

## LAND USE PLANNING AND ZONING COMMITTEE STAFF REPORT

PUBLIC HEARING

DECEMBER 2, 2009

### ITEM IV: ORDINANCE AMENDMENT Nonconforming uses and structures

**REQUEST:** Green Lake County Land Use Planning and Zoning Committee is requesting an amendment to the Code of Green Lake County, Chapter 338 of the Shoreland Protection Ordinance; more specifically to amend various sections within ARTICLE IX.

**ADDITIONAL INFORMATION / ANALYSIS:** This ARTICLE IX was created and approved by the County Board in 2006. The format and standards that apply to nonconforming uses and structures is not intended to change significantly.

The purpose of this ordinance amendment is to clarify existing language that will better provide for consistent administration and enforcement of ARTICLE IX, relating to nonconforming uses and structures. These proposed standards are intended to meet the purpose and intent of the Shoreland Protection Ordinance.

This proposed amendment recognizes the legal nonconforming structures and attempts to incorporate standards to protect their existence and to achieve the purpose and intent of the Shoreland Protection Ordinance.

Attached is a copy Article IX as proposed with the various amendments.

**STAFF COMMENTS:** The Land Use Planning and Zoning Committee has several options in this regard and they are as follows:

- ❑ Forward onto the County Board with recommendation to adopt as proposed.
- ❑ Hold another public hearing to take additional public comment.
- ❑ Reject as proposed.

Strikethrough is proposed deleted language

Red indicates language added

ARTICLE IX

Existing Nonconforming Uses and Structures

~~[Amended 8-17-1993 by Ord. No. 525-93; 11-14-2006 by Ord. No. 881-06]~~

§ 338-32. Purpose.

The provisions of this article of Chapter 338 are intended to regulate nonconforming uses and structures to achieve the purpose of §§ 281.31.(1) and (6) Wis. Stats. **That purpose shall be achieved** by placing restrictions on the expansion of and changes to nonconforming uses. **There shall also be restrictions for and on** structural alterations, expansion, **relocation** and replacement of nonconforming structures. **These restrictions are intended to:**

**provide** adequate spacing between structures and navigable waters, **and**

allow for primary and secondary shoreland buffers, **for** infiltration of stormwater runoff; and

limit other direct and cumulative impacts of shoreland development on water quality; near-shore aquatic, wetland and upland wildlife habitat and natural scenic beauty.

§ 338-32.1. Nonconforming uses.

- A. It is the intent of this section to ~~preserve~~ **allow** the ~~legal status~~ of an existing nonconforming use, as provided by §§ 59.69(10) and 59.692(2)(a) Wis. Stats., **with the nonconforming use** being an existing use of any structure or premises **that does not comply with Chapter 338 that was** established prior to the enactment of this chapter or any amendments thereto. ~~through the application of the provisions of this chapter.~~ The provisions ~~herein~~ **of this article** shall regulate all nonconforming uses within the shoreland jurisdiction, unless a variance has been granted by the County Board of Adjustment.
- B. An existing nonconforming use is subject to the following requirements:
- (1) Expansion, **replacement or relocation** of a structure with a nonconforming use shall be prohibited. ~~and~~ Any **structural** alteration or **ordinary maintenance and repair** ~~replacement of a such nonconforming structure with a nonconforming use~~ shall be in compliance with §§ ~~338-32.2., 338-32.3. and 338-32.4. below if the structure is a nonconforming structure.~~
  - (2) As provided in § 59.69(10) Wis. Stats., if a nonconforming use of a structure or property is discontinued for 12 consecutive months, any future use of the structure(s) and property shall conform with the provisions of this chapter and any other applicable ~~laws and regulations~~ **chapters in the Code of Green Lake County.**
  - (3) If a structure or premises contains a nonconforming use, a conforming use shall not be permitted until such time that the nonconforming use is discontinued or brought into compliance with the provisions of this chapter or other chapters that may be applicable **in the Code of Green Lake County.**
  - (4) If the nonconforming use of a temporary structure is discontinued, such nonconforming use may not be recommenced.

## § 338-32.2. Nonconforming structures.

- A. It is the intent of this section to ~~preserve~~ **allow** the ~~legal status~~ of an existing nonconforming structure subject to the provisions of this chapter. All nonconforming structures shall be allowed ordinary maintenance and repair, including but not limited to, the following:
- (1) Shingle or similar roof replacement.
  - (2) Window and door replacement, ~~same size~~.
  - (3) Cosmetic treatments for exterior walls.
  - (4) Installation of insulation, not involving structure demolition.
  - (5) Crack patching and waterproofing of foundation walls.
  - (6) Cosmetic treatments to interior walls, ceilings and floors.
  - (7) Replacement or maintenance of mechanical or utility systems.
  - (8) Temporary alterations done under emergency conditions to protect life or property.
- B. **Setback** standards.
- (1) ~~In addition to other applicable standards,~~ A structure determined to be nonconforming due to substandard side yard, rear yard and/or ~~front~~ **street** yard setback(s) **and is proposed to be repaired, structurally altered, expanded relocated or replaced** shall be regulated by the provisions of **this** subsection B.(1)(a) through (c) ~~below~~, unless a variance has been granted by the County Board of Adjustment affecting the regulation of the nonconforming structure. **The following shall apply to nonconforming structures within this subsection:**
    - (a) Ordinary maintenance and repair ~~of a nonconforming structure~~ as identified in § 338-32.2.A.(1) through (8) ~~above~~ or others similar thereto **of a nonconforming structure**, shall be allowed.
    - (b) Structural alteration of a nonconforming structure **that does not change any existing limits of the nonconforming structure** shall be allowed. **In addition, structural alterations that** ~~unless the structural alterations meet the requirements of § 338-32.6. Damaged or destroyed nonconforming structures, are allowed. 59.692(1s), Wis. Stats.~~
    - (c) Expansion of a nonconforming structure shall meet the following standards:
      - [1] **Expansion of a nonconforming structure may occur at a point that is equal to or greater than the minimum setback requirement.**
      - [2] There shall be no expansion **on any level into** ~~within~~ the required side yard setback area. **and Side yard expansion shall be permitted provided** the total of the two side yard setbacks after expansion ~~shall~~ **are** not be less than the total of the two required side yard setbacks of this chapter.
      - [3] There shall be no expansion **on any level into** ~~within~~ the required ~~front~~ **street** and rear yard setback areas.
      - [4] **Satisfy the standards of § 338-32.6. Damaged or destroyed nonconforming structures for expansion, if applicable.**

- (d) Relocation. A nonconforming structure shall not be relocated in the shore yard setback area.
  - (e) Replacement. The replacement of an existing nonconforming structure or part thereof within the shore yard setback area is prohibited, unless the requirements of § 338-32.6. Damaged or destroyed nonconforming structures, are satisfied for the replacement structure.
- (2) ~~Furthermore, A structure determined to be nonconforming due to a substandard that was constructed prior to the enactment of this chapter or any amendments thereto and does not conform to the shore yard setback standard of this chapter and is proposed to be repaired, structurally altered, expanded, relocated or replaced shall be regulated by is subject to the following requirements provisions of subsection § 338-32.3. Nonconforming principal structures or § 338-32.4. Nonconforming accessory structures.~~

### § 338-32.3. Nonconforming principal structures.

All nonconforming principal structures that have any part of the structure in the shore yard setback area shall be regulated by the provisions of this chapter ~~article~~ as follows, unless a variance has been granted by the Board of Adjustment affecting the regulation of the nonconforming principal structure. ~~The following shall apply to nonconforming principal structures:~~

- A. ~~Ordinary maintenance and repair of a nonconforming principal structure as identified in § 338-32.2A(1) through (8) above or others similar thereto~~ of a nonconforming principal structure, shall be allowed.
- B. Structural alteration of a nonconforming principal structure shall not be allowed, unless the standards of ~~the County's mitigation system in § 338-32.5. Mitigation system, below~~ are satisfied or the structural alterations meet the requirements of § ~~59.692(1s), Wis. Stats.~~ 338-32.6. Damaged or destroyed nonconforming structures. Structural alterations shall not change any existing limits of a nonconforming principal structure. ~~Structural alterations shall not allow for vertical expansion from the existing limits of any nonconforming principal structure or part thereof.~~
- C. Expansions of ~~all~~ nonconforming principal structures shall meet the purpose and intent of this chapter and comply with the following:
  - (1) Expansion of a nonconforming principal structure with any part located within 35 feet of the ordinary high water mark of navigable waters is prohibited.
  - (2) Expansion on any level of a nonconforming principal structure shall occur at a point that is equal to or greater than 75 feet from the ordinary high water mark of the navigable water. In addition, the expansion must satisfy the standards of § 338-32.5. Mitigation system.
  - (23) Expansion of all nonconforming principal structures within the 75 foot shore yard setback area is allowed if all the standards of subsection §338-32.3.C.(3)(a) thru (d) are satisfied. In addition, if the nonconforming structure is entirely within the 75 foot shore yard setback area, the expansion shall only be made to the side of the nonconforming structure that is farthest from and opposite the ordinary high water mark of the navigable water.

~~expansion of a nonconforming principal structure that is entirely set back 35 feet or~~

~~more from the ordinary high water mark of navigable waters shall only be allowed if all of subsection C.(2)(a) through (e) below are satisfied:~~

(a) The existing land area **is an average width of 50 feet, is** has at least 710,000 square feet in area, and is of record in the Register of Deeds office.

(b) The total of all impervious surface areas within the ~~seventy-five~~ **75** foot shore yard setback area, at the completion of an expansion project, shall be as follows:

[1] A gross shore yard setback area shall be determined, being the area between the ordinary high water mark and a line 75 feet landward and parallel to the ordinary high water mark, and the area between the side lot lines 75 feet back from the ordinary high water mark.

[2] **Subtract** from the gross shore yard setback area the net shore yard setback area. ~~shall be Determine being the remainder after the~~ **net shore yard setback area by subtracting the** ~~thirty-five~~ **35** foot primary shore yard buffer **area** and the two side yard setback **areas** ~~or~~ **and** other **applicable** setback areas. ~~are subtracted from the gross area.~~

[3] The impervious surface area allowed in the gross shore yard setback area shall be ~~determined as~~ a percentage of the net shore yard area. The percentage shall be based on the amount **extent** of encroachment into the **(75 foot) shore yard setback area, of the nonconforming principal structure or part thereof,** with a ~~seventy-five~~ **75** foot shore yard setback being 0% impervious surface ~~being~~ allowed. For each foot of encroachment into the shore yard setback area, ~~an 4% of~~ additional **1% of the net shore yard** area shall be allowed as impervious surface in the gross shore yard setback area, up to a maximum of 40%.

~~[4] The total allowable impervious surface in the gross shore yard setback area does not include area allowed under § 59.692(1v), Wis. Stats.~~

~~[54]~~ Measurements shall be taken from the ordinary high water mark to the closest ~~part~~ **point** of the nonconforming principal structure, **or part thereof.**

~~(c) Horizontal expansion of the footprint of an existing nonconforming principal structure or parts thereof shall not extend closer to the ordinary high water mark. If any expansion is horizontal, the proposed expansion shall only be made to the side of the nonconforming principal structure that is opposite the ordinary high water mark of the navigable waters. Horizontal expansion may occur to a nonconforming principal structure at a point equal to or greater than 75 feet from the ordinary high water mark of the navigable water.~~

~~(d) Vertical expansion of the nonconforming principal structure within the seventy-five foot shore yard setback area shall be prohibited.~~

~~(ec)~~ The standards of the County's mitigation system in § 338-32.5. ~~below~~ **Mitigation system,** are satisfied.

~~(d)~~ **Satisfy the standards of § 338-32.6. Damaged or destroyed nonconforming structures, if applicable.**

D. Replacement. The replacement of an existing nonconforming principal structure or part thereof within the ~~seventy-five~~ **75** foot shore yard setback area is prohibited, unless the

~~replacement structure meets the requirements of § 59.692(1s), Wis. Stats. 338-32.6. Damaged or destroyed nonconforming structures are satisfied for the replacement structure.~~

- E. Relocation. A nonconforming principal structure shall not be relocated in the shore yard setback area.

#### **§ 338-32.4. Nonconforming accessory structures.**

All nonconforming accessory structures that have any part of the structure in the shore yard setback area shall be regulated by the provisions of this ~~article, chapter as follows,~~ unless a variance has been granted by the County Board of Adjustment affecting the regulation of the nonconforming accessory structure. ~~The following shall apply to nonconforming accessory structures:~~

- A. Ordinary maintenance and repair ~~of a nonconforming accessory structure as identified in § 338-32.2A.(1) through (8) above or others similar thereto~~ ~~of a nonconforming accessory structure,~~ shall be allowed.
- B. Structural alterations ~~of a nonconforming accessory structure~~ shall not be allowed unless the standards of the County's mitigation system in § 338-32.5. ~~Mitigation system,~~ below are satisfied or ~~the structural alterations~~ meet the requirements of § 59.692(1s), Wis. Stats. 338-32.6. ~~Damaged or destroyed nonconforming structures. Structural alterations shall not change any existing limits of a nonconforming accessory structure. The foundation of a nonconforming accessory structure shall not be replaced or structurally altered.~~ Structural alterations to nonconforming accessory structures without a foundation shall not be permitted unless ~~said~~ ~~the~~ nonconforming accessory structure is moved to a code-compliant setback location.
- C. The ~~Expansion or replacement~~ of a nonconforming accessory structure is prohibited, unless the requirements of § 338-32.6. ~~Damaged or destroyed nonconforming structures, 59.692(1s), Wis. Stats.,~~ are satisfied. ~~for the replacement of a nonconforming accessory structure.~~
- D. ~~Replacement of a nonconforming accessory structure or part thereof within the 75 foot shore yard setback area is prohibited, unless the requirements of § 59.692(1s), Wis. Stats. 338-32.6. Damaged or destroyed nonconforming structures, are satisfied for the replacement structure.~~
- ~~E~~D. Relocation. ~~A nonconforming accessory structure shall not be relocated in the shore yard setback area. is prohibited unless the nonconforming accessory structure is moved to a code-compliant setback location.~~

#### **§ 338-32.5. Mitigation system.**

- A. This chapter intends to provide a ~~mitigation~~ system that ~~mitigates~~ ~~is proportional to the potential adverse impact of a proposed project on water quality; near-shore aquatic, wetland and upland wildlife habitat; and the natural and scenic beauty of navigable waters. and~~ ~~All proposed projects that are regulated by the provisions of this article shall~~ meets the following minimum standards:
  - (1) Level 1: ~~Nonconforming accessory structures: For~~ Permits issued for ~~the~~ structural alteration of a nonconforming accessory structure ~~shall include the creation or restoration of a shoreland buffer, along with the preservation and maintenance of~~

either, the size of which is the land area's full width and landward a depth of not less than ~~native planting and shoreline stabilization and vegetation within 15 feet of~~ from the ordinary high water mark. An access viewing corridor shall be permitted in accordance with § 338-18.C. of this chapter. ~~shall occur proportional to the work that is being done on the nonconforming accessory structure, as determined by the Land Use Planning and Zoning Department.~~

- (2) Level 2: **Nonconforming principal structures:** For Permits issued for the structural alteration, replacement or expansion of a nonconforming principal structure, shall comply with the following minimum mitigation requirements shall apply:
- (a) Inspection and upgrade, if necessary, of POWTS (private on-site wastewater treatment system) located on a property where a nonconforming principal structure is proposed to be structurally altered, replaced or expanded.
  - (b) The creation **or restoration** of a new primary shoreland buffer ~~or restoration of a previously removed primary shoreland buffer~~ along with the preservation and maintenance of either of these primary shoreland buffers shall be required, the size of which is **the land area's full width and landward a depth of not less than 35 feet from the ordinary high water mark. An access viewing corridor shall be permitted in accordance with § 338-18.C. of this chapter.** ~~in direct proportion to the amount of existing and proposed impervious surface in the shore yard setback area; and the allowed impervious surface in the gross shore yard area, as determined in § 338-32.3.C.(2) above. That proportion (expressed as a percentage) shall be multiplied by the required depth of the primary shoreland buffer of 35 feet, to determine the depth of the buffer required for the proposed project. The proposed buffer shall satisfy the following:~~
    - ~~[1] The shoreland buffer depth shall be 35 feet landward or a proportional depth per § 332-32.5A(2)(b) above measured horizontally and parallel to the ordinary high water mark of navigable waters.~~
    - ~~[2] An access/viewing corridor may extend through the primary buffer subject to the following provisions:~~
      - ~~[a] Tree and shrubbery removal in an area parallel to the ordinary high water mark and 35 feet landward is prohibited.~~
      - ~~[b] Removal of trees in the primary buffer is prohibited; however, selective pruning and/or removal of existing trees and/or shrubs within the thirty five foot buffer to create an access/viewing corridor is permitted. An access/viewing corridor shall:~~
        - ~~[i] Have the same minimum side yard setback as required for a structure.~~
        - ~~[ii] Be limited to one per land area.~~
        - ~~[iii] Be the lesser of 30 feet in width or 30% of the land area's shortest width at the ordinary high water mark of the navigable water.~~
  - (c) The **creation and implementation of a stormwater management plan designed and maintained in accordance with Chapter 284 of the Code of Green Lake County and approved by the County Land Conservation Department.**

~~management of stormwater runoff from impervious surfaces to promote infiltration to the maximum extent possible.~~

- (d) Removal of nonconforming accessory structures may be used as a mitigation option under Level 2, as determined by the Land Use Planning and Zoning Department.

(3) For Level 1 and Level 2 mitigation the primary shoreland buffer shall be designed by an RSVP certified professional(in accordance with NRCS Interim Standard #643A and NRCS Technical Note 1: Shoreland Habitat), be evaluated and approved by the Land Use Planning and Zoning Department prior to land use permit issuance, and be installed within one year of land use permit issuance.

The primary shoreland buffer maintenance shall be governed by a Shoreland Vegetative Buffer Agreement that shall be recorded in the County Register of Deeds Office.

~~B. The County land use permit application to structurally alter, replace or expand a nonconforming principal structure shall require the property owner to submit a stormwater management and erosion control plan and shoreland buffer vegetation plan prior to issuance of a County land use permit. Compliance with these plans shall be a condition of permit approval and issuance. If a shoreland buffer vegetation plan is on file for a property from a previous project and that plan meets all the requirements of this subsection and Subsection A above in mitigating the adverse impact of the proposed project, submittal of another plan may be waived by the Land Use Planning and Zoning Department. The standards for the shoreland buffer vegetation plan shall be those in Level 2 mitigation and all of the following as minimums:~~

- ~~(1) Describe the existing vegetation in the primary shoreland buffer that the property owner shall preserve and maintain; in addition, describe new vegetation to be established and maintained, on the property where the nonconforming structure is located.~~
- ~~(2) Prohibit removal of trees or shrubs in the primary shoreland buffer, except for the removal of exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease or vegetation possessing an imminent safety hazard. Any removed vegetation shall be replaced with native vegetation in the same area following the standards of § 338-19 of this chapter.~~
- ~~(3) Describe how stormwater runoff will be managed to direct runoff from impervious surfaces to vegetated areas to promote infiltration, to the maximum extent possible.~~

### **§ 338-32.6. Nonconforming damaged or destroyed structures.**

A. As required by § 59.692(1s) Wis. Stats., if a landowner can establish that a nonconforming structure has been damaged or destroyed after October 14, 1997 by violent wind, fire, flood vandalism, ice, snow, mold or infestation; this article may not prohibit the restoration of that nonconforming structure if that structure will be restored to the size, location and use it had immediately before the damage or destruction occurred subject to the following:

- (1) A nonconforming structure that is damaged or destroyed due to a deliberate act by the landowner or their agent, or gradual deterioration through old age, or dilapidated condition, may not be restored, except in compliance with the standards of this chapter.
- (2) A nonconforming structure that is damaged or destroyed that is subject to

floodplain zoning regulations may not be restored, unless in compliance with the Code of Green Lake County, Chapter 300, Floodplain Zoning Ordinance.

- (3) The standards of § 338-32.5. Mitigation System, are satisfied.
- (4) The size of the nonconforming structure shall be allowed larger than it was immediately before the damage or destruction, if necessary to comply with applicable state and federal requirements. Documentation of state and federal requirements shall be provided by the landowner prior to issuance of a land use permit.
- (5) Work authorized under this subsection to restore damage or destruction to a nonconforming structure caused by violent wind, fire, flood vandalism, ice, snow, mold or infestation; shall be limited to repair, reconstruction or improvement of the area that was damaged or destroyed.
- (6) The landowner shall bear the burden of proof as to the size, location and use a damaged or destroyed nonconforming structure had immediately before the damage or destruction occurred. Documentation of these items may be required by the Land Use Planning and Zoning Department.