

- d. That such variance will not grant or increase any use of property which is prohibited in the zoning district.
- (c) **Appeals to the Board.** Appeals to the Board of Appeals may be taken by any person aggrieved or by an officer, department, board or bureau of the community affected by any order, requirement, decision or determination of the Zoning Administrator or other administrative official. Such appeals shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the official from whom the appeal is taken and with the Board of Appeals, a notice of appeal specifying the reasons therefor. The Zoning Administrator or other official from whom the appeal is taken shall transmit to the Board all the papers constituting the record on which the appeal action was taken.
- (d) **Public Hearings.**
- (1) Before making a decision on an appeal, the Board of Appeals shall, within a reasonable period of time, hold a public hearing. The Board shall give public notice of the hearing 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 the Board. At the public hearing, any party may appear in person, by agent or by attorney and present testimony.
  - (2) A copy of such notice shall be mailed to the parties in interest and the appropriate district office of the Department at least ten (10) days prior to all public hearings on issues involving shoreland-wetland zoning.
- (e) **Decisions.**
- (1) The final disposition of an appeal, or application for a conditional use permit, to the Board of Appeals shall be in the form of a written decision, made within a reasonable time after the public hearing, signed by the Board chairperson. Such decision shall state the specific facts which are the basis of the Board's determination and shall either affirm, reverse or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or persecution, or grant the application for a conditional use.
  - (2) A copy of such decision shall be mailed to the parties in interest and the appropriate district office of the Department within ten (10) days after the decision is issued.

### **SEC. 13-3-38 AMENDING SHORELAND-WETLAND ZONING REGULATIONS.**

The Village Board may, from time to time, alter, supplement or change the district boundaries and the regulations contained in this Chapter in accordance with the requirements of Section 62.23(7)(d)2, Wis. Stats., Ch. NR 117, Wis. Adm Code, and the following:

- (a) A copy of each proposed text or map amendment shall be submitted to the appropriate district office of the Department within five (5) days of the submission of the proposed amendment to the Village planning agency.
- (b) All proposed text and map amendments to the shoreland-wetland zoning regulations shall be referred to the municipal planning agency, and a public hearing shall be held as required by Section 62.23(7)(d)2, Wis. Stats. The appropriate district office of the Department shall be provided with written notice of the public hearing at least ten (10) days prior to such hearing.
- (c) In order to insure that the shoreland protection objectives in Section 144.26, Wis. Stats., will be accomplished by the amendment, the Village Board may not rezone a wetland in a shoreland-wetland zoning district, or any portion thereof, where the proposed rezoning may result in a significant adverse impact upon any of the following:

- (1) Storm and flood water storage capacity;
  - (2) Maintenance of dry season stream flow or 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;
  - (3) Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
  - (4) Shoreline protection against soil erosion;
  
  - (5) Fish spawning, breeding, nursery or feeding grounds;
  - (6) Wildlife habitat; or
  - (7) Areas of special recreational scenic or scientific interest, including scarce wetland types and habitat of endangered species.
- (d) Where the district office of the Department determines that a proposed rezoning may have a significant adverse impact upon any of the criteria listed in Subsection (c) of this Section, the Department shall so notify the Village of its determination either prior to or during the public hearing held on the proposed amendment.
- (e) The appropriate district office of the Department shall be provided with:
- (1) A copy of the recommendations and report, if any, of the municipal planning agency on the proposed text or map amendment within ten (10) days after the submission of those recommendations to the Village Board; and
  - (2) Written notice of the Village Board's action on the proposed text or map amendment within ten (10) days after the action is taken.
- (f) If the Department notifies the municipal planning agency in writing that a proposed amendment may have a significant adverse impact upon any of the criteria listed in Subsection (c) of this Section, that proposed amendment, if approved by the Village Board, may not become effective until more than thirty (30) days have elapsed since written notice of the Village Board approval was mailed to the Department, as required by Subsection (e) of this Section. If, within the thirty (30) day period, the Department notifies the Village Board that the Department intends to adopt a superseding shoreland-wetland zoning ordinance for the Village under Section 62.231(6) and 61.351(6), Wis. Stats., the proposed amendment may not become effective until the ordinance adoption procedure under Section 62.231(6) and 61.351(6), Wis. Stats., is completed or otherwise terminated.

**SEC. 13-3-39**

**RESERVED FOR FUTURE USE.**

## ARTICLE E

### Penalties; Definitions

#### **SEC. 13-3-40 ENFORCEMENT AND PENALTIES.**

Any development, building or structure or accessory building or structure constructed, altered, added to, modified, rebuilt or replaced, or any use or accessory use established after the effective date of this Chapter in violation of the provisions of this Chapter, by any person, firm, association, corporation (including building contractors or their agents) shall be deemed a violation. The Zoning Administrator shall refer violations to the Village Board and the Village Attorney who shall prosecute such violations. Any person, firm, association or corporation who violates or refuses to comply with any of the provisions of this Chapter shall be subject to a forfeiture as specified in Section 1-1-6, "General Penalties," of this Code of Ordinances, together with the taxable costs of such action. Each day of continued violation shall constitute a separate offense. Every violation of this Chapter is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated by action at suit of the Village, the State or any citizen thereof pursuant to Section 87.30(2), Wis. Stats.

#### **SEC. 13-3-41 DEFINITIONS.**

- (a) For the purpose of administering and enforcing this Chapter, 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; 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.
- (b) The following terms used in this Chapter mean:
  - (1) Accessory Structure or Use. 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 that of the principal structure or use.
  - (2) Boathouse. As defined in Section 30.121(1), Wis. Stats., 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 structural parts.
  - (3) Class 2 Public Notice. Publication of a public hearing notice under Chapter 985, Wis. Stats., in a newspaper of circulation in the affected area. Publication is required on two (2) consecutive weeks, the last at least seven (7) days prior to the hearing.
  - (4) Conditional Use. A use which is permitted by this Chapter provided that certain conditions specified in the ordinance are met and that a permit is granted by the Board of Appeals or, where appropriate, the planning agency designated by the municipal governing body.  
Department. The Wisconsin Department of Natural Resources.
  - 6) Development. 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 buildings or structures; ditching, lagooning, dredging, filling, grading, paving,

- excavation or drilling operations; and the deposition or extraction of earthen materials.
- (7) Drainage System. One (1) or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.
  - (8) Environmental Control Facility. Any facility, temporary or permanent, which is reasonably expected to abate, reduce or aid in the prevention, measurement, control or monitoring of noise, air or water pollutants, solid waste and thermal pollution, radiation or other pollutants, including facilities installed principally to supplement or to replace existing property or equipment not meeting or allegedly not meeting acceptable pollution control standards or which are to be supplemented or replaced by other pollution control facilities.
  - (9) Fixed Houseboat. As defined in Section 30.121(1), Wis. Stats., a structure not actually used for navigation which extends beyond the ordinary high-water mark of a navigable waterway and is retained in place either by cables to the shoreline or by anchors or spudpoles attached to the bed of the waterway.
  - (10) Navigable Waters. 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 Section 144.26(2)(d), Wis. Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under Sections 62.351 and 62.221, Wis. Stats., and Chapter NR 117, Wis. Adm. Code, do not apply to lands adjacent to farm drainage ditches if:
    - a. Such lands are not adjacent to a natural navigable stream or river;
    - b. Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and
    - c. Such lands are maintained in nonstructural agricultural use.
  - (11) Ordinary High-Water Mark. The point on the bank or shore up to which the presence and action of surface water is so continuous so as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation or other easily recognized characteristic.
  - (12) Planning Agency. The Plan Commission created under Section 62.23(1), Wis. Stats.
  - (13) Shorelands. Lands within the following distances from the ordinary high-water mark of navigable waters; one thousand (1,000) feet from a lake, pond or flowage; and three hundred (300) feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.
  - (14) Shoreland-Wetland District. The zoning district, created in this shoreland-wetland zoning ordinance, comprised of shorelands that are designated as wetlands on the wetlands inventory maps which have been adopted and made a part of this Chapter as described in Section 13-3-11 of this Chapter.
  - (15) Unnecessary Hardship. That circumstance where special conditions, which were not self-created, affect a particular property and make strict conformity with the restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purpose of this Chapter.
  - (16) Variance. An authorization granted by the Board of Appeals to construct, alter or use a building or structure in a manner that deviates from the dimensional standards of this Chapter.

- (17) Wetlands. Those areas where water is at, near or above the land surface long enough to support aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.
- (18) Wetland Alteration. Any filling, flooding, draining, dredging, ditching, tiling, excavating, temporary water level stabilization measures or dike and dam construction in a wetland area.