State of Wisconsin

CORRESPONDENCE/MEMORANDUM

DATE: October 1, 2015

FROM: Kay Lutze, Shoreland Policy Coordinator

SUBJECT: 2015 Wisconsin Act 55 and Shoreland Zoning

On July 12, 2015 Governor Walker signed 2015-17 biennial budget (Act 55) which modifies the shoreland zoning provisions. Act 55 changes the authority counties have in the development of a shoreland ordinance that is more restrictive than the shoreland zoning standards contained in NR 115 and changed other shoreland zoning standards. In fulfillment of its duty, under s. 281.31 Wis. Stats, the department has developed this memo to provide general recommendations for counties and to answer questions that have been submitted regarding the interpretation and implementation of Act 55 as it relates to Wisconsin's shoreland protection program. It is important to note that there is not a delayed effective date. Act 55 was enacted July 12, 2015, published July 13, 2015, and took effect July 14, 2015.

The changes to s. 59.692 went into effect the day after publication. Consequently, counties that currently have shoreland zoning ordinance standards that regulate in a more restrictive manner than the standards established in s. 59.692 and NR 115, can no longer enforce those standards in that manner. To clarify, all counties will have to implement the nonconforming structure standards established in s. 59.692(1k). Counties that have not adopted all of the updated standards in NR 115 are not required to adopt a compliant ordinance with these standards until October 1, 2016.

<u>Summary of Act 55</u>

Interpretation of what is no longer allowed by law:

- As part of its approval process for a conditional use permit, a county may not impose on a conditional use permit a requirement that is preempted by federal or state law.
- A shoreland zoning ordinance (county, village or city) may not regulate a matter more restrictively than the matter is regulated by a shoreland zoning standard.
    - Act 55 allows counties to regulate "matters" that are not regulated by a shoreland zoning standard in NR 115. Accordingly, a county shoreland zoning ordinance may include not just regulations that address the standards required by ch. NR 115, but other regulations that also address the purposes of s. 281.31 – 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 structure and land uses and reserve shore cover and natural beauty.
    - The following regulatory examples provide protection for the resource and further the purposes of shoreland zoning under s. 281.31, Wis. Stats.: wetland setbacks and other wetland standards, bluff (escarpment) setbacks, standards for ridge and swale or dune complexes, and density and stormwater standards.
- A shoreland zoning ordinance (county, village or city) may not require a person to establish a vegetative buffer on previously developed land or expand an existing vegetative buffer.
- A shoreland zoning ordinance (county, village, or city) may not impair the interest of the landowner by containing language that does any of the following:
    - Regulates outdoor lighting for residential use.
    - Regulates the maintenance, repair, replacement, restoration, rebuilding or remodeling of a nonconforming structure if the activity does not expand the footprint. No approval, fee or mitigation required.
    - Requires the inspection or upgrade of the structure before the sale/transfer of the structure may be made.

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- Regulates the vertical expansion of a nonconforming structure unless the expansion is greater than 35' above grade level. No approval, fee or mitigation required.
- Establish standards for impervious surfaces unless the standards provide that a surface is considered pervious if the runoff from the surface is treated by a device or system, or is discharged to an internally drained pervious area that retains the runoff on or off the parcel to allow infiltration into the soil. Essentially, NR 115.05(1)(e)3m becomes shall instead of may. Also note the inclusion of the word "off."
- Regulates the construction of a structure on a substandard lot in a manner that is more restrictive than the shoreland zoning standards. This reiterates the language in Act 170.

- The department may not issue an opinion on whether or not a variance should be granted or denied without the request of a county BOA.
- The department may not appeal a BOA decision.
- County shoreland zoning ordinances, construction site erosion control and stormwater management ordinances and city/village wetland zoning ordinances do not apply to lands adjacent to artificially constructed drainage ditches, ponds, or stormwater retention basins that are not hydrologically connected to a natural navigable water body.

Interpretation of what is allowed by law:

- Continued administration of NR 115 standards unaffected by Act 55.
- A county shoreland zoning ordinance may require a vegetative buffer to be maintained provided that a 35' viewing corridor for every 100' is allowed and the viewing corridor is allowed to run contiguously for the entire maximum width.
- The department can establish shoreland zoning standards for vertical and lateral expansion. A county can enact a shoreland ordinance that allows the vertical or lateral expansion of a nonconforming structure if the ordinance does not conflict with the shoreland standards of the department.
- Broadens the exemption from county shoreland zoning, construction site erosion control and stormwater management and city/village wetland zoning to lands that are adjacent to farm drainage ditches by removing the requirement that the land be maintained in nonstructural agricultural use.

Act 55 adds two required definitions:

- "Shoreland setback area" means an area that is within a certain distance of the ordinary high-water mark in which the construction or placement of structures has been limited or prohibited under an ordinance enacted under this section.
- "Structure" means a principal structure or any accessory structure including a garage, shed, boathouse, sidewalk, stairway, walkway, patio, deck, retaining wall, porch or fire pit.

Because we received many questions from counties on various concerns, we have summarized our opinions on how Act 55 affects each topic raised in the questions. Counties should consult with their county corporation counsel to decide what revisions to county ordinances are required by Act 55.

Interaction with other enabling statutes

Counties have the authority to enact zoning ordinances or regulations under a number of different statutory authorities. For example, it is common that counties may develop ordinances or regulations under general zoning (s. 59.69, Stats.), sanitary regulations (s.145, Stats.), platting and subdivision ordinances (s. 236, Stats.), floodplain zoning (s. 87.30, Stats.), Lower St. Croix Riverway Zoning (s. 30.27, Stats.). Each of the enabling statutes identified identify the purpose, applicability and standards for the creation of ordinances under each of those statutes.

Counties enact shoreland zoning ordinances under 59.692 for the purpose of furthering the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites; placement of structure and land uses; and reserve shore cover and natural beauty. (281.31(1)) S. 59.692 (1)(c) defines a shoreland zoning standard as: a standard for ordinances enacted under this section promulgated as a rule by the department. In other words, the shoreland zoning standards are those specific standards identified in NR 115.05. Examples are setbacks from the ordinary high water mark, impervious surfaces and vegetative management.

In section 1922D of the 2015 WI Act 55, the legislature created s. 59.692(1d) prohibiting counties from enacting an ordinance that contains shoreland zoning standards that are more restrictive than the standards in NR 115, Wis Adm. Code but does specifically allow counties to develop regulations for matters not regulated by a shoreland zoning standard in NR 115, Wis. Adm. Code. In order for counties to regulate other matters in their shoreland zoning ordinance, counties must ensure that the matters further the purposes of shoreland zoning. Examples of other matters that have been regulated by counties to further the purposes of shoreland zoning include wetland setbacks, bluff setbacks, density requirements, standards for filling and grading, etc.

The department has received numerous questions from county zoning administrations that identify concerns with the interaction of the standards in their county shoreland zoning ordinance and standards created in ordinances under one of the other enabling statutes. The limiting of county authority to adopt more restrictive shoreland zoning standards under s. 59.692, Stats., did not modify or impact a county's authority to adopt or enforce standards under one of the other enabling statutes that are identified above as long as those standards effectuate the purposes of that enabling authority and meet the applicable standards in that Statute and Administrative Codes.

We recognize others may interpret the statutory changes in Act 55 differently. Counties should consult with their corporation counsel to decide what revisions to county general zoning ordinances are required by Act 55. The Department is opining on the following topics and questions to inform counties how we believe the enabling statutes interact.

Q-1. Does 2015 Act 55 prevent counties from imposing within county shorelands any county general or overlay zoning requirements that regulate a matter more restrictively than the matter is regulated under state shoreland zoning standards (Wis. Admin. Code ch. NR 115)?

A-1. In our opinion, Wis. Stats. s. 59.692(1d)(a) prohibits a county shoreland zoning ordinance provision from regulating a matter more restrictively than ch. NR 115 does. Sub. (1d)(a) applies only to provisions in county shoreland zoning ordinances enacted under Wis. Stats. s. 59.692 (shoreland zoning). It does not apply to county zoning ordinance provisions enacted under other statutes such as general zoning (59.69), farmland preservation zoning (91.30), floodplain zoning (87.30), or St. Croix Riverway zoning (30.27). However, counties may not adopt standards through those authorities in an attempt to create shoreland zoning ***standards*** more restrictive than NR 115.

Q-2. Does s. 59.692(1d)(a) and (5) prevent counties from imposing within county shoreland zoning districts any county general or overlay zoning requirements that regulate a matter more restrictively than the matter is regulated under the county shoreland zoning ordinance?

A-2. In our opinion, counties may not create, through a general zoning or other overlay zoning ordinance, standards that "relate to shorelands." In other words, under s. 59.692(5), Stats., counties may not create standards that apply only to land that lies within the shoreland zoning where the purpose of the standard is to protect shoreland resources. Sub. (5) has been part of the shoreland zoning statute since it was first enacted 49 years ago (1966). We believe, in this time, no one has interpreted sub. (5) to prevent provisions of general zoning or other overlay zoning provisions from applying just because the lands to which the general or overlay ordinance provisions also apply happen to lie within a shoreland area. In the department's opinion, sub. (5) and the shoreland standards in NR 115 only supersede general zoning or other overlay zoning ordinance provisions that "relate to shorelands."

Q-3. Does 2015 Act 55 prevent counties from imposing within county shoreland zoning districts any general or overlay zoning ordinance "minimum lot size" requirements that are more restrictive than similar requirements in state shoreland zoning standards (Wis. Admin. Code ch. NR 115)?

A-3. Counties may not circumvent s. 59.692(1d) and (5) by enacting or enforcing, through a zoning ordinance enacted under a different statutory authority, more restrictive minimum lot size than that set forth in ch. NR 115 if the provision specifically applies ONLY because the land at issue is located within a shoreland AND it applies *because* the lands lie in shorelands. However, a county may require a larger lot size under a general zoning ordinance or through another statutory authority such as farmland preservation or St. Croix Riverway Zoning, as long as the district and its more restrictive provisions does not only apply because the land in the district is within the shoreland.

Q-4. Does s. 59.692(1d)(a) and (5) prevent counties from granting a variance from a county general zoning ordinance requirement if the variance imposes conditions that restrict a land use activity in a manner that conflicts with county shoreland zoning ordinance requirements?

A-4. In our opinion any conditions placed on a variance have to relate to the original purpose of enacting the zoning standard. For example, if there is a variance for a road setback there cannot be a condition to establish the shoreland vegetative buffer. A condition could be placed on that variance to establish a vegetative screen shielding the project from the road. *Certain* conditions may also be placed on a variance with regard to lighting. While lighting conditions on residential properties within the shoreland area would be prohibited, other lighting conditions such prohibiting a new gas station from casting light skyward or onto neighboring properties may be allowable.

It is fairly common for counties to have adopted ordinances that contain standards under multiple enabling statutes. It would be prudent for counties to identify which standards further the purposes of shoreland zoning and which standards further the purposes from one of the other enabling statutes. While this may be a fairly simplistic process for counties that have a stand-alone shoreland ordinance, counties that have a comprehensive ordinance should consider identifying what enabling statute provides the authority to create the standards for each provision within their ordinance. Alternatively, having two separate ordinances eliminates potential confusion in identifying standards that are enacted under shoreland zoning versus general zoning.

It should also be noted that 59.692(5m) states that provisions within a shoreland zoning ordinance that are inconsistent with 59.692(1d),(1f),(1k), or (2m) do not apply and may not be enforced.

Lot Sizes
There have been many questions regarding the minimum required lot size in NR 115 and whether or not that lot size becomes the maximum. The minimum lot sizes required in the shoreland area remain just that – the minimum standards. However, counties can no longer establish in their shoreland ordinance new lots to be larger than the minimum standard. So in effect, while a county may not require lot sizes larger than the minimum lots sizes identified in NR 115.05(1)(a), property owners are not prohibited from creating a larger lot than the minimum required.

Structures
Since 1968, the statewide shoreland zoning standards have required new buildings or structures be at least 75 feet from the ordinary high water mark of navigable waterways, except for certain structures that are identified under NR 115.05(1)(b)(1m) and Wis. Stats. 59.692(1v). While the statewide shoreland zoning standards did not contain a definition of a structure, the 2015 WI Act 55 created a definition of structure in s. 59.692(1)(e) to be "a principal structure or any accessory structure including a garage, shed, boathouse, sidewalk, stairway, walkway, patio, deck, retaining wall, porch, or fire pit." The department has received a number of questions on the interpretation and implementation of this new definition in the county shoreland ordinances.

County Definition of a structure:
A number of questions have been submitted asking whether counties must adopt this definition or whether counties can add or clarify the definition by adding additional structures to the term. For example, fences, swimming pools, barns or silos, or any other structures that may be currently regulated by a county but not specifically included in the statutory definition.

Counties must adopt the definition in 59.692 (1)(e) Stats.for implementation of their shoreland ordinance. However, because this statute uses the word, "includes" rather than, "means" as it lists certain structures, the list is illustrative rather than a final exhaustive list of structures. Therefore all structures are included in the statutory definition.

Exempt Structures:
S. NR 115.05(1)(b)(1m), lists the following structures that are exempt from the shoreland setback standards. Those structures are:

A. Boathouses located above the OHWM and entirely within the access and viewing corridor that do not contain plumbing and not used for human habitation.
B. Open sided and screened structures such as gazebos, decks, patios and screen houses in the shoreland setback area that satisfy the requirements in s. 59.692 (1v), Stats.
C. Fishing rafts that are authorized on the Wolf River and Mississippi River under s. 30.126, Stats.
D. Broadcast signal receivers, including satellite dishes or antennas that are one meter or less in diameter and satellite earth station antennas that are 2 meters or less in diameter.
E. Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on–site wastewater treatment systems that comply with ch. SPS 383, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure.
F. Walkways, stairways or rail systems that are necessary to provide pedestrian access to the shoreline and are a maximum of 60–inches in width.

With the legislation prohibiting counties from enacting or enforcing an ordinance that is more restrictive than NR 115, counties are now required to exempt all of the structures that meet the standards identified above from the shoreland setback requirements in NR 115.05(1)(b). As exempt structures, they are not considered nonconforming structures to the shoreland setback.

S. 59.692(1d)(b) allows counties to regulate a matter that is not regulated by a shoreland zoning standard. Exempt structures identified above are only exempt from the shoreland zoning standard of having to meet the locational requirement of the required water setback. While there may be some legal uncertainty our opinion is that structures that are exempt from the required water setback under NR 115.05(1)(b)1m can continue to be regulated with other standards. Boathouse standards are typical for most counties and regulate the size, roof pitch, number of berths and architectural features that are not regulated by a shoreland zoning standard in NR 115. Boathouse standards are typical for most counties that have previously allowed boathouses. Standards placed on boathouses by counties cannot effectively, practically, or legally disallow the placement of a boathouse within the viewing and access corridor. Additionally, counties typically regulate the location, the number and the type of materials to be used for the construction of stairways. If a structure does not meet the exemptions under NR 115.05(1)(b)1m, then it is regulated and has to meet the required water setback and any other requirements that may apply.

For open sided structures, under s. 59.692(1v), counties must continue to enforce the standards and requirements identified in the statute including the requirement that the property restore or protect the vegetative buffer. These statutory standards that apply to specific structures were not modified or superseded by the statutory standards created or amended in 2015 WI Act 55. Consistent with previous guidance issued by the Department on October 28, 1999, counties must calculate the square footage of all structures located within the setback that are not exempt and may not allow an open sided structure if the total square footage of all of the structures exceeds 200 sq. feet.

Setback of structures:
Finally, a number of counties in the past have not included setback averaging in their shoreland ordinance or have established standards for setback averaging that vary from the standards currently reflected in NR 115.05(1)(b)1. The effect of a county disallowing setback averaging means a county is regulating setback requirements in a manner that is more restrictive by disallowing a reduced setback. Therefore, all counties are now required to allow the averaging provision consistent with NR 115.05(1)(b)1. It is important to remember that setback averaging only applies to principal structures and a structure that meets the average setback is considered a conforming structure under NR 115.

Vegetative Buffers
In section 1922E of the 2015 WI Act 55, the legislature created s. 59.692(1f) prohibiting a county shoreland zoning ordinance from requiring a person to establish a vegetative buffer zone on previously developed land and from expanding an existing vegetative buffer.

The establishment of a vegetative buffer remains an option under the mitigation section of a shoreland zoning ordinance provided it is compliant with NR 115.05(1)(e) and NR 115.05(1)(g)c (lateral expansion only). Creating mitigation options that are based on a menu approach or point system provide property owners with the flexibility to choose from the options available. It should be noted that restoring or establishing the vegetative buffer cannot be the only option provided.

Permits issued, variances or conditional use permits granted with conditions to restore, establish or expand the vegetative buffer remain enforceable if issued prior to July 14th, 2015. The statute does not contain any retroactive language that would invalidate any permits, variances, CUP's that were issued

prior to enactment of the legislation. It is important to note s. 59.692(1v) remains in effect and requires the establishment or the restoration of a vegetative buffer in order to authorize the construction of an open-sided structure within the shoreland setback.

Can a condition placed on a variance require the establishment or restoration of the vegetative buffer? Please see A-4 on page 4 for guidance.

The vegetation standards in NR 115.-05(1)(c) remain in effect with the exception of NR 115(1)(c)2. b. which states that a viewing corridor may not exceed the lesser of 30% of the shoreline frontage or 200 feet. That portion is superseded by the statute change in s.59.692(1f)a "Vegetative buffers are now allowed to contain a viewing corridor that is at least 35 feet wide for every 100 feet of shoreline frontage. The viewing corridor is allowed to run contiguously for the entire maximum width."

59.692(1f)b. allows the county to require a property owner to maintain a vegetative buffer zone that exists as of July 14, 2015. Any vegetative buffers that currently exist must remain and any vegetative removal must comply with the provisions within NR 115.05(1)(c) with the exception of the allowance of the viewing corridor stated in the above paragraph. Removal of vegetation in violation of those standards must be brought into compliance.

Impervious Surfaces

In section 1922F of the 2015 WI Act 55, the legislature created s. 59.692(1k) (a)1.e. This section requires counties to adopt provisions within their impervious surface standards that allow an impervious surface to be considered pervious if the runoff from the impervious surface is treated by a device or system or is discharged to an internally drained pervious area. The device or system or identified internally drained pervious area could be on-site or off-site. This statutory language is similar to the standards in NR 115.05(1)(e)3m however it also allows for the infiltration of the runoff off site and is now mandatory language for the implementation of the impervious surface standards.

S. 59.692(1k) (a)1.e creates specific exemptions for the impervious surface to be considered pervious. Exemptions are to be construed narrowly and a property owner is entitled to the exemption only when the runoff from the impervious surface is being treated by some type of treatment system, treatment device, or internally drained. Property owners that can demonstrate that the runoff from an impervious surface is being treated or is internally drained will qualify for the exemption and the impervious surface will be considered pervious for the purposes of implementing the impervious surface limits in NR 115.

Examples of some treatment systems/devices are listed in NR 115.05(1)(e)3m; however, in their ordinances counties may create additional examples or requirements to effectuate the intent of the statutory language. Provided that a property owner has been able to demonstrate that the treatment system or device is capable of treating the square footage proposed in the project, it would be prudent for the counties to recognize that a maintenance plan and recorded agreements, when necessary, ensure the systems or devices are fully operational and will continue to do so. Maintenance plans and recorded agreements protect subsequent property owners by providing them the information needed to remain exempt. If the system/device or area receiving the runoff fails, the impervious surface that had been treated is no longer considered pervious (exempt) and compliant.

It is important to note that Act 55 did not modify any other impervious surface standards under NR 115.05(1). Therefore, counties may but are not required to adopt highly developed shoreline standards. This provision remains as an option in that there will be counties that will not have any shorelines that will qualify as a highly developed shoreline.

Nonconforming Structures
The intent of the statutory changes is that a property owner should be able to keep what they have. If a single family residence is a nonconforming structure, that single family residence can be maintained, repaired, replaced, restored, rebuilt or remodeled within the existing footprint. A home can be replaced with a home, a patio can be replaced with a patio, etc. There should be a common sense approach to this interpretation such that if a deck was to be replaced with a patio the difference in materials should not preclude the replacement of an accessory structure with another accessory structure that has a similar use. Section 1922F of the 2015 WI Act 55 created s. 59.692(1k) (a)1.b which states that a shoreland zoning ordinance must allow these activities to occur without approval, a fee or any mitigation requirements. In addition, this section allows for the vertical expansion of a nonconforming structure without approval, a fee or any mitigation requirements.

Because the new definition of structures includes accessory structures such as patios, decks, fire pits, etc., the nonconforming structure provisions in 59.692 (1k)(a) 1.b and d will apply to nonconforming accessory structures as well. Vertical expansion of a nonconforming accessory structure could include such things as adding a second story to a garage, replace a patio with a deck, changing roof pitch and side wall height on sheds, barns, etc.

No permits required
Many counties have inquired as to what the statutory change means when it says "no approval" may be required. This means a county cannot require a permit or registration under a shoreland zoning ordinance for the activities described above. It should be noted that permits may still be required under other enabling statutes such as general zoning authority, floodplain zoning, sanitary codes and building code ordinances for work done on a nonconforming structure. Should property owners voluntarily contact the county zoning department seeking some type of assurance that their project complies with Act 55 and NR 115, that assurance should be freely provided and documented in the property file. Property owners voluntarily seeking assurance are able to provide to a subsequent owner that the property was in compliance.

Permits still required
NR 115.05(1)(g) currently contains the statewide shoreland zoning standards for nonconforming principal structures. The changes to 59.692 have superseded NR 115.05(g)4 and 6 (replacement but not relocation) and the vertical expansion provisions within NR 115.05(g)5. The only provisions in NR 115.05(g) that remain completely in effect are the lateral expansion standards subd. 5 and expansion beyond the setback in subd. 5m. For lateral expansion to a principal structure, the expansion is still limited to 200 sq. ft., the expansion may not be any closer to the OHWM than the existing structures, the current structure must still be located at least 35' from the ordinary high water mark, counties must require mitigation and all other county ordinance provisions to be met. Lateral expansion to a nonconforming accessory structure is not available under shoreland zoning. Act 55 requires counties to adopt lateral expansion and prohibits counties from requiring mitigation for expansion beyond the setback, unless required to do so under the impervious surface limits.

What is a nonconforming structure?
For shoreland zoning purposes, it is a structure that was lawfully placed when constructed that does not comply with the required setback from the ordinary high water mark as identified in NR 115.05(1)(b).

The following list identifies structures that are compliant structures for the purposes of shoreland zoning and that do not meet the nonconforming structure definition. Therefore, the nonconforming structure provisions in NR 115 and 59.692 do not apply to the following:

- Exempt structures listed in NR 115.05(1)(b)1m
- Structures that meet the required or average setback from the ordinary high water mark NR 115.05(1)(b)
- Structures that were granted a variance

  A structure for which a variance was granted under the zoning provisions in effect prior to the effective date of the code is not considered non-conforming solely due to the fact that the structure for which the variance was granted fails to comply with the requirement for which the variance was granted. The existence of such a variance does not prevent the structure from being classified as non-conforming if some other characteristics of the use or structure fail to comply with the requirements.
- Structures that have been illegally constructed

  Structures that were illegally constructed but exceed the ten year limitation for enforcement in 59.692(1t) do not become a legal structure or a nonconforming structure just because enforcement action has not been taken.

Due to the variety and magnitude of questions that we have received regarding nonconforming structures the department is providing the following scenarios to assist county interpretation of the statute and code.

Scenarios

1. A nonconforming structure that does not meet the shoreland setback, such as a patio, is proposed to be replaced with a new patio in the same footprint. Similarly, a nonconforming single family residence that does not meet the shoreland setback is proposed to be replaced with a single family home in the same footprint. These meet the intent of the statutory provisions and shoreland zoning code and are allowed.
2. A nonconforming structure that does not meet the shoreland setback, such as a patio, is proposed to be replaced with a new patio in the same footprint but does not meet a general zoning setback. Similarly, a nonconforming single family residence that does not meet the shoreland setback is proposed to be replaced with a single family home in the same footprint but does not meet a general zoning setback or is located in the floodplain. These projects meets the shoreland zoning provision ; however they <u>may</u> be limited or prohibited under general zoning authority or floodplain zoning authority.
3. A nonconforming structure that does not meet the shoreland setback, such as a patio is proposed to be replaced with a new patio that expands the existing footprint. Similarly, a nonconforming single family residence that does not meet the shoreland setback is proposed to be replaced with a single family residence that expands the existing footprint.
    a. If the expansion of the footprint is necessary in order to comply with a required state or federal requirement, the expansion could occur. An example would be a building code requirement that deemed it necessary for the footprint to become larger.
    b. For a nonconforming principal structure (ex. single family residence) that is at least 35' from the ordinary high water mark, lateral expansion of 200 square feet or less is allowed no closer to the OHWM with a permit, fee and mitigation (except installation of new vegetative buffer zones may not be the only option provided) and it must meet all other ordinance provisions. Also nonconforming principal structures may expand beyond the setback provided the structure meets all other ordinance provisions regardless of the distance to the OHWM.

c. A nonconforming accessory structure or principal structure that is located less than 35' from the ordinary high water mark cannot be replaced with an expanded footprint. This is a new structure that needs to meet the required 75' setback from the ordinary high water mark (setback averaging does not apply to accessory structures but it does apply to principal structures).
d. A nonconforming accessory structure replaced with an expanded footprint that totals 200 square feet or less might be possible it is meets the open-sided structure exemption under s. 59.692(1v), Stats.

4. A nonconforming structure is proposed to be replaced with a different structure than the type of structure that existed within the same footprint. For example, a patio is proposed to be replaced with a garage. The intent of the legislature is to be able to keep what you have. The garage is considered a new structure that needs a permit and needs to meet all ordinance provisions. This also reflects the existing impervious surface standards in NR 115.05(1)(e). A broad reading of this is to say that an accessory structure can be replaced with an accessory structure that serves the same utility and purpose and a principal structure can be replaced with a principal structure that serves the same utility and purpose. An example would be if a patio is proposed to be replaced with a deck comprised of with different materials but which serves the same utility and purpose.
5. A nonconforming structure is to be replaced with a nonconforming structure in the same footprint. However, the replacement establishes a different use. For example; a single family residence is to be replaced with a restaurant or a detached garage is to be replaced with a cottage. If there is general zoning authority under S. 59.69, this proposal would have to meet use and zoning district standards and other provisions within the general zoning code. For shoreland zoning ordinances that only contain the standards within NR 115, and the project is not regulated under general zoning or town zoning, this is a permissible project. Also note that converting a structure into a habitable structure, such as the conversion of a shed into a bunkhouse, may require additional review or approval under the floodplain zoning authority and standards if the structure is located in the floodplain.

Act 55 is not retroactive. Any previous permits or variances for expansions to a nonconforming structure or an increase in impervious surface limits that required mitigation, particularly buffer restoration, or other permit conditions remains valid.