

CHAPTER 22
(Revised 10-4-2016)

SHORELANDS AND WETLANDS

STATUTORY AUTHORIZATION, FINDING OF FACT, STATEMENT OF PURPOSE AND TITLE

22.01 STATUTORY AUTHORIZATION. This ordinance (Chapter 22) for shoreland protection is adopted pursuant to the authorization set forth in s. 59.692, Wis. Stats., to implement ss. 59.692, 59.694, & 281.31, Wis. Stats., and Ch. NR 115 of the Wisconsin Administrative Code. These rules and laws shall apply until amended and then shall apply as amended.

22.02 FINDING OF FACT. Uncontrolled use of the shorelands and pollution of the navigable waters of Brown County would adversely affect the public health, safety, convenience, and general welfare and impair the tax base. The legislature of Wisconsin has delegated responsibility to the counties to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; and to preserve shore cover and natural beauty. This responsibility is hereby recognized by Brown County, Wisconsin.

22.03 PURPOSE AND INTENT (s. NR 115.01). For the purpose of promoting the public health, safety, convenience and welfare, and promote and protect the public trust in navigable waters this ordinance has been established to:

- (1) Further the maintenance of safe and healthful conditions and prevent and control water pollution through:
 - (a) Establishing minimum lot sizes to provide adequate area for private on-site waste treatment systems.
 - (b) Controlling filling and grading to prevent serious soil erosion problems.
 - (c) Limiting impervious surfaces to control runoff which carries pollutants.
- (2) Protect spawning grounds, fish and aquatic life through:
 - (a) Preserving wetlands and other fish and aquatic habitat.
 - (b) Regulating pollution sources.
 - (c) Controlling shoreline alterations, dredging and lagooning.
- (3) Control building sites, placement of structures and land uses through:
 - (a) Prohibiting certain uses detrimental to the shoreland area.
 - (b) Setting minimum lot sizes and widths.
 - (c) Setting minimum building setbacks from waterways.
 - (d) Setting the maximum height of near shore structures.
- (4) Preserve and restore shoreland vegetation and natural scenic beauty through:
 - (a) Restricting the removal of natural shoreland cover.

- (b) Preventing shoreline encroachment by structures.
- (c) Controlling shoreland excavation and other earth moving activities.
- (d) Regulating the use and placement of boathouses and other structures.

22.04 TITLE. This ordinance constituting Chapter 22 of the Brown County Code, shall be known, cited and referred to as: The Shorelands and Wetlands Ordinance for Brown County, Wisconsin.

GENERAL PROVISIONS

22.05 AREAS TO BE REGULATED. Areas regulated by this ordinance shall include all the lands (referred to herein as "shorelands") in the unincorporated areas of Brown County which are:

- (1) Within 1,000 feet of the ordinary high-water mark of navigable lakes, ponds or flowages. (s. NR 115.03(8).) Lakes, ponds or flowages in Brown County shall be presumed to be navigable if they are listed in the Wisconsin Department of Natural Resources ("Department") publication FH-800 2009 "Wisconsin Lakes" book available electronically at the following web site: <http://dnr.wi.gov/org/water/fhp/lakes/lakemap/> or are shown on United States Geological Survey quadrangle maps (1:24,000 scale), or other zoning base maps.
- (2) Within 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. (s. NR 115.03(8).) Rivers and streams in Brown County shall be presumed to be navigable if they are designated as perennial waterways or intermittent waterways on United States Geological Survey quadrangle maps. (1:24,000) Flood hazard boundary maps, flood insurance rate maps, flood boundary- floodway maps, county soil survey maps or other existing county floodplain zoning maps shall be used to delineate floodplain areas.
- (3) Determinations of navigability and ordinary high-water mark location shall initially be made by the zoning administrator. When questions arise, the zoning administrator may contact the appropriate office of the Department for a final determination of navigability or ordinary high-water mark. The county may work with surveyors with regard to s. 59.692(1h), Wis. Stats. Field locating the ordinary high-water mark on the Bay of Green Bay ("Bay") shall not exceed the elevation of 583 feet, IGLD85 unless deemed appropriate by the zoning administrator to set higher based on site conditions per the definition of ordinary high-water mark in this ordinance. The all-time historic high water elevation of the Bay is 582.35 feet, IGLD85 as calculated by the Army Corps of Engineers (USACOE).
- (4) Under s. 281.31(2m), Wis. Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, this ordinance does not apply to:
 - (a) Lands adjacent to farm drainage ditches if:
 - 1. Such lands are not adjacent to a natural navigable stream or river.
 - 2. Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching.
 - (b) Lands adjacent to artificially constructed drainage ditches, ponds or stormwater retention basins that are not hydrologically connected to a natural navigable water body.
- (5) The Brown County Private Sewage System Ordinance (Chapter 11 of this Code), The Floodplains Ordinance for Brown County, Wisconsin (Chapter 23 of this Code) and the Brown

County Land Division and Subdivision Ordinance (Chapter 21 of this Code), as referred to in this ordinance, have been adopted separately and are applicable throughout Brown County where there is jurisdiction.

- (6) The provisions of this ordinance apply to the county's regulation of the use and development of unincorporated shoreland areas. Unless specifically exempted by law, all cities, villages, towns, counties and, when s. 13.48 (13), Wis. Stats., applies, state agencies are required to comply with, and obtain all necessary permits under, local shoreland ordinances. The construction, reconstruction, maintenance or repair of state highways and bridges carried out under the direction and supervision of the Wisconsin Department of Transportation is not subject to local shoreland zoning ordinances if s. 30.2022 (1), Wis. Stats., applies. (s. NR 115.02.) Shoreland zoning requirements in annexed or incorporated areas are provided in ss. 61.353 and 62.233, Wis. Stats.

22.06 SHORELAND WETLAND ZONING MAPS. The most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface Water Data Viewer is made part of this ordinance. The maps can be viewed at: <http://dnrmaps.wi.gov/SL/Viewer.html?Viewer=SWDV&runWorkflow=Wetland> and the data will also be available on the county GIS.

22.07 COMPLIANCE (NR 115.04). The use of any land or water, the size, shape and placement of lots, the use, size, type and location of structures on lots, the installation and maintenance of water supply and waste disposal facilities, the filling, grading, lagooning, dredging of any lands, the cutting of shoreland vegetation, the subdivision of lots, shall be in full compliance with the terms of this ordinance and other applicable local, state or federal regulations. (However, see Section 22.46 of this ordinance for standards applicable to nonconforming uses.) Buildings, signs and other structures shall require a permit unless otherwise expressly excluded by a provision of this ordinance. Property owners, builders and contractors are responsible for compliance with the terms of this ordinance.

22.08 MUNICIPALITIES AND STATE AGENCIES REGULATED. Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this ordinance and obtain all necessary permits. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt when s. 30.2022(1), Wis. Stats., applies.

22.09 ABROGATION AND GREATER RESTRICTIONS. The provisions of this ordinance supersede all the provisions of any county zoning ordinance adopted under s. 59.69, Wis. Stats., which relate to shorelands. In other words if a zoning standard only applies to lands that lie within the shoreland and applies because the lands are in shoreland, then this ordinance supersedes those provisions. However, where an ordinance adopted under a statute other than s. 59.692, Wis. Stats., does not solely relate to shorelands and is more restrictive than this ordinance, for example a floodplain ordinance, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.

- (1) (s. 59.692(2)(a), Wis. Stats.) This ordinance shall not require approval or be subject to disapproval by any town or town board.
- (2) (s. 59.692(2)(b), Wis. Stats.) If an existing town ordinance relating to shorelands is more restrictive than this ordinance or any amendments thereto, the town ordinance continues in all respects to the extent of the greater restrictions, but not otherwise.
- (3) This ordinance is not intended to repeal, abrogate or impair any existing deed restrictions,

covenants or easements. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.

- (4) The following provisions of The Floodplains Ordinance for Brown County (Chapter 23) are hereby incorporated by reference; these provisions shall only apply to the shoreland area where they impose greater restrictions than this ordinance otherwise imposes.
- (5) (s. 59.692(1k)(a)1., Wis. Stats.) This ordinance may establish standards to regulate matters that are not regulated in NR 115, but that further the purposes of shoreland zoning as described in section 22.03 of this ordinance.
- (6) (s. 59.692(1k)(a)1., Wis. Stats.) Counties may not establish shoreland zoning standards in a shoreland zoning ordinance that does any of the following:
 - (a) Requires approval to install or maintain outdoor lighting in shorelands, imposes any fee or mitigation requirement to install or maintain outdoor lighting in shorelands, or otherwise prohibits or regulates outdoor lighting in shorelands if the lighting is designed or intended for residential use.
 - (b) Requires any inspection or upgrade of a structure before the sale or other transfer of the structure may be made.
- (7) (s. 59.692(7), Wis. Stats.) The construction and maintenance of a facility is considered to satisfy the requirements of this ordinance if:
 - (a) The Department has issued all required permits or approvals authorizing the construction or maintenance under ch. 30, 31, 281, or 283 of the Wisconsin Statutes.

For purposes hereof, a "facility" means any property or equipment of a public utility, as defined in s. 196.01(5), Wis. Stats., or a cooperative association organized under ch. 185, Wis. Stats., for the purpose of producing or furnishing heat, light, or power to its members only, that is used for the transmission, delivery, or furnishing of natural gas, heat, light, or power.

22.10 INTERPRETATION (59.69(13)). In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the county and shall not be deemed a limitation or repeal of any other powers granted by Wisconsin Statutes. Where a provision of this ordinance is required by statute and a standard in Ch. NR 115, Wis. Adm. Code, and where the ordinance provision is unclear, the provision shall be interpreted in light of the statute and Ch. NR 115 standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.

22.11 SEVERABILITY. If any portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

LAND DIVISION AND SANITARY REGULATIONS

22.12 LAND DIVISION REVIEW (s. NR 115.05(2)). The county shall review, pursuant to s. 236.45, Wis. Stats., all land divisions in shoreland areas which create three or more parcels or building sites of five acres each or less within a five-year period. In such review the following factors shall be considered:

- (1) Hazards to the health, safety or welfare of future residents.
- (2) Proper relationship to adjoining areas.
- (3) Public access to navigable waters, as required by law.
- (4) Adequate storm drainage facilities.
- (5) Conformity to state law and administrative code provisions.

22.13 PLANNED UNIT DEVELOPMENT (s. NR 115.05(1)(a)4.).

- (1) **PURPOSE.** The Planned Unit Development is intended to permit smaller non-riparian lots where the physical layout of the lots is so arranged as to better assure the control of pollution and preservation of ground cover than would be expected if the lots were developed with the normal lot sizes and setbacks and without special conditions placed upon the Planned Unit Development at the time of its approval. A condition of all Planned Residential Unit Development is the preservation of certain open space, preferably on the shoreland, in perpetuity.
- (2) **REQUIREMENTS FOR PLANNED UNIT DEVELOPMENT.** The Brown County Planning and Land Services Department may at its discretion, upon its own motion or upon petition, approve a Planned Unit Development Overlay District upon finding, that all of the following facts exist:
 - (a) **Area.** The area proposed for the Planned Unit Development shall be at least 2 acres in size or have a minimum of 200 feet of frontage on navigable water.
 - (b) **Lots.** Any proposed lot in the Planned Unit Development that does not meet the minimum size standards of sections 22.16 and 22.17 of this ordinance shall be a non-riparian lot.
 - (c) **Lot sizes, widths, setbacks, and vegetation removal.** When considering approval of a Planned Unit Development the governing body shall consider whether proposed lot sizes, widths, and setbacks are of adequate size and distance to prevent pollution or erosion along streets or other public ways and waterways. Increased shoreland setbacks shall be a condition of approval as a way of minimizing adverse impacts of development. Shore cover provisions in section 22.33 of this ordinance shall apply except that maximum width of a lake frontage opening shall be 100 feet and minimum vegetative buffer depth shall be increased to offset the impact of the proposed development.

SANITARY REGULATIONS

22.14 SANITARY REGULATIONS (NR 115.05(3)).

- (1) The county shall adopt sanitary regulations for the protection of health and the preservation and enhancement of water quality.
 - (a) Where public water supply systems are not available, private well construction shall be required to conform to Ch. NR 812, Wis. Adm. Code.
 - (b) Where a public sewage collection and treatment system is not available, design and construction of private on-site waste treatment system shall, prior to July 1, 1980, be required to comply with Ch. SPS 383, Wis. Adm. Code, and after June 30, 1980, be

governed by a private sewage system ordinance adopted by the county under s. 59.70(5), Wis. Stats.

DIMENSIONS OF BUILDING SITES

22.15 PURPOSE (s. NR 115.05(1)(a)).

- (1) Minimum lot sizes in the shoreland area shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water.

22.16 LOTS SERVED BY PUBLIC SANITARY SEWER (s. NR 115.05(1)(a)1.).

- (1) The minimum lot area shall be 10,000 sq. ft. and the minimum average lot width shall be 65 feet with at least 65 feet of frontage at the ordinary high-water mark.

22.17 LOTS NOT SERVED BY PUBLIC SANITARY SEWER (s. NR 115.05(1)(a)2.).

- (1) The minimum lot area shall be 20,000 sq. ft. and the minimum average lot width shall be 100 feet with at least 100 feet of frontage at the ordinary high-water mark.

22.18 SUBSTANDARD LOTS (s. NR 115.05(1)(a)3). A legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot size requirements, may be used as a building site if all of the following apply:

- (1) The substandard lot or parcel was never reconfigured or combined with another lot or parcel by plat, survey, or consolidation by the owner into one property tax parcel.
- (2) The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
- (3) The substandard lot or parcel is developed to comply with all other ordinance requirements.

Note: The intent of this provision is to allow lots that were legally created that currently do not meet the minimum lot width and area requirements to be considered a building site provided all ordinance requirements can be met. Substandard lots that have been reconfigured by a certified survey map or consolidated into one legal description with the Register of Deeds, which result in a larger (closer to conforming) lot should be allowed to be utilized as a building site. Additionally, lots that have a legal description for each substandard lot on record with the Register of Deeds but have one tax parcel number assigned by the Real Property Lister or Assessor for taxing/assessing purposes should be considered separate building sites and should not be considered consolidated. Lots that have had development over the lot lines should be combined with a legal description and recorded with a new deed prior to new development occurring.

22.19 HEIGHT (s. NR 115.05(1)(f)). To protect and preserve wildlife habitat and natural scenic beauty, on or after February 1, 2012, a county may not permit any construction that results in a structure taller than 35 feet within 75 feet of the ordinary high-water mark of any navigable waters.

- (1) Height Measurement: The maximum 35 foot measurement shall be made from the highest grade elevation next to the foundation as measured to the midpoint of the roof line.

IMPERVIOUS SURFACE STANDARDS

22.20 PURPOSE (s. NR 115.05(1)(e)). Establish impervious surface standards to protect water quality, fish and wildlife habitat and to protect against pollution of navigable waters. County impervious surface standards shall apply to the construction, reconstruction, expansion, replacement or relocation of any impervious surface on a riparian lot or parcel and any nonriparian lot or parcel that is located entirely within 300 feet of the ordinary high-water mark of any navigable waterway.

22.21 CALCULATION OF PERCENTAGE OF IMPERVIOUS SURFACE (s. NR 115.05(1)(e)1m.). Percentage of impervious surface shall be calculated by dividing the surface area of the existing and proposed impervious surfaces on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark by the total surface area of that lot or parcel, and multiplied by 100. Impervious surfaces described in section 22.25 of this ordinance shall be excluded from the calculation of impervious surface on the lot or parcel. If an outlot lies between the ordinary high water mark and the developable lot or parcel and both are in common ownership, the lot or parcel and the outlot shall be considered one lot or parcel for the purposes of calculating the percentage of impervious surface.

Note: For properties that have been “condominiumized” the impervious surface calculations apply to the entire property. The property is still under one legal description and the proposed expansion to a unit is not the only impervious surface calculated since the regulation states lot or parcel and not a unit. It will be important to remember also that mitigation applies to the property as a whole and not just to the portion of the frontage that might be in front of the unit impacted.

22.22 IMPERVIOUS SURFACE STANDARD (s. NR 115.05(1)(e)2.). Except as allowed in sections 22.23 through 22.25 of this ordinance allow up to 15% impervious surface on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark.

22.23 IMPERVIOUS SURFACE STANDARD FOR HIGHLY DEVELOPED SHORELINES. (s. NR 115.05(1)(e)2m. and s. 59.692(1k)(am)2, Wis. Stats.). The county at its discretion may adopt an ordinance for highly developed shorelines allowing up to 30% for residential land use and up to 40% for commercial, industrial or business land uses for lands that meet one of the following standards:

- (1) The highly developed shoreline is identified as an Urbanized Area or Urban Cluster in the 2010 US Census or has a commercial, industrial, or business land use as of January 31, 2013.
- (2) After conducting a hearing and receiving approval by the Department, the county has established a map of additional areas of highly developed shorelines that are at least 500 feet in length and meet one of the following criteria:
 - (a) The majority of the lots are developed with more than 30% of impervious surface area.
 - (b) Located on a lake served by a sewerage system as defined in NR 110.03(30), Wis. Adm. Code.
 - (c) The majority of the lots contain less than 20,000 square feet in area.
 - (d) The highly developed shoreline is identified on the Green Bay MPO 2045 Metropolitan Planning Area Boundary approved by WisDOT June 16, 2014.
 - (e) The highly developed shoreline is also identified on the HDS map created on 6/15/16 or as amended to reflect areas that match any of (a), (b) or (c) above.

22.24 MAXIMUM IMPERVIOUS SURFACE (s. NR 115.05(1)(e)3.). A property may exceed the impervious surface standard under sections 22.22 or 22.23 of this ordinance provided the following standards are met:

- (1) For properties where the impervious surface standard applies under section 22.22 of this ordinance, a property owner may have more than 15% impervious surface but not more than 30% impervious surface on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark.
- (2) For properties on shorelands where the impervious surface standard for highly developed shorelines applies under section 22.23 of this ordinance, a property owner may have more than 30% impervious surface but not more than 40% impervious surface for residential land uses. For commercial, industrial or business land uses, a property owner may have more than 40% impervious surface but not more than 60% impervious surface.
- (3) For properties that exceed the standard under sections 22.22 or 22.23 of this ordinance but do not exceed the maximum standard under sections 22.24(1) or 22.24(2) of this ordinance, a permit can be issued for development with a mitigation plan that meets the standards found in section 22.51 of this ordinance.

22.25 TREATED IMPERVIOUS SURFACES (s. NR 115.05(1)(e)3m. and s. 59.692(1k)(a)5, Wis. Stats.). Impervious surfaces that can be documented to show they meet either of the following standards shall be excluded from the impervious surface calculations under section 22.21 of this ordinance.

- (1) The impervious surface is treated by devices such as stormwater ponds, constructed wetlands, infiltration basins, rain gardens, bio-swales or other engineered systems.
- (2) The runoff from the impervious surface discharges to an internally drained pervious area that retains the runoff on or off the parcel and allows infiltration into the soil.

22.26 EXISTING IMPERVIOUS SURFACES (s. NR 115.05(1)(e)4.). For existing impervious surfaces that were lawfully placed when constructed but that do not comply with the impervious surface standard in section 22.22 of this ordinance or the maximum impervious surface standard in section 22.24 of this ordinance, the property owner may do any of the following:

- (1) Maintain and repair the existing impervious surfaces.
- (2) Replace existing impervious surfaces with similar surfaces within the existing building envelope.
- (3) Relocate or modify an existing impervious surface with similar or different impervious surface, provided that the relocation or modification does not result in an increase in the percentage of impervious surface that existed on the effective date of this ordinance and the impervious surface meets the applicable setback requirements in sections 22.27 or 22.28 hereof.

NOTE: The impervious surface standards set forth herein shall not be construed to supersede other provisions of this ordinance. All of the provisions of this ordinance still apply to new or existing development.

SETBACKS FROM THE WATER

22.27 BUILDING SETBACKS (s. NR 115.05(1)(b)). Permitted building setbacks shall be established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood

hazards and avoid water pollution.

- (1) **SHORELAND SETBACK (s. NR 115.05(1)(b)1.).** Unless exempt under section 22.27(2), or reduced under section 22.28 of this ordinance, a setback of 75 feet from the ordinary high-water mark of any navigable waters to the nearest part of a building or structure shall be required for all buildings and structures.
- (2) **EXEMPT STRUCTURES (s. NR 115.05(1)(b)1m. and s. 59.692(1k)(a)(6), Wis. Stats.).** All of the following structures are exempt from the shoreland setback standards in Subsection (1), above:
 - (a) Boathouses located entirely above the ordinary high-water mark and entirely within the access and viewing corridor that do not contain plumbing and are not used for human habitation. The roof of a boathouse may be used as a deck provided that:
 1. The boathouse has a flat roof.
 2. The roof has no side walls or screens.
 3. The roof may have a railing that meets the Department of Safety and Professional Services standards.
 - (b) Shoreland Permit – Special. Open sided and screened structures such as gazebos, decks, patios and screen houses in the shoreland setback area that satisfy the requirements in s. 59.692(1v), Wis. Stats.
 1. The part of the structure that is nearest to the water is located at least 35 feet landward from the ordinary-high water mark.
 2. The floor area of all the structures in the shoreland setback area will not exceed 200 square feet.
 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 county must approve a plan that will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least 70% of the half of the shoreland setback area that is nearest to the water.
 - (c) Broadcast signal receivers, including satellite dishes or antennas that are one meter or less in diameter and satellite earth station antennas that are two meters or less in diameter.
 - (d) Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with Ch. SPS 383, Wis. Adm. Code and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure.
 - (e) Stairways, walkways, and rail systems that are necessary to provide pedestrian access to the shoreline and are a maximum of 60 inches in width.
 - (f) Devices or systems used to treat runoff from impervious surfaces.
- (3) **EXISTING EXEMPT STRUCTURES (s. 59.692(1k)(a)2m., Wis. Stats.).** Existing exempt structures may be maintained, repaired, replaced, restored, rebuilt and remodeled provided the activity does not expand the footprint and does not go beyond the three-dimensional building envelope of the existing structure. The county may allow expansion of a structure beyond the existing footprint if the expansion is necessary to comply with applicable state or federal requirements.

NOTE: Section 59.692(1k)(a)2m., Wis. Stats., prohibits the county from requiring any approval or imposing any fee or mitigation requirement for the activities specified in section 22.27(3) hereof. However, it is important to note that property owners may be required to obtain permits or

approvals and the county may impose fees under Brown County Ordinances it adopted pursuant to other statutory requirements, such as floodplain zoning, general zoning, sanitary codes, building codes, or even stormwater erosion control.

22.28 REDUCED BUILDING SETBACKS (NR 115.05(1)(b)1. and (s. 59.692(1n), Wis. Stats.) A setback less than the 75' required setback from the ordinary high water mark shall be permitted for a proposed principal structure and shall be determined as follows:

- (1) Where there are existing principal structures in both directions, the setback shall equal the average of the distances the two existing principal structures are set back from the ordinary high water mark provided all of the following are met:
 - (a) Both of the existing principal structures are located on adjacent lot to the proposed principal structure.
 - (b) Both of the existing principal structures are located within 250' of the proposed principal structure and are the closest structure.
 - (c) Both of the existing principal structures are located less than 75' from the ordinary high water mark.
 - (d) The average setback shall not be reduced to less than 35' from the ordinary high water mark of any navigable water.

Note: s. 59.692(1d)(a), Wis. Stats., requires counties to adopt the standards consistent with Section 22.28(1) or reducing the shoreland setback.

- (2) Where this is an existing principal structure in only one direction, the setback shall equal the distance the existing principal structure is set back from the ordinary high water mark and the required setback of 75' from the ordinary high water mark provided all of the following are met:
 - (a) The existing principal structure is located on adjacent lot to the proposed principal structure.
 - (b) The existing principal structure is located within 250' of the proposed principal structure and is the closest structure.
 - (c) The existing principal structure is located less than 75' from the ordinary high water mark.
 - (d) The average setback shall not be reduced to less than 35' from the ordinary high water mark of any navigable water.

22.29 FLOODPLAIN STRUCTURES (s. NR 115.05(1)(b)2.). Buildings and structures to be constructed or placed in a floodplain shall be required to comply with any applicable floodplain zoning ordinance.

22.30 CRITICAL SLOPE SETBACK. All residential, commercial or industrial structures shall be set back a minimum of 20 feet from the top ridgeline of a 20% or greater slope measured to the foundation and must comply with the ordinary high-water mark required setbacks of this ordinance, whichever is greater. Elevation change will be analyzed to determine how steep or significant the slope is to decide the applicability of this section. Decks, patios, stairways, fences, gazebos, screen houses, pools, boathouses and storage sheds can be located within the 20 foot setback but must not exceed a building footprint of 500 square feet. If a geotechnical study is completed for the proposed area, a shoreland permit may be issued for a structure within the 20 foot setback subject to being constructed following the recommendations of the study. A certificate of compliance will need to be completed by the responsible architect or engineer after construction and prior to occupancy. This certificate must be returned to the Zoning Office within 60 days of completion of the project.

- (1) Special exceptions. A special exception permit shall be required for the following:
 - (a) For any proposed encroachment into the critical slope setback not identified in section 22.30 of this ordinance.

22.31 SHORELAND PERMIT- AGRICULTURAL. The following uses shall be permitted within the Shoreland District or as defined by the Brown County Land Conservation Department on their most current hazard maps to the extent that they are not prohibited in a particular area by any underlying zoning ordinance. The hazard maps can be found at the Brown County Land and Water Conservation Department or on its website.

- (1) Agricultural uses are permitted providing they comply with the provisions of this ordinance.
 - (a) A minimum of 35 feet of land free of row crops and seeded to grass, alfalfa, or other close-growing crop shall be maintained between the farmed area and the edge of the navigable stream; navigable stream crossings shall be permitted for livestock and shall be of a design deemed appropriate by the Brown County Land Conservation Department. A farmer may be exempt from this section if soil and water conservation practices are deemed sufficient and no pollution is occurring in the opinion of the Brown County Land Conservation Department.
 - (b) If there is a pollution problem resulting from the grazing or pasturing of livestock, the farmer/operator will be required to erect a fence no closer than 16-1/2 feet of the edge of the navigable stream or otherwise abate the pollution in such a manner as may be determined by the Brown County Land Conservation Department. If a fence has to be erected, provision will be allowed for watering livestock in the navigable stream.

REMOVAL OF SHORE COVER - VEGETATION

22.32 PURPOSE (s. NR 115.05(1)(c)1.). To protect natural scenic beauty, fish and wildlife habitat, and water quality, a county shall regulate removal of vegetation in shoreland areas, consistent with the following: The County shall establish ordinance standards that consider sound forestry and soil conservation practices and the effect of vegetation removal on water quality, including soil erosion, and the flow of effluents, sediments and nutrients.

22.33 ACTIVITIES ALLOWED WITHIN VEGETATIVE BUFFER ZONE (s. NR 115.05(1)(c)2.). To protect water quality, fish and wildlife habitat and natural scenic beauty, and to promote preservation and restoration of native vegetation, the county shall designate land that extends from the ordinary high water mark to a minimum of 35 feet inland as a vegetative buffer zone and prohibit removal of vegetation in the vegetative buffer zone except as allowed in section 22.34 hereof.

22.34 SHORELINE CUTTING. Tree and shrubbery cutting in an area parallel to the ordinary high-water mark, and extending 35 feet inland from all points along the ordinary high-water mark, shall be limited in accordance with the following provisions:

- (1) The county may allow routine maintenance of vegetation.
- (2) The county may allow removal of trees and shrubs in the vegetative buffer zone to create access and viewing corridors. Per s. 59.692(1f)(b), Wis. Stats, the viewing corridor may be at least 35 feet wide for every 100 feet of shoreline frontage. The viewing corridor may run contiguously for the entire maximum width or shoreline frontage owned.
- (3) The county may allow removal of trees and shrubs in the vegetative buffer zone on a parcel

with ten or more acres of forested land consistent with “generally accepted forestry management practices” as defined in s. NR 1.25 (2)(b), and described in Department Publication “Wisconsin Forest Management Guidelines” (Publication FR-226), provided that vegetation removal be consistent with these practices.

- (4) The county may authorize by permit additional vegetation management activities in the vegetative buffer zone. The permit issued under this Subsection shall require that all management activities comply with detailed plans approved by the county and designed to control erosion by limiting sedimentation into the waterbody, to improve the plant community by replanting in the same area, and to maintain and monitor the newly restored area. The permit also shall require an enforceable restriction to preserve the newly restored area.
- (5) The county may allow removal of vegetation within the vegetative buffer zone to manage exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease, or vegetation creating an imminent safety hazard, provided that any vegetation removed be replaced by replanting in the same area as soon as practicable.

Note: Wis. Stats., § 59.692(1f)(a) prohibits the county from requiring a property owner to establish a vegetative buffer zone on previously developed land or expand an existing vegetative buffer zone. However, as part of the County’s shoreland mitigation standards, the establishment or expansion of the vegetative buffer may remain an option.

22.35 MINIMUM STANDARD OF A VEGETATIVE BUFFER. Planting Densities. The table below describes planting standards for two major shoreland types: woodland, and barrens/dry prairie/wet prairie. The woodland has a nearly complete canopy of trees while the barrens/prairie and wetland are more open. Plant numbers are to be calculated based on the area in square feet to be reestablished and the appropriate density. The area to be reestablished shall be calculated for each layer.

(1) Shoreland Buffer Planting Standards (Table 1)

Layer	Woodland Buffer		Wetland / Prairie Buffer	
	Minimum number of species	Density per 100 square feet	Minimum number of species	Density per 100 square feet
Tree Canopy*	3	1	1	0.2
Shrub Understory**	4	2	2	0.5
Groundcover Plant Plugs***	1	50 Must be Mulched	5	70 Must be Mulched
Groundcover Seeding	1	Varies Grass 4oz./1000sqft. Forbs 3oz./1000sqft.	5	Varies Grass 4oz./1000sqft. Forbs 3oz./1000sqft.

- * Tree must be ≥ 2 years old and 18" tall or taller
- ** Shrubs must be 1 Liter container size or larger
- *** Plugs must be 3" tall or 1" dia.

(2) Types of Vegetation Buffer Establishment.

- (a) Avoidance- Your buffer may be totally intact or undisturbed. If that is the case, your affidavit will simply state that you will not disturb the area and will remain compliant with placement of your viewing corridor. The area designated as Vegetative Buffer must meet the density requirements of (Table 1).
 - (b) Accelerated Recovery (enhancement) - This method entails actually installing some plant materials to achieve proper vegetation density, outlined in (Table 1). Simply stated, you will be filling in areas that are too thin or where the vegetation is missing.
 - (c) Accelerated Recovery (creation) - This method is used when no buffer exists. The area in question may have been graded to bare soil or the site may have been mowed for many years. Creation will involve planting groundcover, shrubs and trees after removal of existing vegetation.
- (3) Brown County Native Plant List. Species of plants must be selected from the Brown County Native Plant List and approved for shoreline buffers by the Brown County Zoning Administrator. Substitutions must be approved by the Brown County Zoning Administrator. Substitutions to the list will be allowed in the event of lack of plant stock or seed availability on a case-by-case basis. All plants may be transplanted from areas outside of the buffer zone. The following link to the Wisconsin Botanical Information System shall be used to determine Brown County native plants. County: Brown, Origin: Native.
<http://www.botany.wisc.edu/herb/Countysearch.html>
- (4) Shoreland Buffer Plan Requirements. When restoration of a shoreland buffer is chosen as a mitigation option, a restoration plan shall be completed by an engineer, landscape architect, surveyor or other licensed contractor acceptable by the Brown County Zoning Administrator. Said Plan must be approved by the county and shall include:
- (a) Name and address of property owner.
 - (b) Property address and legal description.
 - (c) Extent of the shoreland buffer.
 - (d) Scale (e.g. 1 inch = 10 feet) or as approved by reviewer.
 - (e) North arrow.
 - (f) Ordinary high water mark (OHWM) location.
 - (g) Location of all structures in the shoreland buffer zone.
 - (h) Viewing and access corridor.
 - (i) Boundary of the shoreland buffer zone.
 - (j) Existing trees, shrubs, and native ground cover.
 - (k) Areas to be planted with trees, shrubs, and groundcovers.
 - (l) Implementation schedule.
 - (m) A plant species list; indicate if you are requesting substitutions from the prepared list.

- (n) Erosion control practices (to be installed prior to and during buffer establishment).
 - (o) Water diversions and channelized flow areas.
 - (p) Buffer maintenance (weeding, replanting).
- (5) Certificate of Completion. No later than 2 years after issuance of the shoreland permit, the property owner shall complete the mitigation practices and shall certify in writing to the Brown County Zoning Administrator that the required mitigation has been completed. As part of the certification, the property owner shall submit photos documenting the mitigation measures and the Brown County Planning and Land Services Department staff may conduct an on-site compliance inspection. If the project for which the permit was issued was never completed then the implementation of the mitigation plan will not be required. An affidavit of correction to that effect shall be recorded on to the deed at the property owner's expense.
- (6) Subsequent Development. Shoreland permit applications shall require additional mitigation and will be dependent on the scope of the project.

FILLING, GRADING, LAGOONING, DREDGING, DITCHING AND EXCAVATING

22.36 GENERAL STANDARDS (s. NR 115.05(1)(d)). Filling, grading, lagooning, dredging, ditching and excavating may be permitted only in accordance with the provisions of s. NR 115.04, the requirements of Ch. 30, Wis. Stats., and other state and federal laws where applicable, and only if done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat and natural scenic beauty. Erosion control is required as per Best Management Practices. Filling, grading, lagooning, dredging, ditching or excavating which does not require a permit under section 22.37 of this ordinance may be permitted in the shoreland area provided that:

- (1) It is done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat.
- (2) Filling, grading, lagooning, dredging, ditching or excavating in a shoreland-wetland district meets the requirements of sections 22.41(2) and 22.41(3) of this ordinance.
- (3) All applicable federal, state and local authority is obtained in addition to a permit under this ordinance.
- (4) Any fill placed in the shoreland area is protected against erosion by the use of riprap, vegetative cover or a bulkhead.

22.37 PERMIT REQUIRED.

- (1) Filling, grading, lagooning, dredging, ditching and excavating. Erosion control is required as per Best Management Practices. A permit is required for any shoreland area as defined in this ordinance and on which there is either:
 - (a) At least 1,000 square feet of filling, grading and excavating.
 - (b) Filling of more than 500 square feet within 100 feet of any shoreland wetland. A 35 foot setback is required on wetlands.
 - (c) Not more than 20,000 square feet of filling, grading and excavating within 100 feet of navigable water.

- (2) Special exceptions. A special exception permit shall be required for the following:
- (a) For any filling, grading and excavating of any area within the shoreland district which is within 100 feet horizontal distance of navigable water and on which there is:
 - 1. Filling, grading and excavating greater than 20,000 square feet.
 - (b) For any construction or dredging commenced on any artificial waterway, canal, ditch, lagoon, pond, lake or similar waterway which is within 300 feet landward of the ordinary high-water mark of a navigable body of water or where the purpose is the ultimate connection with a navigable body of water.
 - (c) This subsection (2) does not apply to soil conservation practices such as terraces, runoff diversions, grassed waterways, waste storage facilities, and channel restoration, which are used for sediment reduction. All projects designed by other Brown County Departments, DNR, USF & WS, NRCS, and other governmental departments will not require a special exception permit, only a shoreland permit will be required. The shoreland permit fee will be waived when the agency designing the project will have direct supervision over the construction. A letter must be provided to this office by that agency upon completion indicating the project was completed as permitted. The DOT is exempt from permit requirements when section 30.12(4)(a), Wisconsin Statutes, applies.
 - (d) Municipal projects designed by licensed architects or engineers will not require a special exception permit, only a shoreland permit will be required.
- (3) Conditions. In issuance of a shoreland permit or in granting a special exception permit for filling or grading, the Board of Adjustments or Brown County Zoning Office may attach the following conditions in addition to the provisions specified in Section 22.58 that:
- (a) The smallest amount of bare ground be exposed for as short a time as feasible.
 - (b) Temporary ground cover such as mulch be used and permanent cover such as sod be planted.
 - (c) Diversions, silting basins, terraces, and other methods to trap sediment be used.
 - (d) Fill is stabilized according to accepted engineering standards.
 - (e) Fill will not restrict a floodway or destroy the storage capacity of a floodplain.
 - (f) Sides of a channel or artificial watercourse be stabilized to prevent slumping.
 - (g) Sides of channels or artificial watercourses be constructed with side slopes of two units horizontal distance to one unit vertical or flatter, unless bulkheads or rip rapping are provided.
 - (h) In shoreland areas with no floodplain mapped a minimum 35 foot no fill area is required from the ordinary high-water mark. If floodplain analysis is submitted and approved by the Department the 35 foot no fill area may be reduced.

22.38 PERMIT CONDITIONS. In granting a special exception permit under section 22.37(2), the Board of Adjustment shall attach the following conditions, where appropriate, in addition to those provisions specified in sections 22.58(2) and 22.58(3):

- (1) The smallest amount of bare ground shall be exposed for as short a time as feasible.
- (2) Temporary ground cover (such as mulch or jute netting) shall be used and permanent vegetative cover shall be established.

- (3) Diversion berms or bales, silting basins, terraces, filter fabric fencing, and other methods shall be used to prevent erosion.
- (4) Lagoons shall be constructed to avoid fish trap conditions.
- (5) Fill shall be stabilized according to accepted engineering standards.
- (6) Filling shall comply with any local floodplain zoning ordinance and shall not restrict a floodway or destroy the flood storage capacity of a floodplain.
- (7) Channels or artificial watercourses shall be constructed with side slopes of two units horizontal distance to one unit vertical or flatter which shall be promptly vegetated, unless bulkheads or riprap are provided.

SHORELAND-WETLAND DISTRICT

22.39 DESIGNATION (s. NR. 115.04). This district shall include all shorelands within the jurisdiction of this ordinance which are designated as wetlands on the most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface Water Data Viewer.

- (1) Locating shoreland-wetland boundaries. (s. NR 115.04(b)2.) Where an apparent discrepancy exists between the shoreland-wetland district boundary shown on the Wisconsin Wetland Inventory Maps and actual field conditions, the zoning administrator shall contact the appropriate office of the Department to determine if the shoreland-wetland district boundary as mapped is in error. If Department staff concur with the zoning administrator that a particular area was incorrectly mapped as a wetland or meets the wetland definition, the zoning administrator shall have the authority to immediately grant or deny a zoning permit in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors on the official zoning map, an official zoning map amendment must be initiated within a reasonable period of time.

22.40 PURPOSE. This district is created to maintain safe and healthful conditions, to prevent water pollution, to protect fish spawning grounds and wildlife habitat, to preserve shore cover and natural beauty and to control building and 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.

22.41 PERMITTED USES (s. NR 115.04(3)). The following uses shall be allowed, subject to general shoreland zoning regulations contained in this ordinance, the provisions of Chs. 30, 31, and 281.36, Wis. Stats., and the provisions of other applicable local, state and federal laws:

- (1) Activities and uses which do not require the issuance of a shoreland permit, but which must be carried out without any filling, flooding, draining, dredging, ditching, tiling or excavating except as allowed under sections 22.41(2) or 22.41(3) of this ordinance.
 - (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.
 - (f) The construction or maintenance of duck blinds.
- (2) Uses which do not require the issuance of a shoreland permit and which may include limited filling, flooding, draining, dredging, ditching, tiling, or excavating but only to the extent specifically provided below:
- (a) Temporary water level stabilization measures necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on silvicultural activities if not corrected.
 - (b) The cultivation of cranberries including flooding, dike and dam construction or ditching necessary for the growing and harvesting of cranberries.
 - (c) The maintenance and repair of existing agricultural drainage systems including ditching, tiling, dredging, excavating and filling necessary to maintain the level of drainage required to continue the existing agricultural use. 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.
 - (d) The construction or maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance.
 - (e) The construction or maintenance of piers, docks or walkways built on pilings, including limited excavating and filling necessary for such construction and maintenance.
 - (f) The maintenance, repair, replacement or reconstruction of existing town and county highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.
- (3) Uses which require the issuance of a shoreland permit under section 22.56-(shoreland permits) and which may include limited filling, flooding, draining, dredging, ditching, tiling or excavating, but only to the extent specifically provided below:
- (a) The construction and maintenance of roads which are necessary to conduct silvicultural activities or 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 adverse impact upon the natural functions of the wetland enumerated in section 22.43(2).
 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.
 - (b) The construction or maintenance of nonresidential buildings provided that:
 1. The building is essential for and used solely in conjunction with the raising of waterfowl, minnows or other wetland or aquatic animals; or some other use permitted in the shoreland-wetland district.
 2. The building cannot, as a practical matter, be located outside the wetland.
 3. Such building is not designed for human habitation and does not exceed 500 square feet in floor area.

4. Only limited filling or excavating necessary to provide structural support for the building is authorized.

(c) The establishment of public and private parks and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game bird and animal farms, fur animal farms, fish hatcheries, and public boat launching ramps and attendant access roads, provided that:

1. Any private development is used exclusively for the permitted use and the applicant has received a permit or license under Ch. 29, Wis. Stats., where applicable.
2. Filling or excavating necessary for the construction or maintenance of public boat launching ramps or attendant access roads is allowed only where such construction or maintenance meets the criteria in section 22.41(3)(a)1- 4.
3. Ditching, excavating, dredging, or dike and dam construction in public and private parks and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game bird and animal farms, fur animal farms, and fish hatcheries is allowed only for the purpose of improving wildlife habitat and to otherwise enhance wetland values.

(d) The construction or maintenance of electric, gas, telephone, water and sewer transmission and distribution facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power or water to their members and the construction or maintenance of railroad lines provided that:

1. The transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the wetland.
2. Such construction or maintenance is done in a manner designed to minimize adverse impact upon the natural functions of the wetland enumerated in section 22.43(2).

22.42 PROHIBITED USES (s. NR 115.04(4)). Any use not listed in sections 22.41(1), 22.41(2) or 22.41(3) of this ordinance is prohibited, unless the wetland or portion of the wetland has been rezoned by amendment of this ordinance in accordance with section 22.43 of this ordinance and s. 59. 69(5)(e), Wis. Stats.

22.43 REZONING OF LANDS IN THE SHORELAND-WETLAND DISTRICT (s. NR 115.04(2)).

- (1) For all proposed text and map amendments to the shoreland-wetland provisions of this ordinance, the appropriate district office of the Department shall be provided with the following:
 - (a) A copy of every petition for a text or map amendment to the shoreland-wetland provisions of this ordinance, within five days of the filing of such petition with the county clerk. Such petition shall include a copy of the Wisconsin Wetland Inventory Map adopted as part of this ordinance describing any proposed rezoning of a shoreland-wetland.
 - (b) Written notice of the public hearing to be held on a proposed amendment at least 10 days prior to such hearing.
 - (c) A copy of the county zoning agency's findings and recommendations on each proposed amendment within 10 days after the submission of those findings and recommendations to the county board.

- (d) Written notice of the county board's decision on the proposed amendment within 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.
 - (g) Wetlands both within the boundary of designated areas of special natural resource interest and those wetlands which are in proximity to or have a direct hydrologic connection to such designated areas as defined in s. NR 103.04 which can be accessed at the following web site: <http://www.legis.state.wi.us/rsb/code/nr/nr103.pdf>.
- (3) If the Department notifies the county zoning agency that a proposed text or map amendment to the shoreland-wetland provisions of this ordinance may have a significant adverse impact upon any of the criteria listed in section 22.43(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 30 days have elapsed after written notice of the county board's approval of this amendment is mailed to the Department of Natural Resources. 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 s. 59.692(6), Wis. Stats. If the Department does so notify the county board, the effect of this amendment shall be stayed until the s. 59.692(6) adoption procedure is completed or otherwise terminated."

NONCONFORMING USES AND STRUCTURES

22.44 DISCONTINUED NONCONFORMING USE (s. NR. 115.05(1)(g)3.). If a nonconforming use is discontinued for a period of 12 months, any future use of the building, structure or property shall conform to this ordinance.

22.45 MAINTENANCE, REPAIR, REPLACEMENT OR VERTICAL EXPANSION OF NONCONFORMING STRUCTURES (s. 59.692(1k)(a)2., 4. and (b), Wis. Stats.). An existing structure that was lawfully placed when constructed but that does not comply with the required shoreland setback may be maintained, repaired, replaced, restored, rebuilt or remodeled if the activity does not expand the footprint of the nonconforming structure. Further, an existing structure that was lawfully placed when constructed but that does not comply with the required shoreland setback may be vertically expanded unless the vertical expansion would extend more than 35 feet above grade level. The county may allow expansion of a structure beyond the existing footprint if the expansion is necessary to comply with applicable state or federal

requirements.

22.46 LATERAL EXPANSION OF NONCONFORMING PRINCIPAL STRUCTURE WITHIN THE SETBACK (s. NR 115.05(1)(g)5.). An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback per sections 22.27 and 22.28 of this ordinance may be expanded laterally, provided that all of the following requirements are met:

- (1) The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.
- (2) The existing principal structure is at least 35 feet from the ordinary high-water mark.
- (3) Lateral expansions are limited to a maximum of 200 square feet over the life of the structure. No portions of the expansion may be closer to the ordinary high-water mark than the closest point of the existing principal structure.
- (4) The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in section 22.51 hereof.
- (5) All other provisions of this ordinance shall be met.

22.47 EXPANSION OF A NONCONFORMING PRINCIPAL STRUCTURE BEYOND SETBACK (s. NR 115.05(1)(g)5m.). An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under section 22.24(1) of this ordinance, may be expanded horizontally, landward or vertically provided that the expanded area meets the building setback requirements per section 22.27(1) or 22.28 hereof and that all other provisions of this ordinance are met. A mitigation plan is not required solely for expansion under this section, but may be required per section 22.22 of this ordinance.

22.48 RELOCATION OF NONCONFORMING PRINCIPAL STRUCTURE (s. NR 115.05(1)(g)6.). An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback per sections 22.27(1) and 22.28 of this ordinance may be relocated on the property provided that all of the following requirements are met:

- (1) The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.
- (2) The existing principal structure is at least 35 feet from the ordinary high-water mark.
- (3) No portion of the relocated structure is located any closer to the ordinary high-water mark than the closest point of the existing principal structure.
- (4) The county determines that no other location is available on the property to build a principal structure of a comparable size to the structure proposed for relocation that will result in compliance with the shoreland setback requirement per section 22.27(1) hereof.
- (5) The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in section 22.51 of this ordinance and include enforceable obligations of the property owner to establish or maintain measures that the county determines are adequate to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the replaced or

relocated structure being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the Brown County Register of Deeds.

(6) All other provisions of this ordinance shall be met.

22.49 MAINTENANCE, REPAIR, REPLACEMENT OR VERTICAL EXPANSION OF STRUCTURES THAT WERE AUTHORIZED BY VARIANCE (s. 59.692(1k)(a)2. and (a)4., Wis. Stats.). A structure of which any part has been authorized to be located within the shoreland setback area by a variance granted before July 15, 2015 may be maintained, repaired, replaced, restored, rebuilt or remodeled if the activity does not expand the footprint of the authorized structure. Additionally, the structure may be vertically expanded unless the vertical expansion would extend more than 35 feet above grade level. The county may allow expansion of a structure beyond the existing footprint if the expansion is necessary to comply with applicable state or federal requirements.

22.50 WET BOATHOUSES. The maintenance and repair of nonconforming boathouses which extend beyond the ordinary high-water mark of any navigable waters shall be required to comply with s. 30.121, Wis. Stats.

MITIGATION

22.51 MITIGATION (s. 59.692(1v), Wis. Stats., and s. NR 115.05(1)(e)3., (g)5., & (g)6.). When the county issues a permit requiring mitigation under sections 22.27(2)(b), 22.24, 22.47, or 22.49 of this ordinance, the property owner must submit a complete permit application that is reviewed and approved by the county. Existing buffer zones may be used to meet the mitigation point totals. The following mitigation practices may be used to obtain a minimum of 3 points.

(1) Mitigation Options –Maintenance of Existing or Establishment of Buffers.

- (a) Primary Active Buffer Zone – Shore buffer zone within 35 feet of the ordinary high-water mark, including trees, shrubbery, ground cover and other natural vegetation, and subject to no mowing is permitted other than the allowable viewing corridor. 3 points.
- (b) Passive Buffer Zone – Shoreland vegetation buffer area within 35 feet of the ordinary high-water mark, including un-mowed grass or other ground cover vegetation, but without the tree and shrub layers required to meet the 3 point mitigation standard. 2 points.
- (c) Side Lot Buffer Zone – A 10 foot wide side lot buffer zone including trees, shrubbery, ground cover and other natural vegetation extending along a side lot line for a depth of at least 75 feet from the ordinary high-water mark. 1 point. The side lot buffer area is subject to the condition of no mowing is permitted. Points for side lot line buffers may be additive, for a maximum of 2 points, if buffer areas exist and are maintained along both side lot lines.

(2) Mitigation Alternative Option.

- (a) At the discretion of the Brown County Zoning Administrator, up to three additional mitigation points may be approved for restoration or protection activities that are likely to provide significant benefits to meet the objectives of this ordinance. Examples may include but are not limited to construction of a storm water detention basin or implementation of other storm water management plan activities, replacement of seawalls with bio-engineered structures, rain gardens, bio swales, water diversion of

overland flow or removal of artificial sand beaches in compliance with all applicable statutes and provisions set forth in the Wisconsin Administrative Code. Up to 3 points.

- (b) Factors to be considered in making the determination of number of points and approval of alternative mitigation practices include, but are not limited to:
1. Runoff diversion and/or retention.
 2. Lot configuration.
 3. Parcel size.
 4. Location of impervious areas.
 5. Sensitivity and level of development of the waterbody.
 6. Significance toward meeting ordinance objectives.
 7. Type, density and filtering capacity of vegetation/ground cover.
 8. Replacement of a failing private on-site wastewater treatment system with a code compliant system as permitted by current standards.
 9. Removal of existing impervious areas and structures.

22.52 MITIGATION PLAN. The application shall include the minimum of the following and comply with all requirements as described in section 22.35 of this ordinance:

- (1) A site plan that describes the proposed mitigation measures shall be designed and implemented to restore natural functions lost through development and human activities. The mitigation measures shall be proportional in scope to the impacts on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty.
 - (a) The plan shall be designed by an engineer, landscape architect, surveyor or other licensed contractor acceptable by the Brown County Zoning Administrator to offset the increased impervious surface as calculated by the county. The Brown County Zoning Administrator may determine that the mitigation area will be described by a metes and bounds description and staked on the lot by a professional land surveyor.
 - (b) An implementation schedule and enforceable obligation on the property owner to establish and maintain the mitigation measures shall be recorded in the office of the Brown County Register of Deeds.
- (2) The approved mitigation measures must be started within 1 year of the permit issue date. All plantings and any other activities must be completed within 2 years of the permit issue date.

22.53 RECORDING REQUIREMENT. The affidavit described in 22.52 of this ordinance, as modified by the county during the permitting process, must be recorded in the office of the Brown County Register of Deeds in order for the permit to be effective so that work may commence. If the affidavit is not recorded no permit shall be issued.

ADMINISTRATIVE PROVISIONS

22.54 PLANNING, DEVELOPMENT & TRANSPORTATION COMMITTEE.

- (1) The committee shall oversee the functions of the zoning office; review and make recommendations to the Board of Adjustments of all proposed amendments to the shorelands and wetlands zoning ordinance map and text; and maintain a complete public record of all its proceedings as defined in s. 236.02(1), Wis. Stats., and required by s. 59.692(3), Wis. Stats.
- (2) The Planning, Development and Transportation Committee shall not grant variances or special exceptions to the terms of the ordinance.

22.55 ZONING OFFICE (s. NR 115.05(4)). There is hereby created the Brown County Zoning Office as authorized by s. 59.69, Wis. Stats. and a Brown County Board of Adjustment as authorized by s. 59.694, Wis. Stats. The appointment of a Zoning Administrator and such additional staff may occur as the workload may require. The Zoning Office shall exercise the following duties and powers:

- (1) Advise applicants as to the provisions of this ordinance and assist them in preparing permit applications and appeal forms.
- (2) Issue permits and certificates of compliance and inspect properties for compliance with this ordinance. A system of permits shall remain in place for new construction, development, reconstruction, structural alteration or moving of buildings and structures. A copy of applications shall be required to be filed in the office of the Brown County Zoning Administrator, unless prohibited by s. 59.692(1k), Wis. Stats.
- (3) Keep records of all permits issued, inspections made, work approved and other official actions.
- (4) A variance procedure which authorizes the Brown County Board of Adjustment to grant such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions and the adoption of this ordinance, a literal enforcement of the provisions of this ordinance will result in unnecessary hardship. Provide copies of variances, special exceptions and decisions on appeals for map or text interpretations and map or text amendments within 10 days after they are granted or denied to the appropriate office of the Department.
- (5) Have access to any structure or premises between 7:30 a.m. and 4:30 p.m. for the purpose of performing his/her duties. Regular inspection of permitted work in progress to ensure conformity of finished structures with the terms of this ordinance.
- (6) Investigate and report violations of this ordinance to the appropriate Brown County Zoning Committee and the district attorney or corporation counsel as necessary.

22.56 SHORELAND PERMITS.

- (1) When required. Except where another section of this ordinance specifically exempts certain types of development from this requirement (as in sections 22.41(1) and 22.41(2)) hereof, a shoreland permit shall be obtained from the Brown County Zoning Administrator before any new development, as defined in section 22.64(h) of this ordinance, or any change in the use of an existing building or structure, is initiated.
- (2) Application. An application for a shoreland permit shall be made to the Brown County Zoning Administrator upon forms furnished by the county.
 - (a) Erosion control is required as per Best Management Practices.
- (3) Fees. As established in the annual county budget.
- (4) Expiration of permit. Shoreland permits shall expire 2 years from date of issuance.

22.57 RELAXATION OF STANDARDS FOR PERSONS WITH DISABILITIES APPLIES TO ALL SHORELAND AREAS. The Brown County Zoning office may issue a shoreland permit to relax the standards of this ordinance in order to provide reasonable accommodation of persons with disabilities as required by provisions of federal and state law. Such relaxation shall be consistent

with federal guidelines for accommodation of persons with disabilities and shall, where practicable, be terminated when the facility is no longer in use by a disabled person. A person applying for a permit for construction under this section shall establish the nature and extent of the disability and that the relaxation requested is the minimum necessary to provide reasonable use of the facility.

22.58 SPECIAL EXCEPTION PERMITS.

- (1) Application for a special exception permit. Any use listed as a special exception in this ordinance shall be permitted only after an application has been submitted to the zoning administrator and a special exception permit has been granted by the Brown County Board of Adjustment.
- (2) Standards applicable to all special exceptions. In passing upon a special exception permit, the Brown County Board of Adjustment shall evaluate the effect of the proposed use upon:
 - (a) The maintenance of safe and healthful conditions.
 - (b) The prevention and control of water pollution including sedimentation.
 - (c) Compliance with local floodplain zoning ordinances and opportunity for damage to adjacent properties due to altered surface water drainage.
 - (d) The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover.
 - (e) The location of the site with respect to existing or future access roads.
 - (f) The need of the proposed use for a shoreland location.
 - (g) Its compatibility with uses on adjacent land.
 - (h) The amount of liquid and solid wastes to be generated and the adequacy of the proposed disposal systems.
 - (i) Location factors under which:
 1. Domestic uses shall be generally preferred.
 2. Uses not inherently a source of pollution within an area shall be preferred over uses that are or may be a pollution source.
 3. Use locations within an area tending to minimize the possibility of pollution shall be preferred over use locations tending to increase that possibility.
- (3) Conditions attached to special exceptions. Upon consideration of the factors listed above, the Board of Adjustment shall attach such conditions, in addition to those required elsewhere in this ordinance, as are necessary to further the purposes of this ordinance. Violations of any of these conditions shall be deemed a violation of this ordinance. Such conditions may include specifications for, without limitation because of specific enumeration: type of shore cover; specific sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; sureties; deed restrictions; location of piers, docks, parking and signs; and type of construction. To secure information upon which to base its determination, the Brown County Board of Adjustment may require the applicant to furnish, in addition to the information required for a shoreland permit, the following information:
 - (a) A plan of the area showing surface contours, soil types, ordinary high-water marks, ground water conditions, subsurface geology and vegetative cover.
 - (b) Location of buildings, parking areas, traffic access, driveways, walkways, piers, open

space and landscaping.

- (c) Plans of buildings, sewage disposal facilities, water supply systems and arrangement of operations.
 - (d) Specifications for areas of proposed filling, grading, lagooning or dredging.
 - (e) Other pertinent information necessary to determine if the proposed use meets the requirements of this ordinance.
- (4) Notice, public hearing and decision. Before acting upon an application for a special exception permit, the Board of Adjustment shall hold a public hearing. Notice of such public hearing, specifying the time, place and matters to come before the board, shall be given as a Class Two notice under Ch. 985, Wis. Stats. Such notice shall be provided to the appropriate district office of the Department at least 10 days prior to the hearing. The Brown County Board of Adjustment shall state in writing the grounds for granting or refusing a special exception permit.
- (5) Recording. When a special exception permit is approved, an appropriate record shall be made of the land use and structures permitted and such permit shall be applicable solely to the structures, use and property so described. A copy of any decision on a special exception permit shall be provided to the appropriate district office of the Department within 10 days after it is granted or denied.
- (6) Revocation. Where the conditions of a special exception permit are violated, the special exception permit shall be revoked by the Brown County Board of Adjustment.

22.59 VARIANCES.

- (1) Decision. The Brown County Board of Adjustment may grant upon appeal a variance from the dimensional standards of this ordinance where an applicant convincingly demonstrates that:
- (a) Literal enforcement of the provisions of this ordinance will result in unnecessary hardship on the applicant.
 - (b) The hardship is due to special conditions unique to the property.
 - (c) Such variance is not contrary to the public interest.
 - (d) The request represents the minimum relief necessary to relieve unnecessary burdens.
- (2) Notice, hearing and decision. Before acting on an application for a variance, the Brown County Board of Adjustment shall hold a public hearing. Notice of such hearing specifying the time, place and matters of concern, shall be given a Class Two notice under Ch. 985, Wis. Stats. Such notice shall be provided to the appropriate district office of the Department at least 10 days prior to the hearing. The Brown County Board of Adjustment shall state in writing the reasons for granting or refusing a variance and shall provide a copy of such decision to the appropriate Department office within 10 days of the decision.

22.60 BOARD OF ADJUSTMENT. The County Executive shall appoint the Brown County Board of Adjustment consisting of 3 members and 2 alternates under s. 59.694(2), Wis. Stats. The county board shall adopt such rules for the conduct of the business of the Brown County Board of Adjustment as required by s. 59.694(3), Wis. Stats.

- (1) Powers and duties.

- (a) The Brown County Board of Adjustment shall adopt such additional rules as it deems necessary and may exercise all of the powers conferred on such boards by s. 59.694(3), Wis. Stats.
 - (b) It shall hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made by an administrative official in the enforcement or administration of this ordinance.
 - (c) It shall hear and decide applications for special exception permits pursuant to section 22.58 hereof.
 - (d) It may grant a variance from the dimensional standards of this ordinance pursuant to section 22.59 hereof.
 - (e) In granting a special exception permit or variance, the board may not impose conditions which are more restrictive than any of the specific standards in this ordinance. Where this ordinance is silent as to the extent of restriction, the Brown County Board of Adjustment may impose any reasonable permit conditions to affect the purpose of this ordinance.
- (2) Appeals to the Brown County Board of Adjustment. Appeals to the Brown County Board of Adjustment may be made by any person aggrieved or by an officer, department, board or bureau of the county affected by any decision of the Zoning Administrator or other Administrative Officer. Such appeal shall be made within a reasonable time, as provided by the rules of the Board of Adjustment by filing with the officer whose decision is in question, and with the Brown County Board of Adjustment, a notice of appeal specifying the reasons for the appeal. The Brown County Zoning Administrator or other officer whose decision is in question shall promptly transmit to the board all the papers constituting the record concerning the matter appealed.
- (3) Hearing appeals and applications for variances and special exception permits.
- (a) The Brown County Board of Adjustment shall fix a reasonable time for a hearing on the appeal or application. Said Board shall give public notice thereof by publishing a Class 2 notice under Ch. 985, Wis. Stats, specifying the date, time and place of the hearing and the matters to come before it. Notice shall be mailed to the parties in interest. Written notice shall be given to the appropriate district office of the Department at least 10 days prior to hearings on proposed shoreland variances, special exceptions (conditional uses), and appeals for map or text interpretations.
 - (b) A decision regarding the appeal or application shall be made as soon as practical. Copies of all decisions on shoreland variances, special exceptions (conditional uses), and appeals for map or text interpretations shall be submitted to the appropriate district office of the Department within 10 days after they are granted or denied.
 - (c) The final disposition of an appeal or application to the Brown County Board of Adjustment shall be in the form of a written resolution or order signed by the chairman and secretary of said Board. Such resolution shall state the specific facts which are the basis of the Brown County Board of Adjustment's determination and shall either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or prosecution or grant the application.
 - (d) At the public hearing, any party may appear in person or by agent or by attorney.

22.61 FEES. As established in the annual county budget.

ORDINANCE CHANGES

22.62 CHANGES AND AMENDMENTS. The county board may from time to time, alter, supplement or change the boundaries of use districts and the regulations contained in this ordinance in accordance with the requirements of s. 59.692, Wis. Stats., ch. NR 115, Wis. Adm. Code and section 22.44 of this ordinance where applicable.

- (1) Amendments to this ordinance may be made on petition of any interested party as provided in s. 59.692, Wis. Stats.
- (2) Every petition for a text or map amendment filed with the county clerk shall be referred to the county zoning agency. A copy of each petition shall be mailed to the appropriate office of the Department within five days of the filing of the petition with the county clerk. Written notice of the public hearing to be held on a proposed amendment shall be provided to the appropriate district office of the Department at least 10 days prior to the hearing.
- (3) A copy of the county board's decision on each proposed amendment shall be forwarded to the appropriate district office of the Department within 10 days after the decision is issued.

VIOLATIONS

22.63 ENFORCEMENT AND PENALTIES.

- (1) Any violation of the provisions of this ordinance by any person, firm, association, corporation (including building contractors) or his/her or their agent is hereby declared to be unlawful. A violator shall, upon conviction, forfeit to the county a penalty as specified under Chapter 30 of the Brown County Code. Each day during which such violation exists shall constitute a separate offense.
- (2) Every violation of this ordinance is a public nuisance, and the creation thereof may be enjoined and maintenance thereof may be abated by action at suit of the county, the state, or any citizen thereof. Any such violator may be required to forfeit as specified under Chapter 30 of the Brown County Code. Each day during which such violation exists shall constitute a separate offense.

EXPLANATION OF TERMS AND WORDS

22.64 DEFINITIONS.

- (1) For the purpose of administering and enforcing this ordinance, the terms or words used herein shall be interpreted as follows: Words used in the present tense include the future; words in the singular number include the plural number; and words in the plural number include the singular number. The word "shall" is mandatory, not permissive. All distances, unless otherwise specified, shall be measured horizontally.
- (2) The following terms or words used in this ordinance mean:
 - (a) "ACCESS AND VIEWING CORRIDOR" – means a strip of vegetated land that allows safe pedestrian access to the shore through the vegetative buffer zone.

- (b) "ACCESSORY STRUCTURE OR USE" - means a detached subordinate structure or a use which is clearly incidental to, and customarily found in connection with, the principal structure or use to which it is related, and which is located on the same lot as the principal structure or use.
- (c) "AGRICULTURAL PRACTICE" - has the meaning found in s. 281.16 (1)(b), Wis. Stats.

NOTE: Section 281.16 (1)(b), Wis. Stats., defines "agricultural practice" to mean "beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; grazing; livestock raising; orchards; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; and vegetable raising."

- (d) "BOATHOUSE" - means a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of these structural parts.
- (e) "BUILDING ENVELOPE" - means the three dimensional space within which a structure is built.
- (f) "COUNTY ZONING AGENCY" - means that committee or commission created or designated by the county board under s. 59.69(2)(a), Wis. Stats., to act in all matters pertaining to county planning and zoning.
- (g) "DEPARTMENT" - means the Department of Natural Resources.
- (h) "DEVELOPMENT" - means any man-made change to improved or unimproved real estate, including, but not limited to the construction of buildings, structures or accessory structures; the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of mobile homes; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations, and the deposition or extraction of earthen materials.
- (i) "DISABLED" - means having a physical or mental impairment that substantially limits one or more major life activities.
- (j) "DRAINAGE SYSTEM" - means one or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.
- (k) "EXISTING DEVELOPMENT PATTERN" - means that principal structures exist within 250 feet of a proposed principal structure on each lot in both directions along the shoreline.
- (l) "FLOODPLAIN" - means the land which has been or may be hereafter covered by flood water during the regional flood as shown on the county's official floodplain zoning maps. The regional flood is based upon a statistical analysis of stream flow records available for the watershed or an analysis of rainfall and runoff characteristics in the general watershed region, or both. The flood frequency of the regional flood is once in every 100 years. In any given year, there is a one % chance that the regional flood may occur.

NOTE: "Floodway" is defined in s. NR 116.03 (22) to mean "the channel of a river or stream, and those portions of the floodplain adjoining the channel required to carry the regional flood discharge."

- (m) "IMPERVIOUS SURFACE" - means an area that releases as runoff all or a majority of the precipitation that falls on it. "Impervious surface" excludes frozen soil but includes rooftops, sidewalks, driveways, parking lots, and streets unless specifically designed, constructed, and maintained to be pervious. Roadways as defined in s. 340.01(54), Wis.

Adm. Code, or sidewalks as defined in s. 340.01(58), Wis. Adm. Code, are not considered impervious surfaces.

- (n) "MITIGATION" - means balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through development and human activities.
- (o) "NAVIGABLE WATERS" - means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under s. 281.31(2)(d), Wis. Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under s. 59.692, Wis. Stats., and ch. NR 115, Wis. Adm. Code, do not apply to lands adjacent to:
 - 1. Farm drainage ditches where such lands are not adjacent to a natural navigable stream or river and such lands were not navigable streams before ditching; and
 - 2. Artificially constructed drainage ditches, ponds or stormwater retention basins that are not hydrologically connected to a natural navigable water body.
- (p) "ORDINARY HIGH-WATER MARK" - means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristics. Field locating the ordinary high-water mark on the Bay of Green Bay shall not exceed the elevation of 583 feet, IGLD85 unless deemed appropriate by the zoning administrator to set higher based on site conditions per this definition of ordinary high-water mark. The all-time historic high water elevation of the Bay is 582.35 feet, IGLD85 as calculated by the Army Corps of Engineers (USACOE).
- (q) "REGIONAL FLOOD" - means a flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics, once in every 100 years.
- (r) "REASONABLE ACCOMMODATION" - means allowing a disabled person to deviate from the strict requirements of this ordinance if an accommodation is necessary and reasonable, in order not to unlawfully discriminate against the disabled person and to allow them equal housing opportunity.

NOTE: Federal courts have interpreted the "reasonable accommodations" requirement in the Federal Fair Housing Act to mean that an accommodation is reasonable "if it does not cause any undue hardship or fiscal or administrative burdens on the municipality, or does not undermine the basic purpose that the zoning ordinance seeks to achieve." Oxford House, Inc. v. Town of Babylon, 819 F. Supp. 1179, 1186 (E.D.N.Y. 1993)

- (s) "ROUTINE MAINTENANCE OF VEGETATION" – means normally accepted horticultural practices that do not result in the loss of any layer of existing vegetation and do not require earth disturbance.
- (t) "SHORELANDS" and "SHORELAND ZONE" - have the meaning found in s.59.692 (1)(b), Wis. Stats.

NOTE: Section 59.692 (1)(b), Wis. Stats., defines "shorelands" to mean "the area within the following distances from the ordinary high-water mark of navigable waters, as defined under s. 281.31 (2)(d), Wis. Stats.:

- 1. One thousand feet from a lake, pond or flowage. If the navigable water is a

glacial pothole lake, this distance shall be measured from the ordinary high-water mark of the lake.

2. Three hundred feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.

- (u) "SHORELAND-SETBACK" – also known as the “shoreland setback area” in s.59.692(1)(bn), Wis. Stats., means an area in a shoreland that is within a certain distance of the ordinary high-water mark in which the construction or placement of buildings or structures has been limited or prohibited under an ordinance enacted under section 59.692, Wis. Stats.
- (v) "SHORELAND-WETLAND DISTRICT" - means the zoning district, created as a part of this shoreland zoning ordinance, comprised of shorelands that are designated as wetlands on the wetland maps which have been adopted and made a part of this ordinance.
- (w) "SPECIAL EXCEPTION (CONDITIONAL USE)" - means a use which is permitted by this ordinance provided that certain conditions specified in the ordinance are met and that a permit is granted by the Board of Adjustment or, where appropriate, the planning and zoning committee or county board.
- (x) "STRUCTURE" - means any man-made object with form, shape and utility, that is constructed or otherwise erected, attached to or permanently or temporarily placed, either upon the ground, a river bed, stream bed or lake bed or upon another structure. For the purpose of this chapter, the term “structure” includes garages, sheds, boathouses, sidewalks, walkways, retaining walls, porches, fire pits, patios, and decks, but does not include landscaping or earthwork including graded areas, filled areas, ditches, berms, or earthen terraces. The term “structure” does not include small objects that are easily moved by hand, such as canoes, kayaks, lawn chairs, portable grills, portable picnic tables, temporary snow fences, small temporary fences around individual plants or small groups of plants to prevent animal herbivory, bird feeders, birdhouses and birdbaths.
- (y) "UNNECESSARY HARDSHIP" - means that circumstance where special conditions, which were not self-created, affect a particular property and make strict conformity with restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of this ordinance.
- (z) "VARIANCE" - means an authorization granted by the Brown County Board of Adjustment to construct, alter or use a building or structure in a manner that deviates from the dimensional standards of this ordinance.
- (aa) "VEGETATIVE BUFFER ZONE" – means an area along, and parallel to, the ordinary high-water mark, 35 feet from the water’s edge, that is either undisturbed or restored with native vegetation that provides or will provide natural features and functions for fish and wildlife habitat, water quality protection, and natural scenic beauty. This area may change based on mitigation measures designed by a professional landscape architect or professional stormwater engineer to compensate for and be proportional in scope to the impacts on the lot.
- (bb) "WETLAND" - has th found in s 23.32 (1), Wis. Stats. Means an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.”