Nonconforming Structures, Impervious Surfaces and Mitigation!!

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Nonconforming Structures

- Why do we regulate them??

- Purpose: To protect water quality, fish and wildlife habitat, and natural scenic beauty some control is needed over the modification and reconstruction of these structures.

What is a NC structure?

- A structure that was legally constructed but does not meet the current requirements.

When is a NC structure regulated under NR 115 ?

- When it is a principal structure does not meet the required water setback
- Reminder – illegal structures are not NC structures & not eligible for the flexibility

So – what can be done to a NC principal structure?

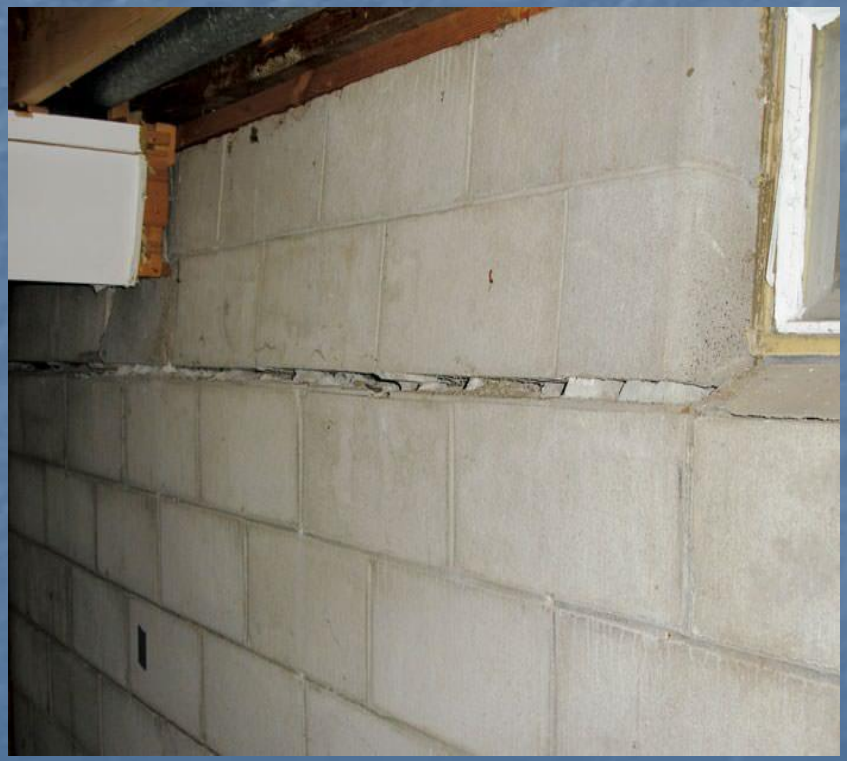
Flexibility now built into the code in exchange for mitigation

- Maintenance and repair – no mitigation
- Vertical and Lateral expansion -mitigation
- Expansion beyond the setback –no mitigation
- Replacement or relocation - mitigation

- “Maintenance and repair” (NR 115.05(1)(g)4.) includes such activities as interior remodeling, exterior remodeling, and the replacement or enhancement of plumbing or electrical systems, insulation, windows, doors, siding, or roof within the existing building envelope.
- Maintenance and repair can be performed on any principal structure that does not meet the required water setback
- No mitigation required

Maintenance and Repair

Foundation repair



Window replacement

Maintenance and Repair

Roof repair

Insulation

Vertical/Lateral Expansion

- **use not been discontinued for a period of 12 months or more if a nonconforming use.**
- **existing principal structure is at least 35 feet from OHWM**
- **limited to 35’ in height and lateral expansions are limited to a maximum of 200 square feet over the life of the structure. No portion may be any closer to the OHWM than the closest point of the existing principal structure.**
- **Mitigation plan shall be approved by the county and implemented by the property owner. The mitigation plan shall meet the standards found in section 12.0 (model ordinance).**
- **All other provisions of the shoreland ordinance shall be met.**

Expansion beyond the setback

- New construction that meets the required setback
- Mitigation not required for this but may be required for impervious surface %
- Does not require structure to be at least 35 ft. from OHWM.
- Also could be an averaged setback or even larger setbacks for counties with lake classification

Replacement or Relocation

- use has not been discontinued for a period of 12 months or more if a nonconforming use.
- existing principal structure is at least 35 feet from OHWM
- No portion of the replaced or relocated structure is located any closer to the OHWM than the closest point of the existing principal structure.
- The county determines that no other location is available to build a principal structure of a comparable size that will result in compliance with the shoreland setback
- Mitigation plan 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 12.0.
- All other provisions of the shoreland ordinance shall be met.

Reminder:

- Requirement to remove NC accessory structures for replacement/relocation of NC principal structure has been eliminated.

NC Principal Structure 20’ from OHWM – what can be done?

- Section 59.692(1s), Stats.
- **May not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:**
  - **The nonconforming structure was damaged or destroyed after October 14, 1997.**
  - **The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.**

Nonconforming principal structure is 50’ from OHWM, what can the property owner do under NR 115?

- Expand vertically/laterally if all requirements met with mitigation (NR 115.05(1)(g)5
- Expand vertically, horizontally beyond the setback without mitigation NR 115.05(1)(g)5m
- Replace/Relocate the structure with mitigation (NR 115.05(1)(g)(6)
- Reminder – if structure meets avg. setback or has been granted a variance it is a complying structure

NC principal structure 50’ from OHWM and within the floodplain, what standards apply?

- The most restrictive standards
- NR116 and FEMA still limit structural repairs, modifications, additions to 50% of the equalized assessed value of the structure.
- Requires comparison of regulations to determine which is more restrictive

NC Principal Structure 52’ from OHWM, proposed vertical expansion w/accepted mitigation plan, does not meet road or side yard setback

- What can be done?
- Maintenance and repair
- Apply for a variance, if granted proceed with project
- Remember – must meet all other ordinance provisions

NC principal structure – previous permit authorized at 45% of the equalized assessed value –application for structural

- Does the 50% start over again?
- No
- Do you add the previous permit %?
- No
- How do you calculate?
- New permit with whatever your new standards are – cannot use 50% of equalized assessed value

Principal structure located 44’ from OHWM authorized by variance

- Property owner wants to vertically expand.
- What can be done?
- Variance granted creates a conforming structure –NC provision don’t apply
- Apply for a subsequent variance for 2nd story
- Remember – variance provided minimal relief & “flexibility” at the time it was granted.

- 200 sq. foot expansion by moving wall out and rebuilding structure when does that become rebuilding?

- The intent of the 200 sq. ft. provision is to allow small additions to the structure.
- if it walks like a duck and it quacks like a duck, it’s a duck.

NC principal structure at 40’ OHWM, variance authorized addition at 35’ from OHWM: proposed vertical expansion over entire structure

Now what?!?

Regulate entire structure using the NC provisions.

- What is the best way to quantify damage or allowed dismantling that would be permitted before complete replacement happens, since cost is longer allowed??
- Dan, Laura, Craig

- Does NR 115 contain regulations for nonconforming accessory structures??

- NO
- But all new structures are required to meet the setbacks NR 115.05(1)(b)

Can you regulate NC accessory structures?

- Yes
- Be sure to create a definition
- Should reflect the intent of shoreland zoning

59.69(10e)(a)(a) In this subsection:
59.69(10e)(a)1. 1. "Development regulations" means the part of a zoning ordinance enacted under this section that applies to elements including setback, height, lot coverage, and side yard.
59.69(10e)(a)2. 2. "Nonconforming structure" means a dwelling or other building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current zoning ordinance.
59.69(10e)(b) (b) An ordinance enacted under this section may not prohibit, or limit based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming structure.

Policy Option

11.8 MAINTENANCE OF NONCONFORMING ACCESSORY STRUCTURES. Accessory structures that were legally constructed before the adoption of this chapter may be maintained and repaired but may not be expanded or rebuilt unless authorized by s. 59.692(1s) Wisconsin Stats. Or unless they are made to conform to all other provisions of this ordinance.

Policy Option 2

- May adjust language suggested in the WCCA guide to allow the replacement of patios, decks, sidewalks but not allow the replacement of buildings
- This would preserve the intent of shoreland zoning and protect public trust
- Limit the square footage
- Don’t forget other ordinance provisions
- Explanation to the public

Impervious Surfaces

"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.

Where does it apply?

IS standards shall apply to the construction, reconstruction, expansion, replacement or relocation of any impervious surface that is or will be located within 300 feet of the OHWM on any of the following:

a. A riparian lot or parcel.

b. A non-riparian lot or parcel that is located entirely within 300 feet of the OHWM

*language can be more restrictive

Impervious surface standards

- What is the standard?
  - Keep the impervious surfaces you have
  - For riparian lots or non-riparian lots that are entirely within 300 feet of the OHWM
    - Up to 15% impervious
    - Between 15% - 30% ok with mitigation

Maintain and repair all impervious surfaces.
b. Replace existing impervious surfaces with similar surfaces within the existing building envelope.
c. Relocate or modify existing impervious surfaces with similar or different impervious surfaces, provided that the relocation or modification meets the applicable setback requirements in par. (b).

Note: For example this provision would allow an existing at−grade patio to be removed and replaced with a new building, if the new building meets the shoreland setback requirements.

Note: Nothing in this paragraph shall be construed to supersede other provisions in county shoreland ordinances.

- Keep what you have means repair, replace, relocate or modify and stay at the same IS %

- BUT – all other ordinance requirements apply = OHWM, side yard, nonconforming accessory structure provisions, gard gazebo provisions, etc…

The WCCA NR 115 committee also recommends in their guidebook the following:

To clarify confusion between NR 115.05(1)(g)6 which addresses replacement and relocation of nonconforming principal structure and NR 115.05(1)(e)4 which addresses existing impervious surfaces the WCCA shoreland committee recommends counties edit 9.5(2) in the impervious surface section of the model from

a. "replace existing impervious surfaces with similar surfaces within the existing building envelope;" to

b."replace existing impervious surfaces with similar surfaces that meet applicable setbacks;"

because this would reduce confusion and would be legally allowed.

Note that the recommended language b. will not allow:

- a gravel driveway or portion of the driveway within the shoreland setback to be surfaced in asphalt or concrete, and
- failing sidewalks or patios within the shoreland setback to be replaced,

which may lead to debates over what is allowed under the "maintenance and repair" definition.

Policy Option 2

- May adjust language in b. in the WCCA guide to allow the replacement of patios, decks, sidewalks but not allow the replacement of buildings
- This would preserve the intent of shoreland zoning –
- Limit the square footage
- Explanation to the public

How do you calculate IS??

1m. ‘Calculation.’ Percentage of impervious surface shall be calculated by dividing the surface area of the existing and proposed impervious surfaces on the lot or parcel by the total surface area of that lot or parcel, and multiplying by 100. For the purposes of this subdivision counties may exclude impervious surfaces described in subd. 3m. If an outlot lies between the ordinary high water mark and the developable lot or parcel described in subd. 1. 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 surfaces.

Flexibility: Highly developed shorelines

- Counties may create “highly developed shorelines”
  - Urbanized Areas or Urbanized Clusters in 2010 US Census
  - OR
  - Commercial, Industrial or Business land use as of January 31, 2013

- Counties may add additional areas if all of the following standards are met (additional data submitted/approved)
  - At least 500 feet of shoreline and as of Feb 1, 2010
    - Majority of lots exceeded 30% impervious
    - **OR**
    - Lots are located on a lake that is sewered (NR 110.03(30)

Highly Developed standards:

- For Highly Developed Shorelines
  - Impervious surface standard (IS):
    - No mitigation permit needed for
      - residential land use with less than 30% IS
      - commercial, industrial or business land use with less than 40% IS
    - Permit with mitigation for expansion over the standard

  - Maximum impervious surface standard:
    - 40% IS for residential land use
    - 60% IS for commercial, industrial or business land use

Flexibility: Treated IS

'Treated impervious surfaces.' A county may exclude from the calculation any impervious surface where the property owner can show that runoff from the impervious surface is treated by devices such as stormwater ponds, constructed wetlands, infiltration basins, rain gardens, bioswales or other engineered systems, or that the runoff discharges to internally drained pervious area that retains the runoff on the parcel to allow infiltration into the soil.

Summary

- For everywhere else (non HDS) same IS standard of 15%
- For HDS (optional for counties)
  - Standard is 30% for residential or 40% for commercial, industrial or business land uses.
  - What is an HDS
    - Automatic areas
      - Urbanized Area or Urban Cluster in the 2010 US Census
      - Shoreline that has a commercial, industrial or business land use as of January 31, 2013.
    - Areas that counties may add in addition to the automatic areas.

Reminder:

- IS provisions do not supersede other ordinance standards. All other ordinance requirements have to be met.

Mitigation

- Required for expansion of NC principal structures and increase in IS % over the minimum
- Proportional in scope to the impacts

- **MITIGATION. The application shall include the following:**
- **A site plan that describes the proposed mitigation measures**
- **Designed and implemented to restore natural functions lost through development and human activities**
- **Mitigation measures shall be proportional in scope to the impacts on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty.**
- **Implementation schedule and enforceable obligation on the property owner to establish and maintain the mitigation measures.**
- **Recorded in the office of the Register of Deeds.**

Variance from mitigation?

- "Area variances" are changes to the dimensional requirements in a zoning ordinance such as height, setback, and lot size.
- “Use variance” is one which permits a use of land other than the use prescribed by the zoning ordinance
- No – not dimensional nor is it a use: it is a standard

Wetland Identification Program

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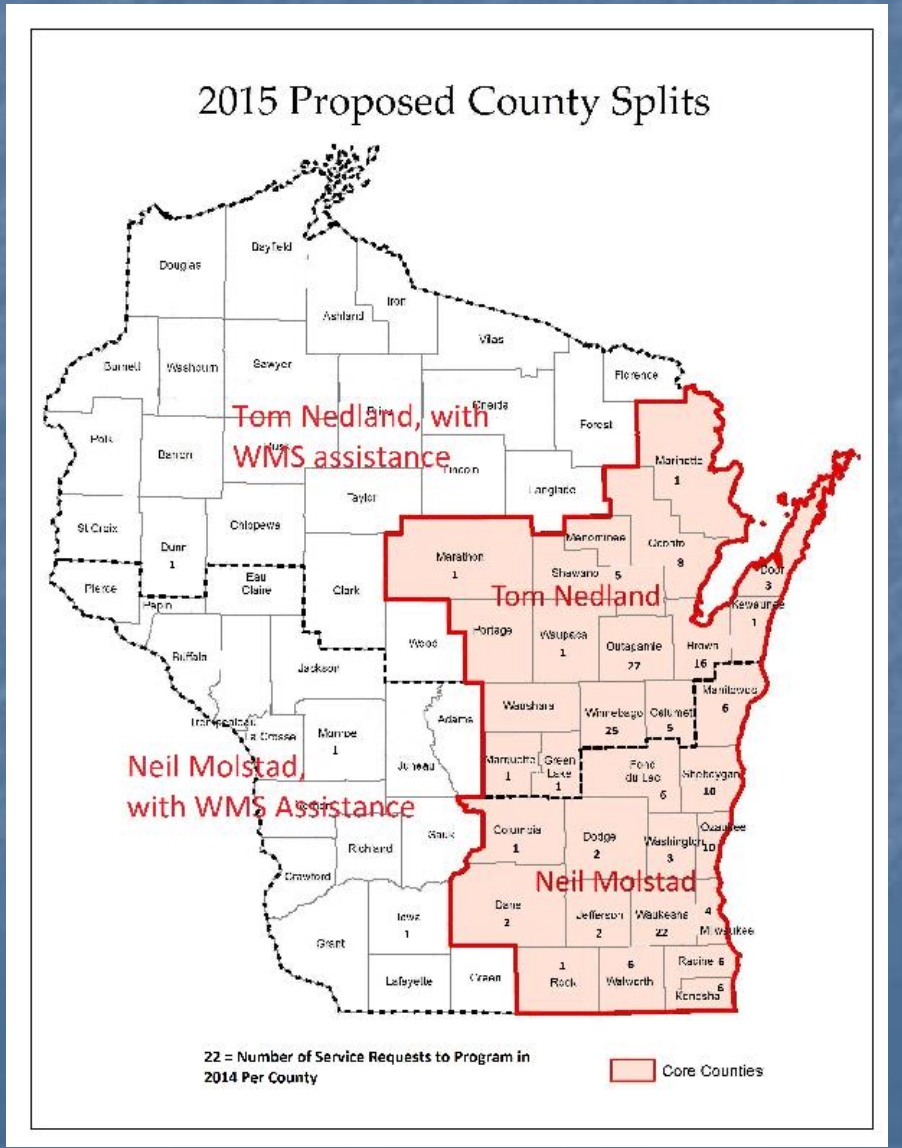
2015 Service Area

- ID and Confirmation Services will be expanding statewide
- Demand outside of core counties unclear