



Department of Planning and Community and Economic Development
Building Inspection Division

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TO: Plan Commission

FROM: Matt Tucker, Zoning Administrator

DATE: February 4, 2010

SUBJECT: Waterfront/lakefront zoning language comparison

Alders and the Plan Commission have requested information on the approach for waterfront / lakefront development, specifically comparing the existing code provisions with the language found in the 9-15-2009 draft (Leg. No. 15932).

The substantive comparison between the new and old code may be found on the attached pages. I have included the actual language of both provisions toward the end of the document. Because the general organization of the ordinance is changing and some of the concepts are new, a direct comparison cannot be made, and may not be very helpful.

Waterfront / Lakefront zoning comparison:
Existing ordinance language in red, Draft ordinance language in blue
Staff comments in italics

Ordinance Structure

Existing ordinance:

- (a) Statement of purpose
- (b) General regulations
 - Seven sub-bullets
- (c) Exemption for small additions, built over years

Draft ordinance

General statement

- (1) General regulations
 - 6 sub bullets
- (2) Residentially-Zoned Lakefront Properties.
 - (a) Lakefront yard setback
 - 2 calculators
 - (b) Building bulk limitations

Statement of Purpose

Existing ordinance

Provides SoP:

Statement of Purpose. This subsection is established to further the maintenance of safe and healthful conditions, prevent and control water pollution, protect spawning grounds, fish and aquatic life by controlling building sites, the placement of structures and land users and reserving shore cover and natural beauty for all waterfront and shoreland development.

Draft ordinance

No SoP, provides general statement:

The following regulation shall apply to all zoning lots that abut Lake Monona, Lake Mendota, Lake Wingra, Monona Bay, and associated harbors. New development on lakefront lots is a conditional use. For purposes of this section, new development shall be a new principal building, an addition or additions to an existing principal building totaling in excess of five hundred (500) square feet of floor area during any ten (10) year period, or any accessory building. Additions to principal buildings of less than five hundred (500) square feet of floor area during any ten (10) year period shall meet the requirements of this section but may be permitted rather than conditional.

Applicability/areas regulated

Existing ordinance states: "...all waterfront and shoreland development."

This suggests very broad applicability, where actual application has been limited to lots with lake or harbor frontage on lakes Mendota or Monona. Limited research of the historical record reflects that applicability has been only for lake frontage sites. A definition of "shoreland" was added after ordinance was adopted, 7-2-1985, to link to Shoreland Zoning requirements for areas annexed to the City after 5-7-1982. Since the entire lake frontage was located within the incorporated area before 5-7-1982

(except a small portion of the southern shore of lake Wingra near the arboretum), Shoreland Zoning requirements do not apply. Shoreland Zoning is referred to in 28.04(3)(o).

Draft ordinance defines applicability: "...apply to all zoning lots that abut Lake Monona, Lake Mendota, Lake Wingra, Monona Bay, and associated harbors. (Excludes Yahara river, Starkweather creek, Badger Mill Creek, other named or and unnamed rivers/creeks)

Setback calculation method

Existing ordinance

All principal structures, except Civic Auditorium Complex, minimum setback from OHWM is set by "existing development pattern": existing development pattern shall mean the average setback of the five (5) developed zoning lots to each side of the proposed development lot. For all zoning lots, the principal building setback shall be not less than the existing development pattern.

Each property has a unique setback requirement, which changes when setback changes for any of the five principal structures on either side.

Draft ordinance

Non-residential principal structures, silent on required setback.

Yard setback requirement of base zoning districts would still apply; requested setback considered and set by Conditional use process approval. Would need variance to be less than base zoning setback requirement.

Residential principal structures, "...in no case shall principal buildings be located closer to the OHWM than twenty-five (25) feet. Two methods:

1. The average setback of the principal building on the two adjoining lots, provided that the setbacks of those buildings are within twenty (20) feet of one another; or
2. Based on the median setback of the principal building on the five (5) developed lots or three hundred (300) feet on either side (whichever is less), or thirty percent (30%) of lot depth, whichever number is greater (see illustration).

Minimum 25' setback. Each property has unique requirement, which changes when neighboring properties waterfront setback changes. Would need variance to be less than "two methods" requirement 25'.

Vegetation cutting/clearing

Existing ordinance / Draft ordinance: Same

Sanitary Sewer Service

Existing ordinance / Draft ordinance: Same

Planned pedestrian path interference

Existing ordinance / Draft ordinance: Same

Marine retaining wall construction

Existing ordinance / Draft ordinance: Same

Boathouse for human habitation restriction

Existing ordinance / Draft ordinance: *Same*

Building bulk limitation

Existing ordinance

No predefined regulation. Base zoning yard requirements and unique waterfront “existing development pattern” setback establish building envelope, which is reviewed as part of CU process.

Draft ordinance

Building Bulk Limitation: The residential floor area ratio of the principal building on the lot shall not exceed one hundred twenty-five percent (125%) of the median floor area ratio of all residentially-zoned buildings within one thousand (1,000) feet on either side. Residential floor area as defined includes finished or occupiable attic and basement space, attached garages and enclosed porches. Floor area information shall be obtained from the City of Madison assessment records

Definition: Floor Area, Residential (for determining floor area ratio on lakefront residential lots). The sum of the gross horizontal areas of the several floors of the building measured from the exterior faces of the exterior walls, or from the center line of walls separating two buildings. Residential floor area includes finished or occupiable attic and basement space, elevated decks open to the sky, attached garages and open or enclosed porches. (pp. 231)

Existing Ordinance (pp 28-27 and 28-28 of zoning code)

28.04(19) Waterfront Development. (Cr. by Ord. 4664, 8-5-74)

- (a) Statement of Purpose. This subsection is established to further the maintenance of safe and healthful conditions, prevent and control water pollution, protect spawning grounds, fish and aquatic life by controlling building sites, the placement of structures and land users and reserving shore cover and natural beauty for all waterfront and shoreland development.
- (b) General Regulations. The following regulations shall apply to all new development except a Civic Auditorium Complex. No building permit shall be issued for any new development of a waterfront or shoreland zoning lot without first obtaining a conditional use permit therefore. For purposes of this section, new development shall be a new principal building, an addition or additions to an existing principal building totaling in excess of five hundred (500) square feet of floor area during any ten (10) year period, or an accessory building. The conditional use permit shall be issued pursuant to the procedure set forth in Section 28.12(11) of this ordinance. In addition to the review standards set forth in Subdivision (g) therein all waterfront development shall be subject to the following standards. (Am. by Ord. 10,713, 8-27-93; Ord. 12,598, 3-3-00; ORD-05-00191, 12-20-05)
1. For purposes of this section, the existing development pattern shall mean the average setback of the five (5) developed zoning lots to each side of the proposed development lot. For all zoning lots, the principal building setback shall be not less than the existing development pattern. (Am. by Ord. 12,598, 3-3-00)
 2. Upon the filing of an application for a conditional use permit, the development plan shall show a complete inventory of shoreline vegetation in any area proposed for building, filling, grading or excavating. In addition, the development plan shall indicate those trees and shrubbery which will be removed as a result of the proposed development. The cutting of trees and shrubbery shall be limited in the strip thirty-five (35) feet inland from the normal waterline. On any zoning lot not more than thirty percent (30%) of the frontage shall be cleared of trees and shrubbery. Within the waterfront setback requirements tree and shrub cutting shall be limited by consideration of the effect on water quality, protection and scenic beauty, erosion control and reduction of the effluents and nutrients from the shoreland.
 3. Any building development for habitation shall be served with public sanitary sewer.
 4. Filling, grading and excavation of the zoning lot may be permitted only where protection against erosion, sedimentation and impairment of fish and aquatic life has been assured. (Am. by Ord. 12,183, 8-31-98)
 5. Where the City's adopted Master Plan includes a pedestrian walkway or bike path along the shoreline, the proposed development shall not interfere with its proposed location.
 6. Construction of marine retaining walls or bulkhead may be permitted providing such construction does not protrude beyond the established shoreline of the adjacent properties. Said retaining walls and bulkheads will be permitted only for the purpose of preventing shoreline recession. The filling and grading of the shoreline shall occur only in the construction of such retaining walls or bulkheads.
 7. In addition to complying with the above standards, boathouses shall not be constructed for human habitation.
- (c) Waterfront Development Less than 500 Square Feet. All development less than 500 square feet in floor area on the water side of an existing building, including additions to an existing building, shall conform to the setback requirements in Sec. 28.04(19)(b)1. above. (Cr. by Ord. 11,591, 6-3-96)

Draft ordinance (pp 130 -131 of 9-15-09 draft zoning code)

28.138 LAKEFRONT DEVELOPMENT.

The following regulation shall apply to all zoning lots that abut Lake Monona, Lake Mendota, Lake Wingra, Monona Bay, and associated harbors. New development on lakefront lots is a conditional use. For purposes of this section, new development shall be a new principal building, an addition or additions to an existing principal building totaling in excess of five hundred (500) square feet of floor area during any ten (10) year period, or any accessory building. Additions to principal buildings of less than five hundred (500) square feet of floor area during any ten (10) year period shall meet the requirements of this section but may be permitted rather than conditional.

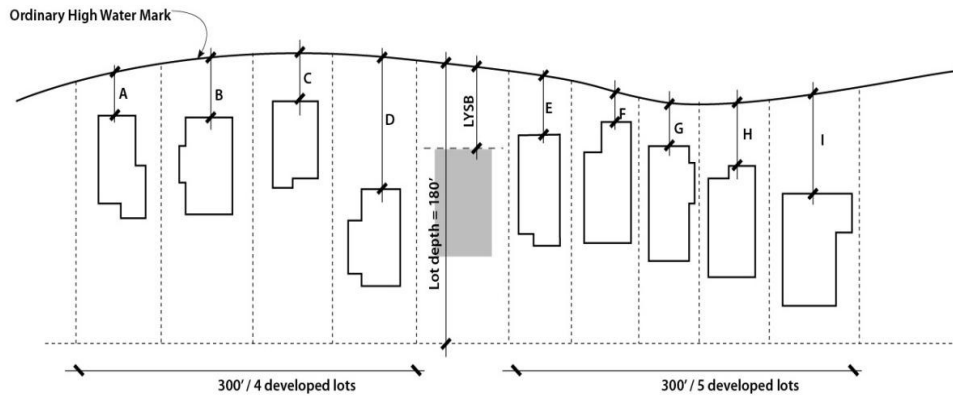
(1) General Regulations.

- a) Upon the filing of an application for a conditional use permit, the development plan shall show a complete inventory of shoreline vegetation in any area proposed for building, filling, grading or excavating. In addition, the development plan shall indicate those trees and shrubbery which will be removed as a result of the proposed development. The cutting of trees and shrubbery shall be limited in the strip thirty-five (35) feet inland from the normal waterline. On any zoning lot not more than thirty percent (30%) of the frontage shall be cleared of trees and shrubbery. Within the waterfront setback requirements tree and shrub cutting shall be limited by consideration of the effect on water quality, protection and scenic beauty, erosion control and reduction of the effluents and nutrients from the shoreland.
- b) Any building development for habitation shall be served with public sanitary sewer.
- c) Filling, grading and excavation of the zoning lot may be permitted only where protection against erosion, sedimentation and impairment of fish and aquatic life has been assured.
- d) Where the City's adopted Master Plan includes a pedestrian walkway or bike path along the shoreline, the proposed development shall not interfere with its proposed location.
- e) Construction of marine retaining walls or bulkhead may be permitted providing such construction does not protrude beyond the established shoreline of the adjacent properties. Said retaining walls and bulkheads will be permitted only for the purpose of preventing shoreline recession. The filling and grading of the shoreline shall occur only in the construction of such retaining walls or bulkheads.
- f) In addition to complying with the above standards, boathouses shall not be constructed for human habitation.

(2) Residentially-Zoned Lakefront Properties.

- (a) Lakefront Yard Setback. The yard that abuts the lake, typically the rear yard, shall be referred to as the "lakefront yard." The yard opposite the lakefront yard shall be treated as the front yard. The minimum depth of the lakefront yard setback from the Ordinary High Water Mark shall be calculated using one of the two following methods, provided that in no case shall principal buildings be located closer to the OHWM than twenty-five (25) feet.
 1. The average setback of the principal building on the two adjoining lots, provided that the setbacks of those buildings are within twenty (20) feet of one another; or
 2. Based on the median setback of the principal building on the five (5) developed lots or three hundred (300) feet on either side (whichever is less), or thirty percent (30%) of lot depth, whichever number is greater (see illustration).
- (b) Building Bulk Limitation. The residential floor area ratio of the principal building on the lot shall not exceed one hundred twenty-five percent (125%) of the median floor area ratio of all residentially-zoned buildings within one thousand (1,000) feet on either side. Residential floor area as defined includes finished or occupiable attic and basement space, attached garages and enclosed porches. Floor area information shall be obtained from the City of Madison assessment records

Graphics



Sample Calculation of Minimum Lakefront Yard Setback

Existing Lakefront Yard Setbacks within 5 lots or 300 feet:

- A: 35'
- B: 45'
- C: 35'
- D: 75'
- E: 45'
- F: 30'
- G: 35'
- H: 45'
- I: 60'

Lakefront Yard Setback calculation:

Median of A to I: 45'

or

30% of lot depth (180'): 54'

28.211 RULES OF CONSTRUCTION AND DEFINITIONS. (pp. 231)

Floor Area, Residential (for determining floor area ratio on lakefront residential lots). The sum of the gross horizontal areas of the several floors of the building measured from the exterior faces of the exterior walls, or from the center line of walls separating two buildings. Residential floor area includes finished or occupiable attic and basement space, elevated decks open to the sky, attached garages and open or enclosed porches.