ONEIDA COUNTY ZONING AND SHORELAND PROTECTION ORDINANCE

CHAPTER 9
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9.90 SHORELAND PROTECTION

A. Shoreland Jurisdiction

The shoreland protection provisions of this ordinance are adopted pursuant to sec. 59.692, Wis. Stats., and shall apply to all lands (referred to herein as "Shorelands") in the unincorporated areas of Oneida County, which are:

1. Within one thousand (1,000) feet of the ordinary high water mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages in Oneida County shall be presumed to be navigable if they are listed in the DNR publication "Surface Water Resources of Oneida County" or shown on the 7.5 minute series United States Geological Survey quadrangle maps.
2. Within three hundred (300) feet of the ordinary high water mark of navigable rivers or streams or to the landward side of the floodplain, whichever distance is greater. Rivers and streams in Oneida County shall be presumed to be navigable if they are designated as either continuous or intermittent waterways on the United States Geological Survey quadrangle maps. Flood Insurance Rate Maps, which have been adopted by Oneida County, shall be used to determine the extent of the floodplain of navigable rivers or streams in Oneida County. Floodplain areas are subject to the Oneida County Zoning and Shorelands Protection Ordinance.
3. Determinations of navigability and ordinary high water mark shall initially be made by the Zoning Administrator. When questions arise, the Zoning Administrator shall contact the Northern Region Service Center of the DNR for a final determination of a navigability or ordinary high water mark.

B. Most Restrictive Provisions Control

The Shoreland Protection Provisions supersede all the provisions of any other County ordinance that relate to shorelands. However, where an ordinance is more restrictive than the Shoreland Protection Provisions, the more restrictive ordinance shall continue in full force and effect to the extent of the greater restrictions but not otherwise.

C. General Zoning Provisions Apply in Shoreland Jurisdiction

The general zoning provisions of this ordinance consisting of Articles 1, 2, 3, 4, 5, 6, 7, 8 and 10 are expressly incorporated by reference into the Shoreland Protection Provisions (Article 9) of this ordinance and shall apply in the shorelands through the County, to the extent applicable. In the event of a conflict between the general zoning provisions and the Shoreland Protection Provisions, the more restrictive provisions shall apply.

D. DNR Notices and Copies of County Decisions

1. Written notice shall be given to the Northern Region Service Center of the DNR at least ten (10) days prior to hearings on proposed shoreland variances, special uses (conditional uses), appeals for map or text interpretations and map or text amendments.
2. Copies of decisions on shoreland variances, special uses (special exceptions), (conditional uses), appeals for map or text interpretations, and map or text amendments shall be submitted to the Northern Region Service Center of the DNR within ten (10) days after they are granted or denied.

9.91 SHORELAND-WETLAND ZONING (DISTRICT 11) (#4-2008)

A. Purpose

This district is adopted to maintain safe and healthful conditions, to prevent water pollution, to protect fish, aquatic life, fish spawning grounds and wildlife habitat, to preserve shore cover and natural beauty and to control building development in wetlands whenever possible. When development is permitted in a wetland, the development should occur in a manner that minimizes adverse impacts upon the wetland.

B. Designation

1. Shoreland-Wetlands of 2 acres or more

   This district shall include all shorelands within the jurisdiction of this ordinance which are wetlands of two (2) acres or more on the Wisconsin Wetland Inventory Maps dated 4/9/98 and 4/23/98. Those portions of wetland located in the shoreland area that extends across the corporate limits of a municipality, across the County boundary, or across the shoreland limits in the unincorporated area of the County, shall be included in this district if the total is two (2) acres or more.

2. Shoreland-Wetlands of less than 2 acres

   In those wetlands that are less than two (2) acres in size but are located in whole or in part within 200 feet of a navigable lake or stream a shoreland alteration permit is required for filling, draining, or dredging them.

C. Shoreland-Wetland District Boundaries

A shoreland-wetland zoning district (District 11) is created under this ordinance as depicted on Wisconsin Department of Natural Resources Wetland Inventory Maps dated 4/9/98 and 4/23/98. Where an apparent discrepancy exists between the Shoreland-Wetland District boundary shown on the Wisconsin Wetland Inventory maps and actual field conditions at the time the maps were adopted, the Zoning Administrator shall contact the Northern Region Service Center of the DNR to determine if the Shoreland-Wetland District boundary, as mapped, is in error. If the DNR staff concur with the Zoning Administrator that a particular area was incorrectly mapped as a wetland, the Zoning Administrator shall have the authority to immediately grant or deny a permit in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors shown on the Wisconsin Wetland Inventory maps, the Zoning Administrator shall be responsible for initiating a shoreland-wetland map amendment within a reasonable period of time.

D. Permitted Uses

The following uses shall be allowed subject to general shoreland zoning regulations in this ordinance, the provisions of Chs. 30 and 31, Wis. Stats., and the provisions of other state and federal laws, if applicable.

1. Uses involving no fill/dredge activity (no zoning permit or shoreland alteration permit required)

   The following uses do not require the issuance of a zoning permit but must be carried out without filling, flooding, draining, dredging, ditching, tilling or excavating:
   a. Hiking, fishing, trapping, hunting, swimming, and boating
   b. The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits, and tree seeds, in a manner that is not injurious to the natural reproduction of such crops
   c. The pasturing of livestock
   d. The cultivation of agricultural crops
   e. The practice of silviculture including the planting, thinning and harvesting of timber, and
   f. The construction and maintenance of duck blinds and deer stands and blinds.

2. Uses involving limited fill/dredge activity (no zoning permit or shoreland alteration permit required)

   The following uses do not require the issuance of a zoning permit and may include filling, flooding, draining, dredging, ditching, tilling or excavating only to the extent specifically provided below:
   a. Temporary water level stabilization measures which are necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on silviculture activities if not corrected.
   b. Flooding, dike and dam construction and ditching for the purpose of growing and harvesting cranberries.
   c. Ditching, tilling, dredging, excavating, or filling done to maintain or repair existing agricultural drainage systems only to the extent necessary to maintain the level of drainage required to continue the existing agricultural use and only where permissible under sec. 30.20, Wis. Stats. This includes the minimum filling necessary for disposal of dredged spoil adjacent to the drainage system, provided that dredged spoil is placed on existing spoil banks where possible and such filling is permissible under Ch. 30, Wis. Stats.
   d. Construction and maintenance of fences for the pasturing of livestock including limited excavating and filling necessary for such construction and maintenance.
   e. Construction and maintenance of piers, docks, and walkways built on pilings including limited excavating and filling necessary for such construction and maintenance.

f. Limited excavating and filling necessary for the maintenance, repair, replacement and reconstruction of existing town and County highways and bridges.

3. Uses involving limited fill/dredge activity (shoreland alteration permit required)

   The following uses are allowed provided a shoreland alteration permit is issued and provided the filling, flooding, draining, dredging, ditching, tilling or excavating, is limited as specifically provided below:

   a. The construction and maintenance of roads which are necessary to conduct silvicultural activities or are necessary for agricultural cultivation provided that:
      (1) The road cannot, as a practical matter, be located outside the wetland.
      (2) The road is designed and constructed to minimize the adverse impact upon the natural functions of the wetland.
      (3) The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use.
      (4) Road construction activities are carried out in the immediate area of the roadbed only; and,
      (5) Any filling, flooding, draining, dredging, ditching, tilling or excavating must be necessary for the construction or maintenance of the road.
   b. The construction and maintenance of non-residential buildings provided that:
      (1) The building is used solely in conjunction with a use permitted in the Shoreland-Wetland District or for the raising of waterfowl, minnows or other wetland or aquatic animals.
      (2) The building cannot, as a practical matter, be located outside the wetland.
      (3) Such building does not exceed 500 square feet in floor area, and
      (4) Only limited excavating and filling necessary to provide structural support for the building is allowed.
   c. The establishment and development of public and private parks and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game birds and animal farms, fur animal farms, shooting preserves, public boat launching ramps and access roads used in conjunction with a public boat launching ramp, provided that:
      (1) Any private wildlife habitat area must be used exclusively for that purpose;

(2) Filling and excavating necessary for the construction and maintenance of public boat launching ramps and access roads is allowed only where such construction meets the criteria under section 9.91(D)(3)(A); and
(3) Ditching, excavating, dredging, dike and dam construction in wildlife refuges, game bird and animal farms, fur animal farms and shooting preserves, must be for the purpose of improving wildlife habitat or to otherwise enhance wetland values.

d. The construction and maintenance of electric, gas, telephone, water and sewer transmission and distribution lines, and related facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power or water to their members provided that:
(1) Transmission and distribution lines and related facilities cannot, as a practical matter, be located outside the wetland; and
(2) Such construction and maintenance is done in a manner designed to minimize the adverse impact upon the natural features of the wetlands.

e. The construction and maintenance of railroad lines, provided that:
(1) The railroad lines cannot, as a practical matter, be located outside the wetland; and
(2) Such construction or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the wetland.

E. Prohibited Uses

Any use not listed in section 9.91(D) is prohibited, unless the wetland or a portion of the wetland has been rezoned by amendment of this ordinance in accordance with sec. 59.69(5)(e), Wis. Stats., Wis. Admin. Code NR 115, and section 9.91(F) of this ordinance.

F. Rezoning

1. For all proposed text and map amendments to the Shoreland-Wetland District, the Northern Region Service Center of the DNR shall be provided with the following:
a. A copy of every petition for a text or map amendment to the Shoreland-Wetland District, within five (5) days of the filing of such petition with the County Clerk.
b. Written notice of public hearing to be held on a proposed amendment, at least ten (10) days prior to such hearing.
c. A copy of the Committee's findings and recommendations on each proposed amendment, within ten (10) days after the sub-

mission of those findings and recommendations to the County Board; and

d. Written notice of the County Board's decision on the proposed amendment, within ten (10) days after it is issued.

2. A wetland, or a portion thereof, in the Shoreland-Wetland District, shall not be rezoned if the proposed rezoning may result in a significant adverse impact upon any of the following:
   a. Storm and flood water storage capacity;
   b. Maintenance of dry season stream flow, the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;
   c. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
   d. Shoreline protection against soil erosion;
   e. Fish spawning, breeding, nursery or feeding grounds;
   f. Wildlife habitat; or
   g. Areas of special recreational, scenic or scientific interest, including scarce wetland types.
3. If the DNR has notified the Committee that a proposed amendment to the Shoreland-Wetland District may have a significant adverse impact upon any of the criteria listed in section 9.91(F)(2) of this ordinance, that amendment, if approved by the County Board, shall contain the following provision:

> "This amendment shall not take effect until more than thirty (30) days have elapsed since written notice of the County Board's approval of this amendment was mailed to the DNR. During that 30 day period the Department of Natural Resources may notify the County Board that it will adopt a superseding Shoreland Ordinance for the County under sec. 59.692(6), Wis. Stats. If the Department of Natural Resources does so notify the County Board, the effect of this amendment shall be stayed until sec. 59.692(6), Wis. Stats., adoption procedure is completed and otherwise terminated."

9.92 SHORELAND-WETLAND RESTRICTIONS (#17-2004)

A. Purpose

Wetlands are critical natural environmental features which provide habitat for native animals and plants, help purify surface and subsurface waters, and add to, or help protect, the natural appearance of the

Northwoods. This section provides the minimum land use restrictions determined to be essential to protect shoreland wetlands.

B. Applicability

This section applies to all areas identified as shoreland wetlands on Wisconsin Wetland Inventory maps, or otherwise determined officially to be wetlands in shoreland areas. It does not apply to public utilities and public roads. Provisions of this section do not supersede more restrictive requirements identified in section 9.91 Shoreland-Wetland Zoning District or involving structures in a floodplain zoning district.

C. Restrictions

1. On or after February 22, 2004, no grading or other land disturbing activities shall be permitted closer than 5 feet from the edge of a shoreland wetland. An elevated walkway may be permitted pursuant to section 9.91(D)(2)(e).
2. Grading or other land disturbing activities less than 25 feet from a shoreland wetland shall require silt fencing. Installation shall be done in accordance with the standards and specifications outlined in the Wisconsin Construction Site Best Management Practices Handbook (WDNR Pub. WR-222 1993 Revision).

9.93 LOT SIZES IN SHORELAND AREAS; WATERWAY CLASSIFICATION

(Amend. #08-2000, 79-2003, 07-2004, 19-2006, 12-2009)

A. Rationale

A variety of studies have indicated that the impacts of development can diminish water quality, natural fish reproduction, wildlife habitat, fish and aquatic life populations, and natural beauty - the very things that people seek out when they choose to visit or live on Oneida County lakes, rivers, and streams. While all waterways can be impacted from use and development, the vulnerability to those impacts will vary from our waterways depending on its unique characteristics including size.

B. Identification

Oneida County waterways are identified in the DNR publication "Surface Water Resources of Oneida County" or identified in the DNR publication "Register of Waterbodies."

1. Waterway Class I refers to lakes and flowages 50 acres in size or less.

2. Waterway Class II refers to lakes and flowages greater than 50 acres and to all rivers and streams.

C. Applicability

All lots created on waterways intended for single or multiple family development must comply with the waterway classification standards contained in this section and Appendix B. Specifically this section supersedes minimum requirements found in Appendix A, unless stated otherwise in this section. Waterway classification requirements apply to riparian lands.

D. Minimum Lot Area

1. Each lot shall have the minimum lot area as listed in the tables in Appendix B.
2. Minimum lot area shall be measured from the OHWM landward.
3. Any portion of a lot having a width of less than 30' shall not be considered in determining the minimum lot area.
4. Except for utility easements, any other easement or combination of adjacent easements which are greater than 20' in width shall not be used in determining the minimum lot area unless approved by the Department.
5. Except for utility easements, that portion of a lot that exceeds the minimum area requirements of Wis. Admin. Code COMM 83 shall not be divided by easements unless approved by the Department.
6. For lots on Class I Waterways, except for public and private parks, 10,000 contiguous square feet of the minimum lot area shall:
   a. Not contain any shoreland-wetlands.
   b. Is above the elevation of the regional flood as defined in Wis. Admin. Code NR 116.
   c. Is at least 2' above the highest known water elevation of any body of water whose regional flood is undefined.
   d. Must have dryland access to a public or private road.
7. For lots on Class II Waterways, except for public and private parks, 10,000 contiguous square feet of the minimum lot area shall:
   a. Not contain any shoreland-wetlands.
   b. Is above the elevation of the regional flood as defined in Wis. Admin. Code NR 116.
   c. Is at least 2' above the highest known water elevation of any body of water whose regional flood is undefined.
   d. Must have dryland access to a public or private road.
8. For off-water lots in the shoreland area 10,000 contiguous square feet of the minimum lot area shall:
   a. Not contain any shoreland-wetlands.

b. Is above the elevation of the regional flood as defined in Wis. Admin. Code NR 116.
c. Is at least 2' above the highest known water elevation of any body of water whose regional flood is undefined.
d. Must have dryland access to a public or private road.

E. Minimum Riparian Frontage Width

1. Each lot shall have the minimum riparian frontage width (RFW) as listed in the tables in Appendix B.
2. The minimum required riparian frontage width shall be measured the lesser of a straight line connecting points where the side lot lines intersect the OHWM or as the length of a chord which is perpendicular to a side lot where it intersects the OHWM and terminates at the opposite side lot line.

F. Minimum Lot Width

1. Each lot shall have a minimum average lot width (ALW) as listed in Table A of Appendix B.
2. The minimum average lot width shall apply to the area covered by the minimum lot area and shall be calculated using the protocol described in the applicable Wisconsin Administrative Code provisions.

G. Lot Size Modification

On waterways in Table A of Appendix B, a landowner may elect to create one lot which meets or exceeds the minimum requirements of the applicable Wisconsin Administrative Code provisions provided that the remaining lot(s) created or to be created in the future meet the minimum requirements in Table A of Appendix B. Once exercised, the landowner or their successor in title would not be able to use this option again and must record a zoning affidavit acknowledging the same. Lots created under this section must be designed to comply with the building limitations in section 9.94(B) or section 9.99. This provision does not apply to section 9.21 C District 1-C Forestry.

H. Riparian Access

Keyhole development as defined in this ordinance is prohibited.

9.94 OHWM SETBACKS AND SPECIAL ZONING PERMISSION FOR STRUCTURES IN SHORELAND SETBACK (Amend. #08-2000, 29-2001, 71-2002, 87-2003,14-2005, 02-2006, 12-2006, 13-2007, 14-2008, 2-2016)

A. OHWM Setbacks

There shall be setbacks from the ordinary high water mark (OHWM) on lots that abut or are within 75 feet of a navigable waterbody.

1. Setback of 75 feet. The setback for all structures shall be seventy-five (75) feet from the OHWM of any navigable waters to the nearest part of such structure, except for boathouses, boat shelters, piers, private sewage systems, water wells, stairways, walkways and lifts which may be permitted by the terms and conditions of this ordinance.
2. Exceptions to the 75-foot setback from the OHWM of a navigable waterbody. See Appendices C through G for illustrative purposes only. The text in this section shall be controlling and will supersede the appendices if there are any conflicting interpretations.
   a. Existing Development Pattern. Placement of a proposed dwelling or principal building and proposed open deck or patio less than 75 feet from the OHWM based on an existing development pattern may be permitted as set forth below. For purposes of this section, a dwelling or principal building shall not include boathouses, storage sheds, detached garages and other accessory structures.
      (1) Where one or more lots are occupied by a dwelling or principal building and the OHWM setbacks of the existing dwelling or principal building are less than the OHWM setback as required in section 9.94(A)(1), the OHWM setback of the proposed dwelling or principal building and proposed open deck or patio shall be the average of seventy-five (75) feet and the setback of each existing dwelling or principal building located 90 feet or less from the OHWM and within 200 feet of the nearest part of the proposed dwelling or principal building. An OHWM setback of less than 40 feet shall not be allowed.
      (2) The combined total square footage of all proposed and existing decks and patios located within 75 feet of the OHWM cannot exceed 200 square feet.
      (3) Except as provided in this sub-section and section 9.94(B), decks and patios are not permitted within 75 feet of the OHWM.
   b. Shallow Lots. If the setback from a roadway alone, or the setbacks from a roadway and OHWM together, do not allow for a 30 foot deep building envelope for a dwelling or principal building, a reduced setback may be allowed for a legal pre-existing lot under section 9.75 of this ordinance, subject to the following:
      (1) Any addition to or relocation of an existing dwelling or principal building under this subsection must be farther from the OHWM than its previous location.
      (2) The property owner shall obtain a written statement from the government entity that has jurisdiction over such road stating

that it has no objection.

(3) The property owner shall also provide a certified survey map of the project establishing that the setback will not be less than 10 feet from the right-of-way.

(4) The proposed reduction in the roadway setback may be permitted until such 30 foot deep envelope is established.

(5) For lots abutting a State Trunk Highway or connecting highway that is subject to Wisconsin Administrative Code TRANS 233.08, the owner must provide proof of compliance from the Wisconsin Department of Transportation.

(6) If the roadway setback reduction described above does not provide for such 30 foot deep envelope, the OHWM setback may then be reduced until such 30 foot deep envelope is established, provided the resulting OHWM setback is not less than 40 feet.

c. Privies, dry wells, drainfields. Privies, dry wells, drainfields, shall not be less than fifty (50) feet from the OHWM.

d. Boathouse. A riparian owner may construct a boathouse subject to the following restrictions:

(1) The construction or placement of boathouses below the ordinary high water mark of any navigable waters shall be prohibited.

(2) The construction of a boathouse is confined to the viewing area and shall be at least ten (10) feet from the side yard lot line.

(3) With the exception of 9.94(A)(2)(d)(12) below, boathouses shall be designed and constructed solely for the storage of boats and related equipment. Patio doors, fireplaces, plumbing, living facilities and other features inconsistent with the use of the structure exclusively as a boathouse are not permitted.

(4) One boathouse is permitted on a lot as an accessory structure.

(5) Any boathouse which may be permitted within the setback area shall be of one story only. The basement definition does not apply to a boathouse and therefore constitutes a story. The sidewalls of a boathouse shall not exceed 12 feet in height as measured from the top of wall to the floor.

(6) Boathouse construction is subject to the requirements of section 9.97.

(7) Boathouses shall be constructed in conformity with local floodplain zoning standards.

(8) The maximum width of a boathouse parallel to the OHWM shall not exceed the lesser of 75 percent of the viewing area(s) or 36 feet. The overhang and eaves are not included in the maximum width and shall not exceed two feet. The maximum length of a boathouse landward and away from the OHWM shall not exceed 35 feet.

(9) The maximum total footprint shall not exceed 1,008 square feet.
(10) Flat roofs that shed water away from the OHWM are permitted.
(11) The roof of a boathouse may be used as a deck provided that:
(a) The boathouse has a flat roof.
(b) The roof has no side walls or screens.
(c) The roof may have a railing that meets the State of Wisconsin Uniform Dwelling Code.
(12) The number of berths within a boathouse shall be subject to the provisions of section 9.98(D).

e. Boat shelter. A boat shelter may be placed in or built over the water, provided that it meets all other requirements of this ordinance. A boat shelter shall be subject to the following restrictions:
(1) The owner must be a riparian (shoreline) landowner.
(2) Only one boat shelter per lot is permitted.
(3) Storage of accessory materials associated with such boats and used in aid of navigation is permitted.
(4) A boat shelter can be used only as a berth place for one water craft.
(5)Any roof must cover the berth only, not the pier, with a maximum of two (2) feet overhang.
(6) A boat shelter cannot have walls or sides of any type or material, including canvas.
(7) Roof components must be clear span or open truss, with a minimum of vertical supports. Half culverts are not allowed.
(8) A boat shelter must be built of materials and colors consistent with the natural local environment.
(9) A boat shelter must not extend beyond the depth of water required for the boat berthed there.
(10) A boat shelter must allow the free movement of water underneath.
(11) A boat shelter must not interfere with public rights or other riparian rights.
(12) A permanent boat shelter must not substantially detract from natural shoreline aesthetics and therefore will be allowed only along developed shorelines as permitted in Wis. Admin. Code NR 326.
(13) A permanent boat shelter can not be constructed if the riparian landowner has a boathouse.
(14) A boat shelter must conform to any DNR administrative rules and guidelines.
(15) A boat shelter shall be subject to the provisions of section 9.98(D).

3. Improvements. Any of the improvements referred to in section 9.94(A)(1), and any stairway, walkway or lift which are essential to provide riparian access to the shoreline and which are a necessary extension of a pier, shall require a shoreland alteration permit if

located in, on or over steep slopes, or rocky, saturated or unstable soils. The shoreland alteration permit shall be subject to the following minimum requirements and to such other requirements as the County may determine are necessary in order to maintain or improve the natural beauty and environmental stability of the setback area and the adjacent navigable waters:

a. The cutting of trees and shrubbery shall be subject to, and in the aggregate shall not exceed, the restrictions of section 9.95 of this ordinance and Wis. Admin. Code NR 115.05(3)(c). Whenever and wherever practicable, if a viewing area has been created by the cutting of trees and shrubbery, all buildings and structures which may be permitted in the setback area, shall be located within such viewing area(s) with the exception of stairways and lifts which may be placed in the most visually inconspicuous portion of the setback area.
b. Environmentally sensitive areas are to be avoided.
c. Native ground cover which stabilizes slopes or screens the improvement from view shall be maintained or, where determined necessary, planted and maintained.
d. Any filling, grading or excavation shall comply with the shoreland alteration permit requirements of this ordinance.
e. Either one stairway or one lift, which otherwise meets the terms and conditions of this ordinance, may be allowed, but not both; except if there is an existing stairway, a permitted lift shall be mounted to or located immediately adjacent to the existing stairway when practicable.
f. Landscaped stairways at grade (not to exceed one foot below the existing grade) are permitted provided they meet the requirements contained in section 9.94(B).
g. Walkways and lifts shall be supported on pilings or footings.
h. If necessary for safety purposes, landings not exceeding four feet in width, including those required for purposes of access to stairways and lifts, are permitted. Open railings on walkways, and open grill work on lifts are permitted. Benches, seats and tables on walkways are prohibited.
i. A maximum width of four (4) feet is allowed for stairways, and walkways. A maximum width of 8 feet is allowed for lifts and motorized cars.
j. Unless otherwise permitted in this ordinance, canopies, roofs and side walls are prohibited.
k. Permitted structures are to be constructed of materials which blend in with the natural ground cover in the immediate vicinity of the permitted improvement(s), stairway, walkway, or lift.

B. Special Zoning Permission for Structures in Shoreland Setback Area.

The Zoning Administrator shall grant special zoning permission for the construction or placement of a structure on property within the shoreland setback area of any navigable waters if all of the following apply:

1. The part of the structure that is nearest to the water is located at least 35 feet landward from the OHWM.
2. The total floor area of all of the structures on the property within the shoreland setback area will not exceed 200 square feet. In calculating this square footage, boathouses shall be excluded. The square footage of stairways, walkways, and lifts that are determined to be necessary by the Department to provide pedestrian access to a berth structure or shoreline because of steep slopes, or rocky, wet, or unstable soils, are not included in calculating the total floor area.
3. The structure that is the subject of the request for special zoning permission has no sides or has open or screened sides.
4. The Zoning Administrator must approve a plan that will be implemented by the owner of the property to preserve or establish a vegetative buffer zone in accordance with the shoreland alteration mitigation requirements of this ordinance that covers at least 70% of the half of the 75 foot setback area that is nearest to the water.

9.95 SHORELAND VEGETATION PROTECTION AREA

Natural vegetation on land abutting lakes and streams protects scenic beauty, controls erosion, provides wildlife habitat, and reduces the flow of effluents and nutrients from the shoreland into the water. To preserve these desirable features of the shoreline, there shall be maintained a shoreline vegetation protection area on each lot abutting a lake or stream which shall extend to 35 feet from, and parallel to, the OHWM.

A. Vegetation removal, excavating, filling, and land disturbing activities within the vegetation protection area are prohibited with the following exceptions:

1. Construction permitted under section 9.94(A) shall be confined to the viewing area, with the exception of stairways and lifts which may be placed in the most visually inconspicuous portion of the setback area. Such structures which existed prior to May 19, 1999, shall be allowed to remain.
2. Pedestrian access walkways and/or lifts to the shoreline requiring removal of vegetation when permitted under section 9.94(A)(3)(e). A walkway excavations shall not be over five feet wide. Land Disturbance for a walkway may be allowed outside of the viewing area when authorized by a shoreland alteration permit justified by topography, soil, and existing vegetation.
3. Shoreline protection activities authorized by a state permit and erosion control measures approved by the County Land Conservation Department which are designed to remedy significant existing erosion problems.
4. A tree, or portion thereof, may be removed for one or more of the following reasons:
   a. The tree, or portion thereof, is dead.
   b. The tree is a safety hazard to person or property.

c. The tree removal is for the purpose of preventing the spread of disease to other trees.

Whenever a tree is removed, it shall be replaced with another tree as defined in this ordinance and having a minimum DBH of 1 inch.

5. Viewing areas in compliance with the following restrictions:
   a. Each viewing area shall not exceed 30 feet in width. Walkways and lifts shall be confined to a viewing area unless otherwise allowed elsewhere under section 9.95(A)(2) above.
   b. No more than one viewing area shall be allowed in any 100 feet of frontage, or 30% of the lot width on lots less than 100 feet.
   c. Viewing areas shall be established by pruning (not to exceed removal of 25% of live branches) and selective removal of trees and woody plants, leaving one square foot of basal area in the viewing area. Preference shall be given to retaining healthy trees and native trees. Sufficient natural trees and woody plants shall be retained to screen development from view from the water while providing a filtered view of the water from the lot during the summer season.
   d. Clear cutting, filling, grading and other land disturbing activities are prohibited in a viewing area unless permitted under section 9.95(A)(3) above and section 9.94(A)(3)(c).
6. Pruning of trees and woody shrubs outside of the viewing area for the health and/or renewal of vegetation. Such pruning shall not result in removal of more than 25% of the living crown of a tree, nor jeopardize the health and natural shape of a tree or shrub.
7. Private on-site waste disposal systems permitted under the Oneida County Private Sewage Systems ordinance.
8. With a shoreland alteration permit, a collector system for a community waste disposal system provided there is no practical alternative location.
9. Permitted roadways adjacent to permitted stream crossings.
10. With a shoreland alteration permit, private boat launch facilities in districts zoned for commercial use and in other districts where no launch facility is available on the water body, and, with a CUP, publicly owned boat launch facilities, parks, and recreational facilities.

B. The following are restrictions within the vegetation protection area:

1. Timber harvesting. On parcels over five acres in size, limited harvesting is permitted, provided that an equivalent of 60 square feet of basal area per acre of residual trees five inches and greater diameter at breast height (DBH), and at least 2.2 square feet of basal area per lineal 50 feet of shoreline frontage, must remain after harvest.
2. Landings or slash piles are prohibited.
3. Establishment of new lawns and unnatural or non-native landscaping is prohibited.

C. In the shoreland area outside the vegetation protection area, trees and woody plants may be cut in accordance with accepted forest best management practices and sound soil conservation practices which protect water quality.

9.96 SHORELAND MITIGATION PLAN (#08-2000, 30-2001, 02-2006, 14-2008, 21-2008, 2-2016)

The construction, alteration, reconstruction or structural repair of such structures located in close proximity to our navigable waters can cause severe erosion, sedimentation, pollution and nutrient loading of such waters. Prior to such construction, alteration, reconstruction or structural repair, the land owner shall be required to submit a plan to mitigate the adverse affects of such structures as related to the buffer area for review and approval by the Department, if the existing conditions do not meet the minimum requirements set forth below. The Department may require consultation with the Land Conservation Department, a certified arborist or certified landscaper prior to the issuance of a permit. A copy of the approved mitigation plan, or amendment there of shall be signed by the property owner, and filed with the Department. Mitigation plans shall be completed within one year of issuance of the related zoning permit.

The Plan shall include an implementation schedule for the following requirements:

A. Any sanitary system associated with a structure located within seventy five feet (75') of the OHWM shall be brought up to current standards for new construction.

B. A buffer zone at least 35 feet from, and parallel to the ordinary high water mark shall be planted or restored and maintained with vegetation native to the area to the fullest practicable extent possible with effective and permanent erosion and sediment control. Existing natural beaches or beaches which have been or may be permitted by the DNR shall be allowed to be continued and maintained. In addition, the minimum vegetation density for trees shall be 1 per 200 sq. ft. evenly spaced with a minimum one inch (1") diameter, subject to the provisions of 9.95. The minimum vegetation density for shrubs shall be 3 per 200 sq. ft. evenly spaced, subject to the provisions of section 9.95. Those structures issued special zoning permission under section 9.94(B) shall establish a vegetation buffer that covers at least 70% of the half of the 75-foot setback area that is nearest to the OHWM.

C. Open decks or patios within the viewing area located less than 35 feet from the ordinary high water mark shall not be enclosed, covered or expanded, but replacement of up to 200 square feet shall be allowed. Excluding boathouses, all other accessory structures including open decks or patios located outside of the viewing area and less than 35 feet from the ordinary high water mark must be removed.

D. Excess fill, rock or materials associated with reconstruction or repair shall be removed from the site and may not be deposited within the seventy-five (75) foot setback area from the OHWM. The mitigation plan shall also be subject to any provisions of this ordinance which set impervious surface limits, storm water and runoff control, and forestry and construction best management practices.

E. A buffer zone at least ten feet (10') wide extending along each side lot line for a depth of at least seventy-five feet (75') from the ordinary high water mark shall be planted or restored and maintained with vegetation native to the area to the fullest practicable extent possible with effective and permanent erosion and sediment control. No cutting or mowing is permitted in this buffer zone. In addition, the minimum vegetation density for trees shall be 1 per 200 sq. ft. evenly spaced with a minimum one inch (1") diameter, subject to the provisions of section 9.95. The minimum vegetation density for shrubs shall be 3 per 200 sq. ft. evenly spaced, subject to the provisions of section 9.95.

Mitigation requirements A-E above shall be implemented for the following:

A. Properties requiring a permit under sections 9.32(E) and 9.33(B) and meet the requirements of section 9.99.

9.97 SHORELAND ALTERATION PERMITS

A. Shoreland Alteration Permit Required

As specified in this section, a shoreland alteration permit is required for the filling, grading, lagooning, dredging, ditching or excavation of a shoreyard or shoreland, except in the Shoreland-Wetland District (District 11) when done in association with the activities specified in sections 9.91(D)(2)(a) to 9.91(D)(2)(f).

B. Application

An application for a shoreland alteration permit shall be filed with the Department on a form approved by the Committee and available from the Department. Completed applications shall be accompanied by the application fee, as determined by the County Board from time to time. Any state or federal permits required for a project shall be filed with the application. No application will be considered complete until these permits are filed.

C. Permit Review Procedure

1. Permit from Zoning Administrator
   a. The Zoning Administrator has the authority to act on applications in the instances set forth below. The Zoning Administrator shall act on an application within 30 working days of the completed application being filed.
      (1) Alterations for the construction of boathouses, pursuant to 9.94(A)(1), structures permitted under special zoning permission pursuant to 9.94 (B) and walkways if located in, on or over steep slopes or rocks, saturated or unstable soils. (Amend. #8-2000, effective 1/10/01)
      (2) Alterations greater than 200 square feet but less than 10,000 square feet of the shoreyard when the slope is greater than 12%. (Amend. #08-2000, effective 1/10/01)
      (3) Alterations of more than 10,000 square feet of the shoreyard. (Amend. #08-2000, effective 1/10/01)
   b. Written notice of action. Written notice of the Zoning Administrator's action shall be provided to the applicant, with a copy provided to the Committee. The Zoning Administrator has the discretion to hold a public hearing on the application at the applicant's expense.

   c. Engineering or architectural plans

      In the following circumstances, the applicant shall file plans created by a registered professional engineer or landscape architect describing erosion control measures to be utilized during construction excavation. The registered professional engineer or landscape architect shall certify that the erosion control measures specified in the permit and plans have been properly installed prior to the start of any construction excavation activities:
      (1) Alterations of 10,000 square feet or less of the shoreyard when the slope of the shoreyard is between 25% to 45%.
      (2) Alterations of more than 10,000 square feet of the shoreland when the slope of the shoreland is less than 25% and where the project is for the construction of anything other than a single family dwelling
2. Permit from Committee
   a. The Committee shall act on applications to fill, grade, lagoon, dredge, ditch or excavate where more than 10,000 square feet of shoreyard will be altered and the slope of the shoreyard is between 25% and 45%. The Committee shall follow the procedures for public hearings, review of applications, and issuance or denials of a conditional use permit as contained in sections 9.42(A), (B) and (C).
   b. The applicant shall file plans created by a registered professional engineer or landscape architect describing erosion control measures to be utilized during construction excavation. The registered professional engineer or landscape architect shall

certify that the erosion control measures specified in the permit and plans have been properly installed prior to the start of any construction excavation activities.

c. Security. A letter of credit in an amount approved by the Department and in a form approved by corporation counsel shall be provided to the Department before the project is begun to help ensure the completion of the project.

D. Slopes Greater than 45%

Alteration of shoreyard involving slopes greater than 45% is prohibited.

E. Inspection and Notification of Completion

1. An inspection of the site by the Department may be performed prior to the issuance of any shoreland alteration permit.
2. A second on-site inspection may be performed by the Department to ensure proper fencing and erosion control measures after the permit is issued but prior to any construction excavation.
3. The permit holder shall advise the Department of completion of the project by written notification. An on-site inspection may be performed by Department to ensure that the project complies with this ordinance.

F. Permit Conditions

In granting a shoreland alteration permit, the Committee, or the Zoning Administrator, shall require that the applicant comply with the following conditions where appropriate:

1. The smallest amount of bare ground shall be exposed for as short a time as feasible.
2. Temporary ground cover (such as mulch) shall be used and permanent cover (such as sod) shall be planted.
3. Diversion, silting basin, terraces and other methods shall be used to trap sediment.
4. Lagooning shall be conducted in such a manner as to avoid creation of fish trap conditions.
5. Fill shall be stabilized according to accepted engineering standards.
6. Fill shall not restrict a floodway or destroy the storage capacity of a floodplain.
7. Sides of a channel or artificial watercourses shall be stabilized to prevent slumping.
8. Sides of channels or artificial watercourses shall be constructed with slopes (side) of two units horizontal distance to one unit vertical or flatter, unless bulkheads or rip-rapping are provided.
9. Any specific landscaping, construction, planting, or erosion control conditions.

10. Fill materials shall not be deposited in any floodplain, wetland, or outside the designated and fenced construction without proper written authorization.
11. Post-construction runoff shall be infiltrated or temporarily stored to prevent erosion and sediment transport.
12. Upland slopes and artificial watercourses shall be stabilized according to accepted engineering standards.
13. Any other conditions intended to protect shorelines and minimize erosion, sedimentation, and the impairment of fish and wildlife habitat.

9.98 PIERS AND OTHER BERTH STRUCTURES (#83-2003, #12-2006, #7-2015)

A. Purpose

Near shorelands and waters and land within statutorily established setback distances from the OHWM provide natural beauty and are biologically the most productive and the most important for recreational use. Excessive or inappropriate construction of berthing and recreation structures in Oneida County's waterways may have a substantial cumulative adverse effect on public rights and interests in those waters. These requirements are intended to minimize the adverse effects of such construction and to reduce conflict between adjacent or nearby riparian owners by separating their respective uses of the water. A pier shall not unreasonably obstruct navigation or otherwise interfere with public rights in the navigable water and shall not interfere with the rights of other riparian owners. It is recognized that berth structures may be used by people with or without boats, for swimming and fishing, and may be used for general recreation. This ordinance does not regulate the placement or use of mooring buoys other than to count them in any determination of the maximum number of berths allowed to a riparian land owner pursuant to section 9.98(D).

B. Compliance

1. A berth structure which existed prior to April 17, 2012 may be maintained in its present location and configuration as a permissible pre-existing berth structure subject to the requirements of section 9.99 of this ordinance. The annual seasonal removal of the berth structure does not affect its status as a permissible pre-existing berth structure.
2. Subject to the conditions and restrictions of any existing state or county permit, a marina which existed prior to April 17, 2012 may be maintained in its present location and configuration as a permissible marina to the extent that it is located and used in accordance with such permit.
3. Any increase in the number of berths, any change in the location of, or any increase in the dimensions of, or any replacement of an existing berth structure shall be in accordance with this section.

Boathouses are not subject to the dimensional restrictions of this section.

C. Berth Structures Limited

1. Berth structures, except boathouses and boat shelters, may be placed by a riparian property owner without County permits if the construction complies with this section.
2. The use of the property must remain in conformity with the permissible uses enumerated within the zoning district.
3. Decks, platforms and other construction not essential for berthing of boats are prohibited, except that a canopy is permitted over a boat hoist or boat lift and a roof is permitted over a boat shelter or boathouse.
4. A wharf shall only be permitted as an authorized berth structure upon the application for and issuance of a zoning permit after the following conditions have been established by the applicant:
   a. That the wharf will not unreasonably obstruct navigation or otherwise interfere with public rights in the navigable water.
   b. That the wharf does not interfere with the rights of other riparian owners.
   c. That the construction or installation of a pier is not a practicable alternative.

D. Number of Berths

1. For each lot, the total number of berths or moorings at a berth structure is limited to two for the first full 50 feet of shoreline and one berth for each additional full 50 feet. Other factors such as those referenced in section 9.98(E) below, may limit construction and placement to a lesser number. Contiguous lots in common ownership shall be considered a single lot for the purposes of this section.
2. The maximum number of berths that may be permitted for a marina shall be two times the number of berths that would otherwise be permitted under section 9.98(D)(1), subject to the same factors as those referenced in section 9.98(E), which may limit construction and placement to a lesser number. Compliance with this section shall be subject to section 9.98(B)(3).
3. For the purpose of this section, riparian shoreline frontage shall be determined pursuant to the provisions of Wis. Admin. Code NR 326.07.

E. Location of Berth Structures

1. Berth structures and moored boats must be confined to the owner's riparian zone as described in Wis. Admin. Code NR 326. Berth structures must be set back a minimum of 10 feet from side lot lines

extended waterward and any additional distance required to confine approach and docking of the boat to the owner's riparian zone.

2. A berth structure may not unreasonably obstruct navigation or otherwise interfere with public rights in navigable waters. A pier may not encircle or isolate part of a waterway and may not interfere with the rights of other riparian owners.
3. Berth structures and their use may not damage public interest in waterways, including but not limited to, ecologically significant areas, i.e. spawning areas, important vegetation, loon or other waterfowl nesting areas, natural shoreline beauty.
4. Berth structures shall be consolidated as close together as practicable at a single location for each lot. Located within the view corridor, for each lot.
5. Berth structures, where practicable, shall be located immediately waterward from the shoreline where any boathouse or boat shelter is located.
6. The number of piers allowed accrues proportionately to the amount of shoreland frontage owned: one pier is permitted for riparian owners owning less than 150 feet of shoreland frontage. One additional pier is permitted for each additional full 100 feet. Multiple piers shall be consolidated as close together as practicable for each lot.

F. Dimensional Requirements

1. Length.
   a. Unless limited by a pierhead line, as authorized by sec. 30.13, Wis. Stats., pier length is limited to:
      (1) distance to three (3) foot water depth.
      (2) length of boat to be berthed.
      (3) depth required by boat to be berthed.
2. Width. The deck width of a pier, including "T" or "L" or similar finger extensions, may not exceed six (6) feet. Pursuant to section 9.19, Relaxation of Standards for Persons with Disabilities, a deck width of up to eight (8) feet may be permitted because of the handicap of a frequent user.
3. Lateral extensions. Any lateral extensions on piers shall be a "T" or "L" shape and must not exceed 20 feet in total width.

G. Regulation of Lighting

The purpose of this section is to minimize light pollution of the shoreland environment without significantly inhibiting safety and security. This section applies to all lighting on berthing structures or designed to illuminate those structures and associated berths. Light fixtures which do not conform to these provisions may be allowed with a conditional use permit upon a showing of special circumstances affecting safety, security, or general public interest. Legal pre-existing lighting in existence on the effective date of this section must be brought into compliance within five (5) years.

1. Flashing and rotating lights are prohibited.
2. Lighting inside a boathouse and intended to illuminate its interior is permitted.
3. Lighting on exteriors of berthing structures shall be fitted with opaque shades or shields to prevent direct visibility of the lamp to persons on public waters or adjacent lands more than 50 feet beyond the berthing structure.
4. Lighting not mounted on a berthing structure but designed to illuminate a berthing structure or its immediate vicinity shall comply with subparagraph 3 above.
5. Lighting installed on, or intended to illuminate, seasonally used berthing structures shall be turned off when not required for safety or security.
6. Public marinas may install illuminated signs with opaque shaded or shielded lighting that provide information pertaining to applicable federal, state or municipal rules and regulations relating to electrical, fueling, waste and sewage disposal or other safety and environmental matters. Such sign illumination shall not be visible from off the berth structure.

H. Accessory Construction

A pier may include only the following accessory construction:

1. Fuel or sewage handling equipment if applicable state and local safety and pollution prevention rules are complied with and necessary State and/or County permits are obtained.
2. Up to two (2) benches that are six (6) feet or less in length or two (2) swivel seats, or one bench six (6) feet or less and one swivel seat.
3. Flag pole.
4. A vertical boarding ladder or near vertical water stairs with handrails not to exceed four (4) feet in width.
5. An open railing may be permitted pursuant to section 9.19 Relaxation of Standards for Persons with Disabilities.
6. Bumpers to protect watercraft and pier from damage.

I. Pier Construction Materials

Piers may be constructed of wood, treated wood, metal or other material, subject to the following:

1. They shall be free of any product residue or pollutants.
2. Metallic flotation devices shall be coated or painted to prevent corrosion.
3. They shall not include any container previously used to store hazardous substances as defined in sec. 144.01, Wis. Stats
4. They shall not include material that may readily fragment or break up, such as unprotected polystyrene or polyurethane floats.
5. Flotation devices shall be securely attached to the frame and maintained in serviceable condition at all times.

J. Marina Permit Guidelines

Granting of permits for marina facilities under this section shall be guided by the following principles:

1. The County has an obligation to protect public water resources and public safety by regulating construction of berth structures for boats.
2. The County encourages public access to navigable water consistent with its obligation to prevent degradation of water resources by overuse.
3. The uncontrolled drainage of developed riparian land has a significant adverse impact upon the health, safety, and welfare of the County by increasing the siltation and pollution of ground and surface water, by accelerating the eutrophication of receiving waters, by diminishing groundwater recharge and by increasing the incidence and severity of flooding.
4. The right to place berths, berth structures or on-site storage facilities for boats accrues in proportion to the amount of shoreline owned as described in section 9.98(D). Any such berth or storage facility in excess of the number permitted pursuant to section 9.98(D), shall be authorized only for the purpose of serving the public's interests and rights in the navigable waterways of this County. Such berths or on-site storage facilities must be available to members of the public on a first come - first served basis. Rentals or leases for the exclusive use of any such berths shall not be permitted for periods in excess of one year.

K. Marina Facilities

1. Any pier, boat shelter or mooring placement which exceeds the requirements of section 9.98(D) is deemed a marina facility for the purposes of meeting the requirements of this section and shall require a conditional use permit which may only be issued after a duly noticed public hearing has been held. Such permits may only be approved for lots which are located in zoning districts which allow marinas, or if the facility is owned by the federal, state or a municipal government.
2. In making a determination of whether a site is appropriate for a marina, the type of information contained in a CUP application may be considered as well as the impact of a marina on neighboring land or public facilities and of the public need for a marina. The following additional criteria must be addressed:
   a. Existing land and water uses within 2 mile of the marina, including all current business uses of the property.
   b. Current zoning district designation within 2 mile of the marina.
   c. Proximity of the marina to existing public boat landings, public swimming beaches and marinas.
   d. Buffer areas between the marina and adjacent properties.
   e. Location of ecologically significant areas within 2 mile of the proposed site.
   f. Noise control measures.
   g. A detailed sketch showing location and size of existing and proposed buildings, wells, septic systems, piers, individual slips, mooring buoys, water depth for berths and berth structures, boat launching facilities, beaches, fuel tanks and dispenser, parking lots, traffic circulation for both vehicles and boats.
   h. A statement from the applicant indicating the number of berths proposed to be sold, rented, or leased and the method of conveyance (e.g., fee simple, lease).
   i. Methods of waste collection and disposal. Identify precautions to stop improper disposal.
   j. Visual markers and/or signage of reasonable dimensions necessary to identify and/or locate the project.
   k. Exterior lighting of the marina facility.
   l. Sewage system capacity and compliance.
   m. Motor vehicle and trailer parking facilities.
   n. Hours of operation.
   o. Anticipated future changes or additional phases of the project.
   p. Methods to safely dispensing fuel.
   q. Location of any existing or proposed no-wake buoys.
   r. Erosion control measures.
   s. Storm water runoff controls.
   t. Fire protection measures.
   u. A statement from the applicant identifying all permits applied for or obtained by the applicant or his/her predecessor at the site, or obtained by the applicant or his/her operator at any other

commercial site within the preceding ten (10) years and the extent of compliance with such permits.

L. Marina Facility Requirements

Marina facilities shall comply with the following requirements:

1. Marina facilities may not be permitted on waters formally designated by federal or state government as an outstanding resource water.
2. The applicant is required to secure authorization required by municipal floodplain, shoreland, wetland and general zoning ordinances and applicable state statutes and administrative rules, including but not limited to regulations relating to electrical, fueling, waste and sewage disposal and other safety and environmental regulations.
3. The applicant must demonstrate that on-land boat storage or trailer launch facilities are not a feasible alternative to any proposed pier, boat shelter or mooring construction.
4. The applicant shall employ erosion control measures to prevent erosion, siltation, sedimentation and washing and blowing of dirt and debris from excavation, grading, open cuts, side slopes and related activities of the applicant or the contractors. Such measures shall include, but not be limited to, seeding, sodding, mulching, watering, ponding and the construction of berms.
5. The applicant shall determine stormwater runoff or flow as a result of this development. The applicant shall provide stormwater management facilities either in the form of an infiltration structure or a detention basin which will retain on-site the first inch of stormwater from all impervious surfaces from this development.
6. Berthing privileges available to members of the public shall be rented or leased only on a first come - first served basis for terms no longer than one (1) year.
7. Any change or proposed change involving the facts relating to criteria identified in sections 9.98(K) and (L) or as a condition of approval for which a conditional use permit was issued must be submitted to and approved by the County prior to implementation of such change.
8. Reasonable public access to the facility and handicapped parking in compliance with state and federal regulations for the disabled must be provided.
9. Permits issued under this section are subject to further restrictions, conditions, modifications or revocation if the County determines the facility has become detrimental to the public interest or that it is not being adequately offered for use to the general public.
10. Boats berthed at a marina facility shall not be used for overnight lodging.

M. Boathouses

Any permitted boathouse shall be confined to the viewing area, shall be at least 10 feet from the side yard lot line and subject to the provisions of section 9.94(A)(2)(d).

9.99 SHORELAND USES AND STRUCTURES

A. Applicability (#87-2003, 25-2004,4-2009)

The lawful use of a structure or premises located in areas subject to this ordinance that existed at the time of the enactment of this ordinance, or any amendment thereto, may be continued although such use does not conform with the provisions of the zoning district in which it is located, subject to the limitations in this section.

B. Burden of Proof

The property owner shall have the burden to prove by a preponderance of the evidence that:

1. The legal pre-existing use was legally established and in existence at the time the applicable ordinance provision became effective.
2. The use of the property prior to the effective date of the ordinance provision was so active and actual and was not merely casual and occasional, or incidental to the principal use, so that it can be said that the property owner has acquired a "vested interest" in the continuance of such a use.

C. Legal Pre-Existing Uses

1. A legal pre-existing use of a structure or premises may be expanded or enlarged upon issuance of an administrative review permit. No structural alteration, addition or repair to any building or structure with a legal pre-existing use, over the life of the building or structure shall exceed 100 percent of its building footprint at the time it became legal pre-existing unless it is permanently changed to conform to the requirements of this ordinance and provided that the requirements of section 9.50 and 9.99 are met.
2. Discontinuance. If a legal pre-existing use is discontinued for twelve (12) consecutive months, any future use of the building, structure or property shall conform to this ordinance.
3. Temporary Structures. If the legal pre-existing use of a temporary structure is discontinued, such legal pre-existing use may not be recommenced.
4. Nuisances. Uses which are nuisances shall not be permitted to continue as legal pre-existing uses.

D. Shoreland structures which do not meet minimum setbacks of this ordinance. (#29-2001, 71-2002, 79-2003, 87-2003, 25-2004, 14-2008)

1. Purpose. It is the purpose of this ordinance to recognize the interest of the owners of shoreland structures which do not meet minimum setbacks of this ordinance that were legally permitted under the previous ordinances or otherwise lawfully existed, and which existed at the time this ordinance took effect on December 15, 2003, shall be conforming. See Appendices H-L for illustrative purposes only. The text in this section shall be controlling and will supercede the appendices if there are any conflicting interpretations.
2. Buildings and other structures or portions thereof that were lawfully permitted under previous ordinances or otherwise lawfully existed and which existed at the time this ordinance took effect on December 15, 2003, may only be altered or reconstructed in compliance with the limitations in this section.
   a. Existing buildings and other structures or portions thereof unlawfully constructed or altered shall be accorded no benefit under this section.
   b. Subject to the zoning permit requirements of this ordinance, and as required by sec. 59.692(1s), Wis. Stats., if a land owner can establish by permit application that a structure less than seventy-five (75) feet from the OHWM or located in a road setback, side yard setback or rear yard setback areas, has been destroyed or damaged after October 14, 1997 by violent wind, fire, flood or vandalism, the same may be reconstructed or repaired to the size, location and use it had immediately before the damage occurred, subject to the following conditions:
      (1) A structure that is destroyed or damaged due to a deliberate act by the land owner or by his/her agent, or due to general deterioration or dilapidated condition, may not be reconstructed or repaired, except in conformance with the standards of this ordinance.
      (2) Except as provided in sec. 87.30(1d), Wis. Stats., structures less than seventy-five (75) feet from the OHWM that are subject to regulation under a floodplain zoning ordinance may not be reconstructed or repaired except in compliance with the floodplain zoning ordinance.
      (3) Mitigation as set forth in section 9.96 is required.
      (4) The land owner shall bear the burden of proof as to the size, location or use a destroyed or damaged structure located less than seventy-five (75) feet from the OHWM had within a reasonable time before such destruction or damage by providing photographic records, construction documents and assessor's / appraiser's records pertaining to the structure.
      (5) Reconstruction or repairs authorized under this provision shall be permitted only to the extent that they are necessary to repair the specific damage caused by violent wind, vandalism,

fire or flood and only that portion of the structure that has been damaged or destroyed may be reconstructed.

(6) As required by sec. 59.692(1s), Wis. Stats., the size of a structure damaged or destroyed by violent wind, vandalism, fire or flood may be increased to the minimum amount necessary to comply with applicable state or federal laws.

3. Existing accessory structures less than seventy-five (75) feet from the OHWM.
   a. Ordinary maintenance and repair of accessory structures less than seventy-five (75) feet from the OHWM is permitted. Such accessory structures shall not be structurally altered, improved, replaced or expanded except as provided in paragraph b and c in this subsection.
   b. Open decks or patios less than seventy-five (75) feet.
      (1) Located within 40 feet of the OHWM. Open decks or patios less than forty (40) feet from the OHWM shall not be enclosed, covered, or expanded, but replacement and ordinary maintenance and repair is allowed.
      (2) Located from 40 to 75 feet of the OHWM. Open decks or patios less than seventy-five (75) feet from the OHWM, but 40 feet or more from the OHWM, shall not be enclosed or covered. Replacement and ordinary maintenance and repair is allowed. Open decks or patios are permitted horizontal expansion parallel to the OHWM at a distance equal to or greater than the dwelling unit or principal building, provided the dwelling unit or principal building is located 40' or more from the OHWM. Horizontal expansion toward the OHWM is not permitted. The combined total square footage of all decks and patios located less than 75 feet from the OHWM cannot exceed 200 square feet, including any located less than 40 feet from the OHWM.
   c. Boathouses. The maintenance and repair of boathouses that extend water ward beyond the OHWM of any navigable waters shall be permitted upon the issuance of a permit and shall be subject to the requirements of sec. 30.121, Wis. Stats.
   d. Replacement of retaining structures, essential for the control of severe erosion problems, due to steep slopes, or unstable soils shall be permitted.
4. Dwelling units or principal buildings less than seventy-five (75) feet from the OHWM. Dwelling units or principal buildings less than seventy-five (75) feet from the OHWM may be continued subject to the following conditions.
   a. Ordinary maintenance and repair to a dwelling unit or principal building or portion thereof located within seventy-five (75) feet of the OHWM, and structural improvements and/or alterations shall be permitted in compliance with the following limitations:
      (1) All work shall be in strict compliance with all other requirements of this ordinance.

(2) An existing dwelling unit or principal building with 50 percent or more of the footprint located within 40 feet of the OHWM. Horizontal expansion is not permitted. New stories, new basements and other vertical expansions, which may result in total replacement, are permitted within the building footprint provided that the requirements for mitigation in Section 9.96 are met.

(3) An existing dwelling unit or principal building less than 40 feet from the OHWM with more than 50 percent of the footprint located between 40 and 75 feet from the OHWM may be expanded vertically and horizontally, which may result in total replacement, provided the requirements for mitigation in Section 9.96 are met. Horizontal expansion parallel to the OHWM is permitted provided the expansion is located greater than 40 feet from the OHWM. Horizontal expansion toward the OHWM is not permitted. The lifetime total area of all horizontal expansion may not exceed 50 percent of the building footprint, which existed from the effective date of this ordinance on December 15, 2003. An existing dwelling unit or principal building with a footprint less than 720 square feet may be expanded up to a maximum total footprint of 1000 square feet.

(4) An existing dwelling unit or principal building located 40 feet or more from the OHWM may be expanded vertically and horizontally, which may result in total replacement. Horizontal expansion toward the OHWM is not permitted. The lifetime total area of all horizontal expansion may not exceed 100 percent of the existing building footprint, which existed from the effective date of this ordinance on December 15, 2003.

E. Structures that do not meet the minimum setbacks of this ordinance.

1. Accessory structures that encroach over lot lines, road right-of-way lines, or are located within the road setback, side yard or rear yard setback are permitted ordinary maintenance and repair. Such accessory structures shall not be structurally altered, improved, replaced or expanded.
2. Dwelling units or principal buildings that encroach over lot lines or road right-of-way lines may be continued subject to the following:
   a. All work shall be in strict compliance with all other requirements of this ordinance.
   b. Ordinary maintenance, repairs and non-structural improvements shall be permitted provided they do not alter the envelope of such structure, which consists of any existing exterior wall, roof or foundation.
   c. Structural improvements. The alteration of any structural members of the existing walls, roof or interior structural members of such structure shall not be permitted.
3. Dwelling units or principal buildings located in road setback, side

yard setback or rear yard setback areas may be continued subject to the following:

a. All work must be in strict compliance with all other requirements of this ordinance. Ordinary maintenance, repairs and structural improvements shall be permitted.
b. A dwelling unit or principal building or portions thereof located in a road setback, side yard setback or rear yard setback areas is permitted to be expanded vertically and horizontally, which may result in total replacement, in a direction away from the adjoining lot line or road right-of-way line. Upon reaching the setback line, such expansion may also be lateral to the setback line.
c. In the event a proposed expansion is in a road setback area, the property owner shall obtain a written statement from the government entity that has jurisdiction over such road stating that it has no objection.