

(1v) A county shall grant special zoning permission for the construction or placement of a structure on property in a shoreland setback area if all of the following apply:

(a) The part of the structure that is nearest to the water is located at least 35 feet landward from the ordinary high-water mark.

(b) The total floor area of all of the structures in the shoreland setback area of the property will not exceed 200 square feet. In calculating this square footage, boathouses shall be excluded.

(c) The structure that is the subject of the request for special zoning permission has no sides or has open or screened sides.

(d) 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.

(2) (a) Except as otherwise specified, all provisions of s. 59.69 apply to ordinances and their amendments enacted under this section whether or not enacted separately from ordinances enacted under s. 59.69, but the ordinances and amendments shall not require approval or be subject to disapproval by any town or town board.

(b) If an existing town ordinance relating to shorelands is more restrictive than an ordinance later enacted under this section affecting the same shorelands, it continues as a town ordinance in all respects to the extent of the greater restrictions, but not otherwise.

(c) Ordinances that are enacted under this section shall accord and be consistent with any comprehensive zoning plan or general zoning ordinance applicable to the enacting counties, so far as practicable.

(2m) A county shoreland zoning ordinance may not regulate the construction of a structure on a substandard lot in a manner that is more restrictive than the shoreland zoning standards for substandard lots.

(3) All powers granted to a county under s. 236.45 may be exercised by it with respect to shorelands, but the county must have or provide a planning agency as defined in s. 236.02 (3).

(4) (a) Section 66.0301 applies to this section, except that for the purposes of this section an agreement under s. 66.0301 shall be effected by ordinance. If the municipalities as defined in s. 281.31 are served by a regional planning commission under s. 66.0309, the commission may, with its consent, be empowered by the ordinance of agreement to administer each ordinance enacted hereunder throughout its enacting municipality, whether or not the area otherwise served by the commission includes all of that municipality.

(b) Variances and appeals regarding shorelands within a county are for the board of adjustment for that county under s. 59.694, and the procedures of that section apply. Notwithstanding s. 59.694 (4), the department may not appeal a decision of the county to grant or deny a variance under this section but may, upon the request of a county board of adjustment, issue an opinion on whether a variance should be granted or denied.

(5) An ordinance enacted under this section supersedes all provisions of an ordinance enacted under s. 59.69 that relate to shorelands.

(5m) If a county has in effect on or after July 14, 2015, a provision in an ordinance that is inconsistent with sub. (1d), (1f), (1k), or (2m), the provision does not apply and may not be enforced.

(6) If a county does not enact an ordinance by January 1, 1968, or if the department, after notice and hearing, determines that a county has enacted an ordinance that fails to meet the shoreland zoning standards, the department shall adopt such an ordinance for the county. As far as possible, s. 87.30 shall apply to this subsection.

(6m) For an amendment to an ordinance enacted under this section that affects an activity that meets all of the requirements under s. 281.165 (2), (3) (a), or (4) (a), the department may not

proceed under sub. (6), or otherwise review the amendment, to determine whether the ordinance, as amended, fails to meet the shoreland zoning standards.

History: 1979 c. 233; 1981 c. 330; 1983 a. 189 s. 329 (23); 1991 a. 39; 1993 a. 329; 1995 a. 201 s. 476; Stats. 1995 s. 59.692; 1995 a. 227; 1997 a. 27, 35, 252; 1999 a. 9; 1999 a. 150 s. 672; 2005 a. 112; 2011 a. 6, 170; 2013 a. 80; 2015 a. 55; s. 13.92 (1) (bm) 2.

Cross-reference: See also ch. NR 115, Wis. adm. code.

The DNR, as trustee of navigable waters in the state, has standing to appeal shore-line zoning decisions. DNR v. Walworth County Board of Adjustment, 170 Wis. 2d 406, 489 N.W.2d 631 (Ct. App. 1992).

The private right to fill lakebeds granted under s. 30.11 does not preempt the zoning power of a county over shorelands under this section. State v. Land Concepts, Ltd. 177 Wis. 2d 24, 501 N.W.2d 817 (Ct. App. 1993).

The legal standard of unnecessary hardship requires that the property owner demonstrate that without a variance there is no reasonable use for the property. When the property owner has a reasonable use for the property, the statute takes precedence and the variance should be denied. State v. Kenosha County Board of Adjustment, 218 Wis. 2d 396, 577 N.W.2d 813 (1998), 96–1235. See also State v. Outagamie, 2001 WI 78, 244 Wis. 2d 613, 628 N.W.2d 376, 98–1046.

The burden is on the applicant for a variance to demonstrate through evidence that without the variance he or she is prevented from enjoying any reasonable use of the property. State ex rel. Spinner v. Kenosha County Board of Adjustment, 223 Wis. 2d 99, 588 N.W.2d 662 (Ct. App. 1998), 97–2094.

The state, in administering the Fair Housing Act, may not order a zoning board to issue a variance based on characteristics unique to the landowner rather than the land. County of Sawyer Zoning Board v. Department of Workforce Development, 231 Wis. 2d 534, 605 N.W.2d 627 (Ct. App. 1999), 99–0707.

In evaluating whether to grant an area variance to a zoning ordinance, a board of adjustment should focus on the purpose of the zoning law at issue in determining whether an unnecessary hardship exists for the property owner seeking the variance. The facts of the case should be analyzed in light of that purpose, and boards of adjustment must be afforded flexibility so that they may appropriately exercise their discretion. State v. Waushara County Board of Adjustment, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514, 02–2400.

The term “floor area” in sub. (1v) (b) unambiguously encompasses only the surface portion of a deck’s floorboards and, therefore, does not include portions of the deck’s support system that extend beyond the floorboards. If a portion of a structure is outside the setback area, that part is not in the setback area and it is not the portion “extending into” that area for purposes of calculating the 200 square foot restriction in sub. (1v) (b). Propp v. Sauk County Board of Adjustment, 2010 WI App 25, 323 Wis. 2d 495, 779 N.W.2d 705, 09–0209.

Appellants appropriately relied on the county’s zoning map to identify the ordinary high water mark of a nearby lake and determine that the sign’s proposed location was outside the county’s 1,000 foot zone of shoreland authority. It was reasonable for the appellant to rely on the map rather than conduct on-site measurements. Oneida County v. Collins Outdoor Advertising, Inc. 2011 WI App 60, 333 Wis. 2d 216, 798 N.W.2d 724, 10–0084.

By enactment of this section and s. 281.31, the legislature intended that towns would not have authority to regulate shorelands except where such regulation fell within the language of sub. (2) (b). That statutory scheme does not distinguish between towns with village powers and those without. Hegwood v. Town of Eagle Zoning Board of Appeals, 2013 WI App 118, 351 Wis. 2d 196, 839 N.W.2d 111, 12–2058.

County floodplain zoning ordinances may be adopted under s. 59.971 [now 59.692] and do not require the approval of town boards in order to become effective within the unincorporated areas of the county. 62 Atty. Gen. 264.

Counties may zone lands located within 300 feet of an artificial ditch that is navigable in fact. 63 Atty. Gen. 57.

County shoreland zoning of unincorporated areas adopted under s. 59.971 [now 59.692] is not superseded by municipal extraterritorial zoning under s. 62.23 (7a). Sections 59.971, 62.23 (7), (7a) and 144.26 [now 281.31] are discussed. Municipal extraterritorial zoning within shorelands is effective insofar as it is consistent with, or more restrictive than, the county shoreland zoning regulations. 63 Atty. Gen. 69.

A county may not enact a shoreland zoning ordinance without a provision regulating nonconforming uses that have been discontinued for 12 months or longer. A county may enact an ordinance without the 50% provision under s. 59.69 (10) (a) [now s. 59.69 (10) (am)], in which case common law controls. OAG 2–97.

Wisconsin’s Shoreland Management Program: An Assessment With Implications for Effective Natural Resources Management and Protection. Kuczenski. 1999 WLR 273.

The necessity of zoning variance or amendments notice to the Wisconsin department of natural resources under the shoreland zoning and navigable waters protection acts. Whipple, 57 MLR 25.

59.693 Construction site erosion control and storm water management zoning. (1) **DEFINITION.** In this section, “department” means the department of natural resources.

(2) **AUTHORITY TO ENACT ORDINANCE.** To effect the purposes of s. 281.33 and to promote the public health, safety and general welfare, a county may enact a zoning ordinance, that is applicable to all of its unincorporated area, except as provided in s. 60.627 (2) (b), for construction site erosion control at sites described in s. 281.33 (3) (a) 1. a. and b. and for storm water management. This ordinance may be enacted separately from ordinances enacted under s. 59.69. An ordinance enacted under this subsection is subject to the strict conformity requirements under s. 281.33 (3m).

August 13, 2015

To: Members, Planning and Zoning Committee

From: Members, Board of Adjustment

For the third time recently, with another request at our August public hearing, the Board of Adjustment has heard several petitions regarding landowners wanting to occupy their current residence while building a replacement residence. After the replacement residence is completed, the petitioner then will remove the older structure from the property. The Board has been continually granting variances to allow two residences on the property on a temporary basis with the following conditions: "The old home is to be removed within two years from issuance of the Zoning Permit. The existing structure is to be occupied by the applicant."

Variance:

V1466-15 – Salmieri – will be heard on 08/13/2015, Ord. Section 11.04(f)6, A-1 Exclusive Agricultural

V1462-15 – Simon – heard 07/09/2015, Ord. Section 11.04(f)6, A-1 Exclusive Agricultural

V1459-15 – Stade – heard 06/11/2015, Ord. Section 11.04(f)6, A-1 Exclusive Agricultural

V1456-15 – Idrizi – heard 05/14/2015, Ord. Section 11.04(f)8, A-3 Rural Residential

The Board of Adjustment is requesting the Planning and Zoning Committee to please consider making ordinance changes so future cases similar to those described above can be handled without Board of Adjustment review. Thank you for your consideration of our request.

Janet Sayre Hoeft
Jefferson County Board of Adjustment
Chairperson