

## Chapter 377

### SHORELAND-WETLAND ZONING

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[HISTORY: Adopted by the Village Board of the Village of Black Creek as Title 10, Ch. 3, of the 1987 Village Code. Amendments noted where applicable.]

#### ARTICLE I

##### Statutory Authorization, Findings of Fact, Statement of Purpose and Title

§ 377-1. Statutory authorization.

This chapter is adopted pursuant to the authorization in §§ 61.35, 61.351, 62.23, 87.30 and 281.31, Wis. Stats.

**§ 377-2. Findings of fact; purpose.**

- A. Findings of fact. Uncontrolled use of the shoreland-wetlands and the pollution of the navigable waters of the Village of Black Creek would adversely affect the public health, safety, convenience, and general welfare and impair the tax base. The Legislature of Wisconsin has delegated responsibility to all municipalities 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 preserve shore cover and natural beauty.
- B. Purpose. To promote the public health, safety, convenience and general welfare, this chapter has been established to:
- (1) Further the maintenance of safe and healthful conditions;
  - (2) Prevent and control water pollution by filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters and to maintain storm- and floodwater capacity;
  - (3) Protect fish spawning grounds, fish, aquatic life and wildlife by preserving wetlands and other fish and aquatic habitat;
  - (4) Prohibit certain uses detrimental to the shoreland-wetland area; and
  - (5) Preserve shore cover and natural beauty by restricting the removal of natural shoreland cover and controlling shoreland-wetland excavation, filling and other earthmoving activities.

**§ 377-3. Title.**

Shoreland-Wetland Zoning Ordinance/Chapter for the Village of Black Creek, Wisconsin.

ARTICLE II  
**General Provisions**

**§ 377-4. Compliance.**

The use of wetlands, and the alteration of wetlands within the shoreland area of the Village, shall be in full compliance with the terms of this chapter and other applicable local, state or federal regulations. (However, see § 377-15 of this chapter for the standards applicable to nonconforming uses.) All permitted development shall require the issuance of a zoning permit unless otherwise expressly excluded by a provision of this chapter.

**§ 377-5. Municipalities and state agencies regulated.**

Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this chapter and obtain all necessary permits. State agencies are required to comply if § 13.48(13), Wis. Stats., applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt when § 30.2022, Wis. Stats., applies.

**§ 377-6. Abrogation and greater restrictions.**

- A. This chapter supersedes all the provisions of any municipal zoning ordinance enacted under § 61.35, 62.23, or 87.30, Wis. Stats., which relate to shoreland-wetlands, except that where another municipal zoning ordinance is more restrictive than the provisions contained in this chapter, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.
- B. This chapter is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.

**§ 377-7. Interpretation.**

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements and shall be liberally construed in favor of the municipality and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes. Where a provision of this chapter is required by a standard in Ch. NR 117, Wis. Adm. Code, and where the chapter provision is unclear, the provision shall be interpreted in light of the Ch. NR 117 standards in effect on the date of the adoption of this chapter or in effect on the date of the most recent text amendment to this chapter.

**§ 377-8. Annexed areas.**

The Outagamie County shoreland and wetland zoning regulations in effect on the date of annexation will be administered by the Village for all annexed areas. These lands are described on the official municipal Zoning Map. The Outagamie County shoreland and wetland zoning provisions are adopted by reference for the purpose of administering this section and are on file in the office of the Zoning Administrator. Amendments to these regulations must be at least as restrictive as the prior county zoning for all areas annexed after May 7, 1982 [§ 59.692(2)(a), Wis. Stats.].

**ARTICLE III****Shoreland-Wetland Zoning District****§ 377-9. Purpose of shoreland-wetland zoning.**

This chapter is adopted to maintain safe and healthful conditions, to prevent and control water pollution, to protect fish-spawning grounds, fish and aquatic life 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 which minimizes adverse impacts upon the wetland.

**§ 377-10. Official Shoreland-Wetland Zoning Maps.**

The following maps are hereby adopted and made a part of this chapter and are on file in the office of the Village Clerk-Treasurer: Wisconsin Wetland Inventory Map(s), stamped "FINAL" on July 15, 1992, "Black Creek United States Geological Survey Map," most recent

revision and floodplain zoning maps titled "Floodboundary & Floodway Map" and the Flood Insurance Rate Map (FIRM), both dated March 2, 1981.

**§ 377-11. District boundaries.**

- A. The shoreland-wetland zoning district includes all wetlands in the Village of Black Creek, Wisconsin, which are five acres or more and are shown on the final Wetland Inventory Map that has been adopted and made a part of this chapter in § 377-10 and which are:
- (1) Within 1,000 feet of the ordinary high-water mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages in the Village of Black Creek shall be presumed to be navigable if they are listed in the Department publication "Surface Water Resources of Outagamie County" or are shown on the United States Geological Survey quadrangle maps or other zoning base maps which have been incorporated by reference and made a part of this chapter in § 377-10 of this chapter.
  - (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. Rivers and streams shall be presumed to be navigable if they are designated as either continuous or intermittent waterways on the United States Geological Survey quadrangle maps or other zoning base maps which have been incorporated by reference and made a part of this chapter in § 377-10. Flood hazard boundary maps, Flood Insurance Rate Maps, flood boundary-floodway maps, county soil survey maps or other existing community floodplain zoning maps used to delineate floodplain area which have been adopted by the Village shall be used to determine the extent of floodplain areas in the Village.
- B. Determinations of navigability and ordinary high-water mark shall initially be made by the Zoning Administrator. When questions arise, the Zoning Administrator shall contact the appropriate district office of the Department for a final determination of navigability or ordinary high-water mark.
- C. When an apparent discrepancy exists between the Shoreland-Wetland District boundary shown on the Official Shoreland-Wetland Zoning Maps and the actual field conditions at the time the maps were adopted, the Zoning Administrator shall contact the appropriate district office of the Department to determine if the Shoreland-Wetland District boundary, as mapped, is in error. If the Department staff concurs with the Zoning Administrator that a particular area was incorrectly mapped as a wetland, the Zoning Administrator shall have the authority to immediately grant or deny land use or building permit, in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors shown on the Official Shoreland-Wetland Zoning Maps, the Zoning Administrator shall be responsible for initiating a shoreland-wetland map amendment within a reasonable period.

**§ 377-12. Filled wetlands.**

Wetlands which are filled prior to July 15, 1992, the date on which the municipality received final wetland inventory maps, in a manner which affects their wetland characteristics to the extent that the area can no longer be defined as wetland are not subject to this chapter.

**§ 377-13. Permitted uses.**

The following uses are permitted subject to the provisions of Chs. 30 and 31, Wis. Stats., and the provisions of other local, state and federal laws, if applicable:

- A. Activities and uses which do not require the issuance of a zoning permit, provided that no wetland alteration occurs:
  - (1) Hiking, fishing, trapping, hunting, swimming, snowmobiling and boating;
  - (2) 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;
  - (3) The practice of silviculture, including the planting, thinning and harvesting of timber;
  - (4) The pasturing of livestock;
  - (5) The cultivation of agricultural crops; and
  - (6) The construction and maintenance of duck blinds.
- B. Uses which do not require the issuance of a (zoning/land use/building) permit and which may involve wetland alterations only to the extent specifically provided below:
  - (1) The practice of silviculture, including limited temporary water level stabilization measures which are necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the conduct of silvicultural activities if not corrected;
  - (2) The cultivation of cranberries, including limited wetland alterations necessary for the purpose of growing and harvesting cranberries;
  - (3) The maintenance and repair of existing drainage ditches, where permissible under § 30.20, Wis. Stats., or of other existing drainage systems (such as tiling) to restore preexisting levels of drainage, including the minimum amount of filling necessary to dispose of dredged spoil, provided that the filling is permissible under Ch. 30, Wis. Stats., and that dredged spoil is placed on existing spoil banks where possible;
  - (4) The construction and maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance;



- (5) The construction and maintenance of piers, docks and walkways, observation decks and trail bridges built on pilings, including limited excavating and tilling necessary for such construction or maintenance;
  - (6) The installation and maintenance of sealed tiles for the purpose of draining lands outside the shoreland-wetland zoning district, provided that such installation or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the shoreland-wetland listed in § 377-24C of this chapter; and
  - (7) The maintenance, repair, replacement and reconstruction of existing highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.
- C. Uses which are allowed upon the issuance of a conditional use permit and which may include wetland alterations only to the extent specifically provided below:
- (1) The construction and maintenance of roads which are necessary for the continuity of the municipal street system, the provision of essential utility and emergency services or to provide access to uses permitted in this section, provided that:
    - (a) The road cannot, as a practical matter, be located outside the wetland;
    - (b) The road is designed and constructed to minimize the adverse impact upon the natural functions of the wetland listed in § 377-24C of this chapter;
    - (c) The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use;
    - (d) Road construction activities are carried out in the immediate area of the roadbed only; and
    - (e) Any wetland alteration must be necessary for the construction or maintenance of the road.
  - (2) The construction and maintenance of nonresidential buildings, provided that:
    - (a) The building is used solely in conjunction with a use permitted in the Shoreland-Wetland District or for the raising of waterfowl, minnows or other wetland or aquatic animals;
    - (b) The building cannot, as a practical matter, be located outside the wetland;
    - (c) The building does not exceed 500 square feet in floor area; and
    - (d) Only limited filling and excavating necessary to provide structural support for the building are allowed.
  - (3) The establishment and development of public and private parks and recreation areas, outdoor education areas, historic, natural and scientific areas, game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms, wildlife preserves and public boat launching ramps, provided that:

- (a) Any private development allowed under this subsection shall be used exclusively for the permitted purpose;
  - (b) Only limited filling and excavating necessary for the development of public boat launching ramps, swimming beaches or the construction of park shelters or similar structures are allowed;
  - (c) The construction and maintenance of roads necessary for the uses permitted under this subsection are allowed only where such construction and maintenance meets the criteria in Subsection C(1) of this section; and
  - (d) Wetland alterations in game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms, and wildlife preserves shall be for the purpose of improving wildlife habitat or to otherwise enhance wetland values.
- (4) The construction and maintenance of electric and telephone transmission lines and water, gas and sewer distribution lines, and related facilities, provided that:
- (a) The transmission and distribution lines and related facilities cannot, as a practical matter, be located outside the wetland;
  - (b) Only limited filling or excavating necessary for such construction or maintenance is allowed; and
  - (c) Such construction or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the wetland listed in § 377-24C of this chapter.
- (5) The construction and maintenance of railroad lines, provided that:
- (a) The railroad lines cannot, as a practical matter, be located outside the wetland;
  - (b) Only limited wetland alteration necessary for such construction or maintenance is allowed; and
  - (c) Such construction or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the wetland as listed in § 377-24 of this chapter.

**§ 377-14. Prohibited uses.**

- A. Any use not listed in § 377-13 of this chapter is prohibited, unless the wetland or a portion of the wetland has been rezoned by amendment of this chapter in accordance with § 377-24 of this chapter.
- B. The use of a boathouse for human habitation and the construction or placement of a boathouse or fixed houseboat below the ordinary high-water mark of any navigable waters are prohibited.

**§ 377-15. Nonconforming structures and uses.**

The existing lawful use of a structure, building or property, or its accessory use, which is not in conformity with the provisions of this chapter may be continued, subject to the following conditions:

- A. Notwithstanding § 62.23(7)(h), Wis. Stats., the repair, reconstruction, renovation, remodeling or expansion of a legal nonconforming structure in existence at the time of adoption or subsequent amendment of this chapter adopted under § 61.351, Wis. Stats., or of an environmental control facility in existence on May 7, 1982, related to that structure, is permitted under § 61.351(5), Wis. Stats., § 62.23(7)(h), Wis. Stats., and applies to any environmental control facility that was not in existence on May 7, 1982, but was in existence on the effective date of this chapter or amendment.
- B. If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, any future use of the building, structure or property shall conform to the appropriate provisions of this chapter.
- C. Any legal nonconforming use of property which does not involve the use of a structure and which existed at the time of the adoption or subsequent amendment of this chapter adopted under Sections 62.231 or 61.351, Wis. Stats., may be continued although such use does not conform with the provisions of this chapter. However, such nonconforming use may not be extended.
- D. The maintenance and repair of nonconforming boathouses which are located below the ordinary high-water mark of any navigable waters shall comply with the requirements of § 30.121, Wis. Stats.
- E. Uses which are nuisances under common law shall not be permitted to continue as nonconforming uses.

**ARTICLE IV****Administrative Provisions****§ 377-16. Zoning administrator.**

The Zoning Administrator shall have the following duties and powers:

- A. Advise applicants as to the provisions of this chapter and assist them in preparing permit applications and appeal forms.
- B. Issue permits and certificates of compliance and inspect properties for compliance with this chapter.
- C. Keep records of all permits issued, inspections made, work approved and other official actions.
- D. Have access to any structure or premises between the hours of 8:00 a.m. and 6:00 p.m. for the purpose of performing these duties.



- E. Submit copies of decisions on variances, conditional use permits, appeals for a map or text interpretation, and map or text amendments within 10 days after they are granted or denied, to the appropriate district office of the Department.
- F. Investigate and report violations of this chapter to the appropriate Village Plan Commission and the District Attorney or Village Attorney. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

**§ 377-17. Zoning permits.**

- A. When required. Unless another section of this chapter specifically exempts certain types of development from this requirement, a zoning permit shall be obtained from the Zoning Administrator before any new development, as defined in § 377-26B of this chapter, or any change in the use of an existing building or structure is initiated.
- B. Application. An application for a permit shall be made to the Zoning Administrator upon forms furnished by the Village and shall include, for the purpose of proper enforcement of these regulations, the following information:
  - (1) General information.
    - (a) Name, address, and telephone number of the applicant, property owner and contractor, where applicable.
    - (b) Legal description of the property and a general description of the proposed use or development.
    - (c) Whether or not a private water or sewage system is to be installed.
  - (2) Site development plan. The site development plan shall be drawn to scale and submitted as a part of the permit application form and shall contain the following information:
    - (a) Dimensions and area of the lot;
    - (b) Location of any structures with distances measured from the lot lines and center line of all abutting streets or highways;
    - (c) Location of any existing or proposed on-site sewage systems or private water supply systems;
    - (d) Location of the ordinary high-water mark of any abutting navigable waterways;
    - (e) Location and landward limit of all wetlands;
    - (f) Existing and proposed topographic and drainage features and vegetative cover;
    - (g) Location of floodplain and floodway limits on the property as determined from floodplain zoning maps used to delineate floodplain areas;
    - (h) Location of existing or future access roads; and

- (i) Specifications and dimensions for areas of proposed wetland alteration.
- C. Expiration. All permits issued under the authority of this chapter shall expire one year from the date of issuance.

**§ 377-18. Certificates of compliance.**

- A. Except where no zoning permit or conditional use permit is required, no land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, rebuilt or replaced shall be occupied, until a certificate of compliance is issued by the Zoning Administrator subject to the following provisions:
  - (1) The certificate of compliance shall show that the building or premises or part thereof, and the proposed use thereof, conform to the provisions of this chapter.
  - (2) Application for such certificate shall be concurrent with the application for a zoning or conditional use permit.
  - (3) The certificate of compliance shall be issued within 10 days after the completion of the work specified in the zoning or conditional use permit, providing the building or premises or proposed use thereof conforms with all the provisions of this chapter.
- B. The Zoning Administrator may issue a temporary certificate of compliance for a building, premises or part thereof pursuant to rules and regulations established therefor by the Village Board.
- C. Upon written request from the owner, the Zoning Administrator shall issue a certificate of compliance for any building or premises existing at the time of the adoption certifying, after inspection, the extent and type of use made of the building or premises and whether or not such use conforms to the provisions of this chapter.

**§ 377-19. Conditional use permits for wetland areas.**

- A. Application. Any use listed as a conditional use in this chapter shall be permitted only after an application has been submitted to the Zoning Administrator and a conditional use permit has been granted by the Board of Appeals, following the procedures in § 377-23C, D and E for hearing and deciding appeals.
- B. Conditions. Upon consideration of the permit application and the standards applicable to the permitted uses in § 377-13C of this chapter, the Board of Appeals shall attach such conditions to a conditional use permit, in addition to those required elsewhere in this chapter, as are necessary to further the purposes of this chapter as listed in § 377-2 of this chapter. Such conditions may include specifications for, without limitation because of specific enumeration, type of shore cover; erosion potential; increased side yard setbacks; specific sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; sureties; deed restrictions; location of piers, docks, parking areas and signs; and type of construction. To secure information upon which to base its determination, the Board of Appeals may require the applicant to furnish, in addition to the information required for a zoning permit,

other pertinent information which is necessary to determine if the proposed use is consistent with the purpose of this chapter.

**§ 377-20. Fees. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

The Village Board does hereby establish fees for the following permits and administrative procedures under this chapter as set forth in the General Fee Schedule, on file in the Village offices.

**§ 377-21. Recording.**

Where a zoning permit or conditional use permit is approved, an appropriate record shall be made by the Zoning Administrator of the land use and structures permitted.

**§ 377-22. Revocation.**

Where the conditions of a zoning permit or conditional use permit are violated, the permit shall be revoked by the Board of Appeals.

**§ 377-23. Board of Appeals.**

- A. Appointment. The Village President shall appoint a Board of Appeals under Chapter 12, Boards, Commissions and Committees, of this Code and § 62.23(7)(e), Wis. Stats., consisting of five members subject to confirmation by the Village Board. The Board of Appeals shall adopt rules for the conduct of the business of the Board of Appeals as required by § 62.23(7)(e)3., Wis. Stats.
- B. Powers and duties. The Board of Appeals:
  - (1) Shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this chapter.
  - (2) Shall hear and decide applications for conditional use permits under this chapter.
  - (3) May authorize upon appeal in specific cases such variance from the terms of this chapter as shall not be contrary to the public interest, where owing to special conditions, a literal enforcement of this chapter will result in unnecessary hardship. In the issuance of a variance, the spirit of this chapter shall be observed and substantial justice done. No variance from the terms of this chapter shall be granted which is contrary to the public interest. A variance may be granted where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary hardship. The granting of a variance shall not have the effect of granting or extending any use of property which is prohibited in that zoning district by this chapter.
- 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 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 10 days after the decision is issued.

**§ 377-24. 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 Ch. NR 117, Wis. Adm. Code, and § 62.23(7)(d)2, Wis. Stats., 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 days of the submission of the proposed amendment to the Village Plan Commission.
- B. All proposed text and map amendments to the shoreland-wetland zoning regulations shall be referred to the Plan Commission, and a public hearing shall be held as required by § 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 10 days prior to such hearing.



- C. In order to ensure that the shoreland protection objectives in § 281.31, 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 floodwater 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 Village Plan Commission on the proposed text or map amendment within 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 10 days after the action is taken.
- F. If the Department notifies the Plan Commission, 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 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-day period, the Department notifies the Village Board that the Department intends to adopt a superseding shoreland-wetland zoning ordinance for the Village under § 62.231(6), Wis. Stats., the proposed amendment may not become effective until the ordinance adoption procedure under § 62.231(6), Wis. Stats., is completed or otherwise terminated.



## ARTICLE V

**Enforcement; Terminology****§ 377-25. Violations 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 Plan Commission 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 § 1-4, General penalty, of this Code, 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 § 87.30(2), Wis. Stats.

**§ 377-26. Definitions and word usage.**

- 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:

**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.

**BOATHOUSE** — As defined in § 30.01(1d), Wis. Stats., a structure used for the storage of watercraft and associated materials which has one or more walls or sides. [**Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)**]

**DEPARTMENT** — The Wisconsin Department of Natural Resources.

**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.

**DRAINAGE SYSTEM** — One or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.

**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.

**FIXED HOUSEBOAT** — As defined in § 30.01(1r), 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 spud poles attached to the bed of the waterway.

**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 § 281.31(2)(d), Wis. Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under § 62.231, Wis. Stats., and Ch. NR 117, Wis. Adm. Code, do not apply to 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; and
- (3) Such lands are maintained in nonstructural agricultural use.

**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.<sup>1</sup>

**REGIONAL FLOOD** — A flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur or be exceeded on a particular stream, because of like physical characteristics, once in every 100 years.

**SHORELANDS** — Lands within the following distances from the ordinary high-water mark of navigable waters: 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.

**SHORELAND-WETLAND DISTRICT** — The zoning district, created in this chapter, 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 § 377-10 of this chapter.

**SPECIAL EXCEPTION or CONDITIONAL USE** — A use which is permitted by this chapter, provided that certain conditions specified in the chapter are met and that a permit is granted by the Board of Appeals or, where appropriate, the Plan Commission designated by the Village Board.

1. Editor's Note: The definition of "planning agency," which immediately followed this definition, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

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.

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.

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.

WETLAND ALTERATION — Any filling, flooding, draining, dredging, ditching, tiling, excavating, temporary water level stabilization measures or dike and dam construction in a wetland area.