



Department of Planning & Community & Economic Development  
**Planning Division**

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## MEMORANDUM

**TO:** Plan Commission  
**FROM:** Planning Division Staff  
**DATE:** August 12, 2010  
**SUBJECT:** Lakefront Property Considerations

### I. Introduction

Under the proposed ordinance, development occurring on zoning lots that abut Lake Monona, Lake Mendota, Lake Wingra, Monona Bay, and associated harbors is a conditional use, subject to regulations in Section 28.138. All lakefront development is subject to general regulations in Sec. 28.138(1). Unlike residential development, which is subject to bulk and setback standards relative to the characteristics of nearby lakefront properties (see Sec. 28.138(2)), there are no predetermined bulk or setback standards for non-residential development. Instead, such details would be reviewed on a case-by-case basis and approved as part of the conditional use process.

The Plan Commission has requested that staff propose additional specific standards for non-residential waterfront development. This memorandum provides an overview of applicable properties, an analysis of alternative approaches for the Plan Commission to consider, and recommendations. Other related issues of interest such as a statement of purpose for Section 28.138, lot coverage, and vegetation standards are briefly discussed at the end.

### II. Applicable Properties

The attached map categorizes the 555 parcels that make up the 26 miles of City of Madison lakefront property into four land use categories: Residential (23% of linear shoreline – not addressed in this memorandum); Private Non-Residential (1%); Civic / Institutional (29%); and Parks / Public Access (47%).

The eight private non-residential properties are labeled with small photos on the map for reference. Ranging in size from 1 to 3 acres, these eight properties represent a wide variety of existing development and their surrounding contexts are quite different. As reflected on the map, they comprise a very small proportion of lakefront property in the City.

Civic / Institutional lakefront property includes two small parcels owned by City Engineering, the Monona Terrace, the northern part of the UW-Madison Campus, the Edgewood College Campus, and the Mendota State Hospital Campus, on the north shore of Lake Mendota. Development on these lots ranges widely, from the public terraces immediately adjacent to each lake to institutional buildings hundreds of feet from the lakefront on deep lots. Partially due to the depth of the Campus lots, the properties in this land use category comprise nearly

half of the lakefront acreage shown on the map. Aside from the Engineering-owned parcels and the Monona Terrace, these properties will most likely be in the Campus-Institutional Zoning District, where Master Plans will be required in order to accomplish significant development absent conditional use review and approval.

The Parks / Public Access category includes all City of Madison lakefront parks, the UW Arboretum, Tenney Locks, and a small access parcel owned by the Wisconsin DNR. These properties are sparsely developed with park shelters and public boat houses.

### **III. Alternatives**

There are multiple approaches that could be utilized to regulate non-residential lakefront development. Staff have started by looking at three basic approaches.

#### **A. *As Proposed in Current Draft Ordinance***

- Non-residential “waterfront development” is a conditional use, subject to the conditional use standards and general regulations in Sec. 28.138(1).
- Unlike residential development, there are no pre-determined specific or setback standards (aside from the underlying zoning). Such details are reviewed and approved as part of the conditional use process.

#### **B. *Utilize Proposed Residential Setback Methodology for Non-Residential Development***

- Non-residential “waterfront development” is a conditional use, subject to the conditional use standards and general regulations in Sec. 28.138(1).
- Non-residential properties (shown as red, green, and blue on map) would be subject to the *setback averaging* standards described for residential development in Section 28.138(2)(a) of the Draft Code.
- No specific building bulk limitations are proposed, though development would need to meet the bulk standards in the underlying district.

#### **C. *Utilize March 2010 Non-Residential Waterfront Setback Methodology***

- Non-residential “waterfront development” is a conditional use, subject to the conditional use standards and general regulations in Sec. 28.138(1).
- Lakefront setbacks for all non-residential properties (shown as red, green, and blue on map) would be calculated using methods described in the zoning text amendment approved in March 2010.
- For new principal buildings, the setback would be not less than the average of the five (5) developed zoning lots to each side of the proposed zoning lot.
- For additions, alterations, or expansions of an existing principal building, the setback shall be not less than 75 feet or the setback of the existing building.
- No specific building bulk limitations are proposed, though development would need to meet the bulk standards in the underlying district.

#### **IV. Evaluation**

Non-residential development on lakefront properties would be a conditional use in all of the above alternatives. Each development will need to meet the conditional use standards, as well as setback and bulk regulations in the underlying zoning districts. The primary difference is in the flexibility each option provides and its overall applicability to the varied types of lakefront development.

**Alternative A** is the simplest approach and provides the most flexibility. Non-residential lakefront development would remain subject to the general regulations of this ordinance, the conditional use standards, and the standards in the underlying zoning district. There are no other pre-determined bulk or setback standards. However, even through conditional use review, the required rear yards in the underlying zoning districts would essentially function as the minimum lakefront setback, and these are generally between 20 and 35 feet (100 feet in the Conservancy District). Staff believes that this approach remains a valid option, considering the great variation among the relatively small number of non-residential lakefront properties that would be impacted.

**Alternative B** applies a consistent approach between residential and non-residential lakefront development for the determination of lakefront setbacks. Under this alternative, lakefront setbacks for non-residential development would be calculated using the same process defined for residential development. Staff anticipate this approach may work best when applied to some of the smaller, non-institutional properties (shown as red on the map) that are located near residential development. Others, such as the Verex Building, would be problematic, since the nearest developed lots on the east side by which the setback could be determined are on the other side of James Madison Park and are somewhat irrelevant.

Staff believe that applying this setback methodology to larger institutional properties, such as the UW, would likely result in a significant increase in projects seeking variance approval. This approach does not adequately address the unique built form on the large institutional properties, which often have multiple buildings with widely varying setbacks on each large parcel. Further, in considering potential bulk standards, staff do not believe it is practical to create an overarching bulk standard due to the significantly varied building types and uses. Rather, staff recommend using the form and bulk standards of the new underlying districts.

**Alternative C** applies the recently approved methodology found in the existing ordinance to regulate lakefront setbacks on non-residential properties. In some ways, this option provides a bit more flexibility than the methodology described in "B", including the provision to allow for building additions that do not decrease the existing lakefront setback. As in Alternative B, staff believes it may be difficult to apply this methodology to larger institutional properties. Finally, there are no specific bulk standards beyond those in the underlying district.

Staff notes two potential issues. One is that this alternative uses a different methodology for non-residential and residential properties, which may add unnecessary confusion in applying the ordinance. A second issue is that there might be an expectation that a significant amount of bulk could be added to an existing structure, so long as lakefront setbacks are not decreased.

**Additional Provisions** - Staff considered two potential provisions that could be added to the above alternatives to reduce the anticipated need for variances. These could address some of the unique aspects of larger institutional and public park properties.

- **Provision 1:** Development on a lakefront property proposed greater than 300 feet from the ordinary high water mark or development on a lakefront property that is separated by a street or right of way is exempt from conditional use review, unless required by another provision. This would provide some development flexibility further from the lakefront on the atypically deep institutional lakefront properties, which will likely be in the Campus Institutional District and guided by adopted Master Plans.
- **Provision 2 (*Most Relevant with Alternatives B or C*):** Exempt parks, civic, and institutional uses (shown in green and blue on the map) from specific pre-determined bulk or lakefront setback standards over and above those in the underlying zoning district. Development on these properties (park shelters, public boat houses, civic and institutional buildings) would still be reviewed as a conditional use. However, instead of determining setbacks based on their relationship with nearby properties, which they are so different from, this provision would allow flexibility in the review of the unique types of development occurring on these properties.

## V. Recommendation

Staff suggests two options. The first recommended option is Alternative **A, with Provision 1**

- Non-residential “waterfront development” is a conditional use, subject to the conditional use standards and general regulations in Sec. 28.138(1).
- Unlike residential development, there are no pre-determined specific or setback standards (aside from the underlying zoning). Such details are reviewed and approved as part of the conditional use process.
- **Provision 1:** Development on a lakefront property proposed greater than 300 feet from the ordinary high water mark or development on a lakefront property that is separated by a street or right of way is exempt from conditional use review, unless required by another provision. This would provide some development flexibility further from the lakefront on the atypically deep institutional lakefront properties, which will likely be in the Campus Institutional District and guided by adopted Master Plans.

*To implement this recommendation, the following should be added to the beginning of Section 28.13 (language not yet finalized):*

“Development on a lakefront property that occurs greater than 300 feet from the ordinary high water mark or development that is separated by a street or right-of-way is exempt from conditional use review under this section.”

-OR-

Should the Plan Commission wish to recommend a more specific set of standards, staff recommends **Alternative B, with Provisions 1 and 2.**

- Non-residential “waterfront development” is a conditional use, subject to the conditional use standards and general regulations in Sec. 28.138(1).
- Non-residential properties (shown as red on the map) would be subject to the *setback averaging* standards described for residential development in Section 28.138(2)(a) of the Draft Code.
- No specific building bulk limitations are proposed, though development would need to meet the bulk standards in the underlying district.
- **Provision 1:** Development on a lakefront property proposed greater than 300 feet from the ordinary high water mark or development on a lakefront property that is separated by a street or right of way is exempt from conditional use review, unless required by another provision. This would provide some development flexibility further from the lakefront on the atypically deep institutional lakefront properties, which will likely be in the Campus Institutional District and guided by adopted Master Plans.
- **Provision 2:** Exempt parks, civic, and institutional uses (shown in green and blue on the map) from specific pre-determined bulk or lakefront setback standards over and above those in the underlying zoning district. Development on these properties (park shelters, public boat houses, civic and institutional buildings) would still be reviewed as a conditional use. However, instead of determining setbacks based on their relationship with nearby properties, which they are so different from, this provision would allow flexibility in the review of the unique types of development occurring on these properties.

*To implement this recommendation, the following additions should be made:*

- *Add Provision 1 to the beginning of Section 28.138 to read,*

“Development on a lakefront property that occurs greater than 300 feet from the ordinary high water mark or development that is separated by a street or right-of-way is exempt from conditional use review under this section.”

- *Create a new section:*

Section 28.138(3) Lakefront Properties with Non-Residential Use

The Lakefront Yard Setback:

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).

- *Add Provision 2 to Section 28.138(3)*

Aside from the underlying district standards, there shall be no pre-determined bulk or setback standards for parks, civic, and institutional uses (*shown in green and blue on the map*)

## VI. Other Considerations

The Plan Commission also requested that staff provide additional information on the following:

### Statement of Purpose

The Plan Commission noted that Section 28.138 Lakefront Development still needs a Statement of Purpose. Staff propose the following for the Commission's consideration:

"This subsection is established to further the maintenance of safe and healthful conditions by preserving and enhancing water quality, habitats, and other environmental and aesthetic qualities of lakes through the regulation of zoning lots abutting lakes within the City."

### Lot Coverage Standards

The Plan Commission has discussed lakefront development as it relates to two primary ecological issues: water quality and habitat. In considering water quality, a discussion with City Engineering staff confirmed that each property in the Yahara Watershed has an impact on the lakes, and the difference between the impacts of surface run-off from a lakefront property and another property is likely negligible. Therefore, the creation of a lot coverage standard specific only to lakefront properties is not believed to be an effective tool to address water quality. Staff believes that in conjunction with the City's stormwater management system and regulatory structure, the lot coverage standards in underlying zoning districts are adequate.

However, there are reasons to protect and enhance the interface between lakes and the shoreline for habitat purposes, and staff believes that improvements could be made to the draft code to better address this. The draft includes general regulations within 35 feet of the ordinary high water mark, but these do not currently relate to impervious surface or lot coverage within this sensitive area. For habitat protection purposes, it might be useful to consider limits to impervious surface areas within this sensitive area (perhaps in the range of 5%-20%).

For consideration, the types of development commonly found within this area include:

- Waterfront Public Path
- Boat Launch (public or private)
- Patios
- Access paths or stairways to the water (public or private)
- Boat Houses

Specific exemptions may be necessary for existing unique properties such as the Union Terrace, Monona Terrace, etc.

### **Vegetation Removal and Replacement Standards**

In Section 28.138(1), the draft ordinance limits the clearing of existing trees and shrubs within 35 feet of the lakefront, but it currently does nothing to improve the *quality* of vegetation in this area. Often, the existing vegetation includes non-natives, invasive species, scrub trees, or other less than desirable vegetation given that these areas in the city have been cleared, developed and replanted over time.

The existing as-built urbanized condition does not effectively relate to the vegetative clearing regulations in the draft. Vegetative clearing and replacement standards could be drafted to ensure preservation of quality existing vegetation, require replacement with native plantings, and establish a minimum percentage of the frontage to be vegetated to improve habitat conditions.

Staff has not yet drafted specific recommendations, but has discussed concepts such as requiring a landscape plan including a mix of native trees, shrubs, and groundcover, which could be approved as a condition of approval for the conditional use. In any case, the post-construction condition of the sensitive area along the water's edge should be the focus of any additional requirements relating to habitat quality.

