

AMENDMENTS TO THE WAUKESHA COUNTY SHORELAND & FLOODLAND PROTECTION ORDINANCE

SECTION 1

Repeal and Recreate the Table of Contents to read as follows:

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Editor's Note

Updated for changes made through Enrolled Ordinance 168-3, which became effective 04-23-2013.

SECTION 2

Repeal and Recreate Section 3(h)(1)(I) to read as follows:

Every structure, except boathouses and any other structure excepted from shore setback by another Section of this Ordinance, shall have a shore setback of at least seventy five (75) feet from the ordinary high water mark of navigable waters, the floodplain, or the conservancy district, whichever distance is greater, except [\(see also Section 37, Delafield Shoreland Overlay District\)](#):

- i. Boathouses may be permitted in accordance with Section 3(s) of this Ordinance.
- ii. Boat hoists and piers may be erected on the bed of navigable waters pursuant to Chapter 30 of the Wisconsin Statutes and Section 3(d)5.C of this Ordinance.
- iii. Under the authority of Section 59.692(1v), Wisconsin Statutes, the zoning administrator may grant a special zoning permit for a structure that extends closer than seventy five (75) feet to the ordinary high water mark of a navigable body of water if all of the following requirements are met, but in no case is a structure exempt from the shore setback requirements from the Conservancy District boundary line:
 - a. The part of the structure that is nearest to the water is located at least thirty five (35) feet landward from the ordinary high water mark.
 - b. The total floor area of all structures in the shore setback area of the property shall not exceed two hundred (200) square feet. In calculating the square footage, boathouses shall be excluded.
 - c. The structure that is subject to the request for special zoning permission has no sides or has open or screened sides.
 - d. The zoning administrator shall review a plan submitted by the applicant which shall be subject to the zoning administrator's approval and which will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least seventy (70) percent of half of the shore setback area that is nearest to the water. The zoning administrator is authorized to require implementation of the vegetative buffer plan prior to the issuance of the zoning permit for the structure.

- iv. A retaining wall shall be set back at least seventy five (75) feet from the ordinary high water mark of a navigable body of water and outside of the conservancy district and wetlands and may be allowed if the zoning administrator determines that the retaining wall is necessary to abate a known and identified soil erosion and sedimentation problem. The setback averaging provisions below may not be used to locate a retaining wall closer than seventy-five (75) feet from the ordinary high water mark of a navigable body of water or within the conservancy district and wetlands. A retaining wall is not a structure that can be used in the setback averaging provisions below to reduce the shore setback or conservancy setback requirements for any other building or structure, including retaining walls themselves.
- v. A single stairway or walkway, determined by the zoning administrator, due to steep topography, to be necessary for access to a lake, pond or river, shall be permitted to have a shore setback of less than seventy five (75) feet provided the width of the stairway or walkway does not exceed four (4) feet, subject to the issuance of a Zoning Permit.
- vi. Where there is an existing pattern of development with principal buildings having shore setbacks less than seventy five (75) feet from the ordinary high water mark of a navigable body of water or the Conservancy District boundary line, the setback requirements for new principal buildings or additions to the principal building or structures immediately adjacent thereto (such as decks or patios, but not including retaining walls and swimming pools and sports courts) shall be allowed to be reduced in accordance with the following setback averaging formulas, however, in no case shall the required minimum shore setback from the ordinary high water mark or Conservancy District boundary be reduced to less than thirty (30) feet and, if more restrictive, the setback averaging provisions of the Delafield Shoreland Overlay District shall apply to properties zoned as such, in accordance with Section 37 of this Ordinance:
 - a. If there is a building which is non conforming with respect to shore setback with a similar use as the proposed building and located on an adjacent parcel on one side of the proposed building and within two hundred (200) feet of the proposed building, the average of the shore setback of that building of similar use and the required minimum shore setback shall apply.
 - b. If there are two buildings that are non conforming with respect to shore setback with similar uses as the proposed building and located on adjacent parcels on each side of the proposed building and within two hundred (200) feet of the proposed building, the average of the shore setbacks of the two buildings of similar use shall apply.
 - c. In the case of a proposed addition to an existing building which has less than the required shore setback, the shore setback of the addition shall be calculated by the average of the existing building and the shore setback of an existing building with a similar use as the proposed addition if it is located on the adjoining parcel on the same side as the proposed addition and within two hundred (200) feet of the proposed addition.
 - d. In the case of a proposed addition to an existing building, which has less than the required shore setback, if there are not similar uses on either adjoining parcels, the shore setback of the addition shall be calculated by the average of the existing

building and the required minimum shore setback.

- e. The effect of the shore setback regulations in combination with the road setback regulations shall not reduce the buildable depth of such lot to less than thirty (30) feet. Where such reduction would result in a depth less than thirty (30) feet after applying the shore setback and road setback averaging formulas, the zoning administrator shall have the authority to modify the road setback, shore setback, and offset provisions to the extent necessary to minimize the encroachment on the offset and setback standards while maintaining the thirty (30) foot depth.
- f. In applying these shore setback averaging formulas to a proposed principal building or addition to a principal building, the shore setback measurements shall be taken from other principal buildings only and the measurements shall not be from any immediately adjacent structures, such as decks, patios, retaining walls, swimming pools or sports courts.
- g. In applying these shore setback averaging formulas to a proposed ~~structure~~, such as a deck or patio, which is immediately adjacent to the principal building, the shore setback measurements may be taken from other principal buildings or immediately adjacent structures, such as decks or patios, but not from retaining walls and swimming pools and sports courts.
- vii. A principal building, an addition to a principal building or a deck or patio immediately adjacent to a principal building may be located as close as fifty (50) feet from the Conservancy District boundary if it is in conformity with the required shore setback from the ordinary high water mark and if the existing natural ground elevation adjacent to the lowest level of the principal building, including an exposed basement, is at least three (3) feet above the regional flood elevation or the high water mark of the conservancy area.

viii. Within the Delafield Shoreland Overlay District, shore setback requirements are as specified within Section 37 of this Ordinance and re-stated as follows: All structures within the Delafield Shoreland Overlay District, except boathouses and any other structure excepted from shore setback by another section of this Ordinance, shall setback a minimum of 150' from the Ordinary High Water Mark of a navigable waterway, with the following exceptions:

- a. Where the nearest principal building or structure on one side of a proposed principal building or structure is within 500 feet and has less than the required shore lot line offset and the nearest principal building or structure on the other side of a principal building or structure is 500 feet or greater away, the average between such existing shore lot line offset of the nearest principal building or structure and the required shore lot line offset shall apply.
- b. Where the nearest principal buildings or structures on both sides of a proposed principal building or structure are within 500 feet, but neither is closer than 300 feet to the proposed principal building or structure and each have less than the required shore lot line offset, the average of such existing shore lot line offset of the nearest principal building or structure and the required shore lot line offset shall apply.

- c. Where the nearest principal buildings or structures on both sides of a proposed building or structure are each within 300 feet of the proposed principal building or structure and each have less than the required shore lot line offset, the average between such existing principal buildings or structures shore lot line offset shall apply.
- d. In the case of a proposed addition to an existing building or structure which has less than the required shore lot line offset, such existing building or structure may be considered the "nearest principal building or structure" in order to apply the aforesaid exceptions in determining required shore lot line offset for the proposed addition.

SECTION 3

Repeal and Recreate Section 3(s) to read as follows:

(s) Boathouses

1. Use permitted: Boathouses, as defined by this Ordinance and in Section 30.01(1d) of the Wisconsin Statutes, are permitted in any district abutting a public or private body of water in which a single-family dwelling is permitted by right and subject to the terms and the conditions set forth herein and Section 30.121 of the Wisconsin Statutes. Said boathouse may be used for the storage of marine and accessory items used by the occupants of the lot. Said boathouse shall be placed on a permanent foundation extending below the frost line or a concrete slab and shall contain at least two hundred (200) square feet in area to be considered a boathouse.
2. Habitation prohibited: A boathouse may not be used for human occupancy or habitation. A boathouse may contain limited plumbing facilities for occasional use and convenience of the occupants of the lot such as having a toilet facility or shower facility convenient for users of the lakefront, but under no circumstances may the boathouse be used for human habitation, human habitation being defined as utilizing the building for occupancy for overnight living or longer periods of time and including the aggregate of normal living activities such as lounging, cooking, eating, sleeping, etc.
3. Accessory to a single-family dwelling: No boathouse is permitted unless a single family dwelling is already present on the lot. Only one (1) boathouse per lot is allowed.
4. Building location: A boathouse shall not be located closer than five (5) feet to the ordinary high water mark or further than fifty (50) feet from the ordinary high water mark. A boathouse shall not be located within the floodplain and/or wetland. Its location relative to offsets shall be in accordance with the standards set forth in Section 3(h)2 of this Ordinance. Within the Delafield Shoreland Overlay District, no boathouse shall extend more than thirty-five (35) feet from the Ordinary High Water Mark of the adjacent waterway (also see Section 37).

5. Flat roofed surfaces of boathouses may be used as open recreational living areas but shall not be permanently enclosed. Canopies, railings, and access stairs shall be considered ordinary appurtenances.
6. The maintenance and repair of nonconforming boathouses that extend beyond the ordinary high water mark of any navigable water shall be required to comply with Section 30.121 of the Wisconsin Statutes.
7. Boathouses prohibited: No boathouse shall be allowed on any lot that is less than 15,000 square feet in size or any lot having a minimum average width of less than 100 feet.
8. Height: A boathouse may not contain more than one floor level and shall not exceed fifteen (15) feet in total height, as defined in this Ordinance.
9. Maximum size: Within the Delafield Shoreland Overlay Zone, no boathouse shall be larger than 600 square feet in area with a minimum of 200 square feet of boat storage space and a maximum width parallel to the shore lot line of 20' (also see Section 37).

Section 4

Repeal and Recreate Section 37 to read as follows:

Section 37 (~~Reserved~~) DSO Delafield Shoreland Overlay District

- (a) Applicability: This overlay district, as mapped or intended to be mapped, includes properties within the Town of Delafield that are located within 1,000' of Pewaukee Lake.
- (b) General regulations: All use, location, area, height and other general provisions of the underlying zoning district and other general requirements of this Ordinance shall apply within the DSO District, unless more specifically prescribed within Section 37(b) or 37(c) below:
- (c) Shore Setback (also see Section3(h)(1)(I))

All structures within the DSO District, except boathouses and any other structure excepted from shore setback by another section of this Ordinance shall be setback a minimum of 150' from the Ordinary High Water Mark of a navigable waterway, with the following exceptions.

1. Where the nearest principal building or structure on one side of a proposed principal building or structure is within 500 feet and has less than the required shore lot line offset and the nearest principal building or structure on the other side of a principal building or structure is 500 feet or greater away, the average between such existing shore lot line offset of the nearest principal building or structure and the required shore lot line offset shall apply.

2. Where the nearest principal buildings or structures on both sides of a proposed principal building or structure are within 500 feet, but neither is closer than 300 feet to the proposed principal building or structure and each have less than the required shore lot line offset, the average of such existing shore lot line offset of the nearest principal building or structure and the required shore lot line offset shall apply.
3. Where the nearest principal buildings or structures on both sides of a proposed building or structure are each within 300 feet of the proposed principal building or structure and each have less than the required shore lot line offset, the average between such existing principal buildings or structures shore lot line offset shall apply.
4. In the case of a proposed addition to an existing building or structure which has less than the required shore lot line offset, such existing proposed building or structure may be considered the "nearest principal building or structure" in order to apply the aforesaid exceptions in determining required shore lot line offset for the proposed addition.

(d). Boathouses (also see Section 3(s))

No boathouse shall be larger than 600 square feet in area with a minimum of 200 square feet of boat storage space and a maximum width parallel to the shore lot line of 20'. Boathouses shall not extend more than thirty-five (35) feet from the Ordinary High Water Mark of the adjacent waterway.