

Creation of New Lots

Current ordinance

Under the current shoreland ordinance, 14.504, the minimum lot size is 10,000 sq. ft. for sewered lots and 20,000 sq. ft. for unsewered lots. Both sewered and unsewered lots must have a minimum of 100 ft. at the ordinary high water mark (OHWM) and a 100 ft. average width. Sewered lots must have a minimum width of 66 feet at the building line, and 66 feet of road frontage measured at right angles at the right-of-way. Unsewered lots must have a minimum of 100 feet at the building line, and 100 feet of road frontage measured at right angles at the right-of-way.

Proposed ordinance

Under the proposed ordinance:

Lots would not be categorized by sewered or unsewered. Instead, lots would be categorized by the classification of the abutting lake or stream.

Lots on Class 3 waters shall have at a minimum 100 feet at the building line, 100 feet of road frontage measure at right angles at the right-of-way, 100 feet at the OHWM, and 100 feet of average lot width. These lots shall have a minimum area of 20,000 square feet.

Lots on Class 2 waters shall have at a minimum 150 feet at the building line, 150 feet of road frontage measure at right angles at the right-of-way, 150 feet at the OHWM, and 150 feet of average lot width. These lots shall have a minimum area of 65,000 square feet.

Lots on Class 1 waters shall have at a minimum 300 feet at the building line, 300 feet of road frontage measure at right angles at the right-of-way, 300 feet at the OHWM, and 300 feet of average lot width. These lots shall have a minimum area of 120,000 square feet.

In summary, lots on Class 3 waters are the same as current unsewered lots. Lots on Class 2 and Class 1 waters have larger lot requirements because of the increased sensitivity of Class 2 and Class 1 waters.

Setbacks

Current ordinance

OHWL Setback

Under the current Oconto County ordinance, 14.505, no new building or structure shall be located closer than 75 ft. from the OHWL, except as allowed with setback averaging, 14.410 (4). Setback averaging allows a principal building or structure to be located closer to the OHWL than 75 ft., only if the 75 ft. setback cannot be met. Setback averaging is accomplished by first measuring the setback distances of the principal buildings on the adjoining lots, provided that the principal buildings are within 200 ft. of the common lot line. Next, the neighboring OHWL distances (x and y) are averaged with 75 ft. (the original OHWL setback), to get the setback average distance. Last, the setback average distance cannot be less than 40 ft.

Sideyard Setback

Under the current ordinance, 14.505, principal structures have a sideyard setback of 10 ft. Accessory structures have a sideyard setback of 7.5 ft on lots of 100 ft or more in width and 5 ft. for accessory structures on lots of less than 100 ft. in width.

Rearyard Setback:

The rear lot setback is 20 ft.

Proposed ordinance

OHWL Setback

Under the proposed ordinance, setback averaging would not be used. No new building or structure shall be located closer than 75 ft., 100 ft., and 125 ft. on Class 3, Class 2, and Class 1 lots, respectively.

Sideyard and Rearyard Setback

The proposed ordinance is the same as the current ordinance.

Legal Pre-existing Primary Structures on Shoreland Lots

General:

Current ordinance

Under 14.427 Primary Dwelling, a parcel or lot is allowed only one dwelling for human habitation (primary structure). The primary structure must be a minimum of 700 sq. ft. of living space. For structures constructed after January 1, 1997, additions to the primary structure do not count towards meeting the 700 sq. ft. requirement. Additionally, 1 - the primary structure must have minimum nominal width of 14 ft, 2 - have a nominal roof pitch of 3 inches of rise per 12 inches or run, 3- the primary structure was constructed no more than 15 years prior to the date of application. Additions to existing conforming structures that are 15 years or older are not prohibited by this ordinance. 4 – A primary structure that does not meeting the criteria of 1, 2, and 3 may be used for human habitation as a conditional use if the primary structure has a nominal width of at least 14 ft.

Under 14.407 Height Restrictions

(1) A basic height limit of 35 ft. is established for all objects and structures, with some exceptions found in (2).

Proposed ordinance

The proposed ordinance is the same as the current ordinance.

Expansion or Substantial Improvement:

Current ordinance

14.408 Non-conforming Uses and Structures

(2)

The legal use and ordinary maintenance and repair of a legal pre-existing structure may be continued subject to the following:

(Other conditions are not listed and will not be changed under the proposed ordinance. Condition e and f are the only conditions to be modified under 14.408 (2)).

e. No structural alteration, structural addition or structural repair to any legal pre-existing structure, over the life of the building or structure, shall exceed 50 percent of its current estimated fair market value unless it is permanently changed

to conform to the requirements of this ordinance unless a variance is granted by the Board of Adjustment.

f. If the alteration, addition or repair of a building or structure with a non-conforming use or a non-conforming building or structure is prohibited because it is in excess of 50 percent of the current estimate fair market value, the property owner may still make the proposed alteration, addition or repair if: (*amended 12-17-98*)

- (1) A non-conforming use is permanently changed to a conforming use; and
- (2) The property owner appeals the determination of the Zoning Administrator and either the county Board of Adjustment or the Circuit Court find in the property owner's favor under Sections 59.694(4) or 59.694 (10), Wisconsin Statutes.

Explanation of the 50% Rule and the Proposed Alternative

Why is the 50% rule being replaced with a total footprint limit? In short, the limit saves time and money for property owners and Oconto County. An example will make it clearer.

A primary structure on a waterbody in Oconto County is closer than 75 ft. to the OHWM. This is closer than what the current ordinance allows and makes the primary structure legally pre-existing. It can legally be used because the primary structure existed before the creation of the 75 ft. setback from the OHWM. However, any expansion of the primary structure is limited to 50% of its value. More than likely, the primary structure was built in the 1950's or 1960's. As families grew, many of these primary structures were expanded or substantially improved afterwards (perhaps in the 1980's and 1990's). The expansion was allowed because it was limited to 50% of the primary structure's value. That is, when the structure was expanded, the assessed value of the home was determined and the expansion was 50% or below the assessed value. To illustrate, if the structure's assessed value in the 1980's was \$100,000, then a \$50,000 addition could be built. Once the 50% is used, no more expansion or substantial improvement is ever allowed. Today, some property owners wish to expand again. However, they cannot because of past expansions "using-up" the 50%. Unless they are granted a variance, they are stuck with the structure's size as is. As a result, property owners apply for variances. Unfortunately, applications for variances are expensive and time consuming for the property owner and Oconto County staff. A variance application is \$250 and requires the Oconto County Board of Adjustment to make an on-site inspection of the property with the

property owner to determine a hardship. Typically, the on-site visit is during normal business hours, which can upset property owner's schedules. Furthermore, there is no guarantee the Board of Adjustment will grant the variance; a hardship must be established. The desire to have a bigger home or cottage does not constitute a hardship. Such variance requests would be denied. Hardship is established only when the ordinances cause the property owner to have no reasonable use of their property. Several Wisconsin counties have been facing the same issue and recent court cases have made clear what constitutes hardship.

Under the proposed ordinance, the 50% rule will be replaced with a total footprint limit. Now, when the property owner wants to expand again and has already used their 50%, expansion is allowed as long as the total footprint on their lot is below the limit.

By using a footprint, it eliminates the complicated math needed to calculate a 50% value, especially if additions were made over time. Let's use the example cottage from above. A cottage was built in the 1950's. In the 1980's, the owners wished to expand the structure. The structure was assessed at \$100,000 in the 1980's. The expansion was worth \$40,000. Therefore, the expansion was 40%, with a remainder of 10% (50% - 40%) to use in the future. If the same structure was to be expanded again in the 2000's, then the assessed value would be found again. Let's say the structure is now worth \$200,000. 10% of \$200,000 is \$20,000. Thus, the expansion in the 2000's would be limited to \$20,000. After the second expansion, the structure could not be expanded again (40% + 10% = 50%). 40% was used in the 1980's and 10% was used in the 2000's.

Unlike the 50% rule, where past assessed values of structures and expansions are required, the footprint is easily calculated by measuring and summing the exterior dimensions of primary and enclosed accessory structures. The total footprint limits are as follows.

Proposed ordinance

The 50% rule, as specified in 14.408 (2) (e) and (f) will be replaced with the following:

The expansion of legal pre-existing structures on shoreland lots will depend upon the abutting water's classification and location of the structure. All expansion shall not be closer to the OHWM than the current primary structure.

Total footprint is calculated by measuring and summing the exterior dimensions of all primary and enclosed accessory structures.

Class 3 waters:

Zones on lots on Class 3 waters:

Primary zone – OHWM to 35 ft. inland

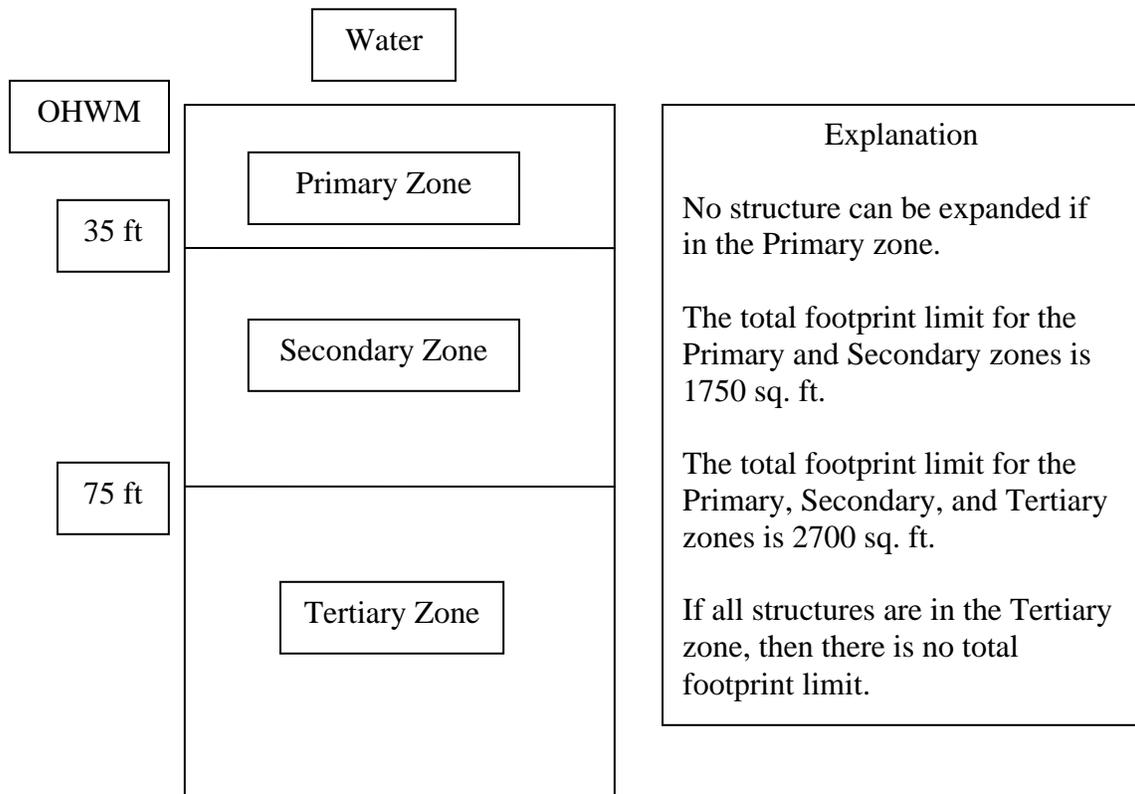
Secondary zone – 35 ft. to 75 ft.

Tertiary zone – Beyond 75 ft.

Note, these zones are same as the current ordinance.

No expansion shall occur in the primary zone. Total footprint is limited to 1750 sq. ft. in the combined primary and secondary zones. Total footprint is limited to 2700 sq. ft. in the combined primary, secondary, and tertiary zones. Unlimited total footprint in the tertiary zone provided no primary and accessory structures are located in the primary and secondary zones. See Figure 1.

Figure 1 Class 3 Lots - Zones and total footprint limits.



Class 2 waters:

Zones on lots on Class 2 waters:

Primary zone – OHWM to 35 ft. inland

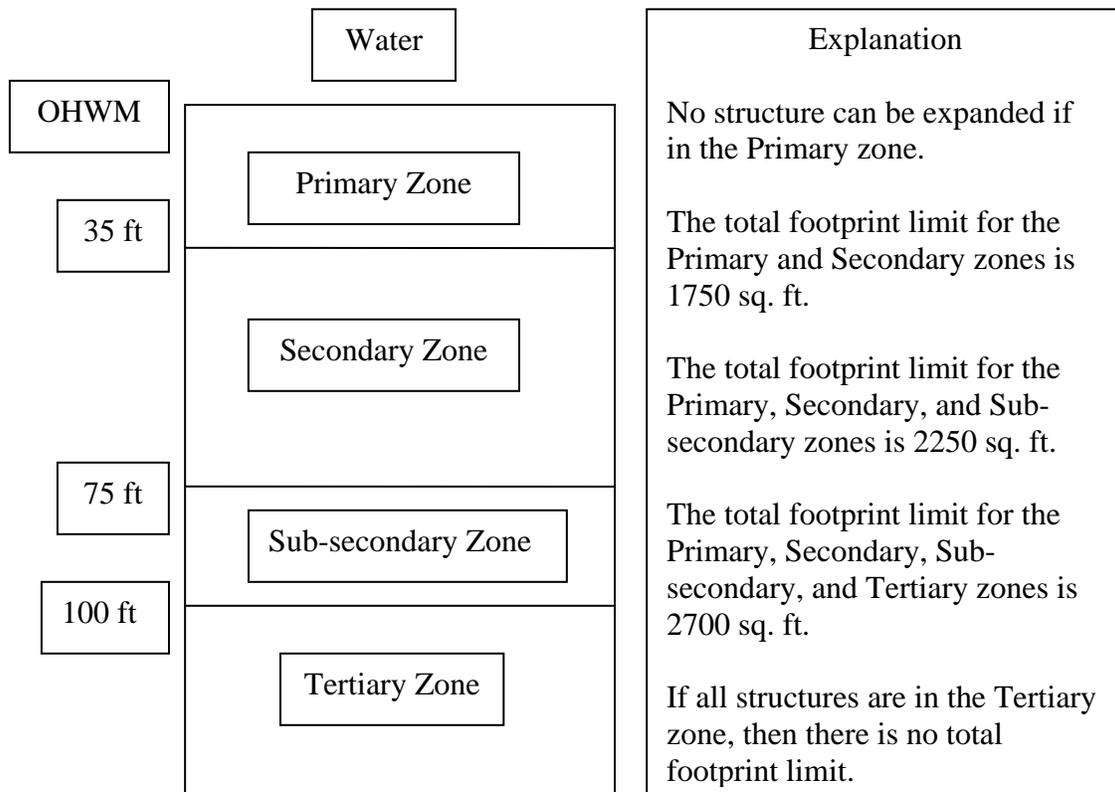
Secondary zone – 35 ft. to 75 ft.

Subsecondary zone – 75 ft. to 100 ft.

Tertiary zone – Beyond 100 ft.

No expansion shall occur in the primary zone. Total footprint is limited to 1750 sq. ft. in the combined primary and secondary zones. Total footprint is limited to 2250 sq. ft. in the combined primary, secondary, and subsecondary zones. Total footprint is limited to 2700 sq. ft. in the combined primary, secondary, subsecondary, and tertiary zones. Unlimited total footprint in the tertiary zone provided no primary and accessory structures are located in the primary, secondary, and subsecondary zones. See Figure 2.

Figure 2 Class 2 Lots - Zones and total footprint limits.



Class 1 waters:

Zones on lots on Class 1 waters:

Primary zone – OHWM to 35 ft. inland

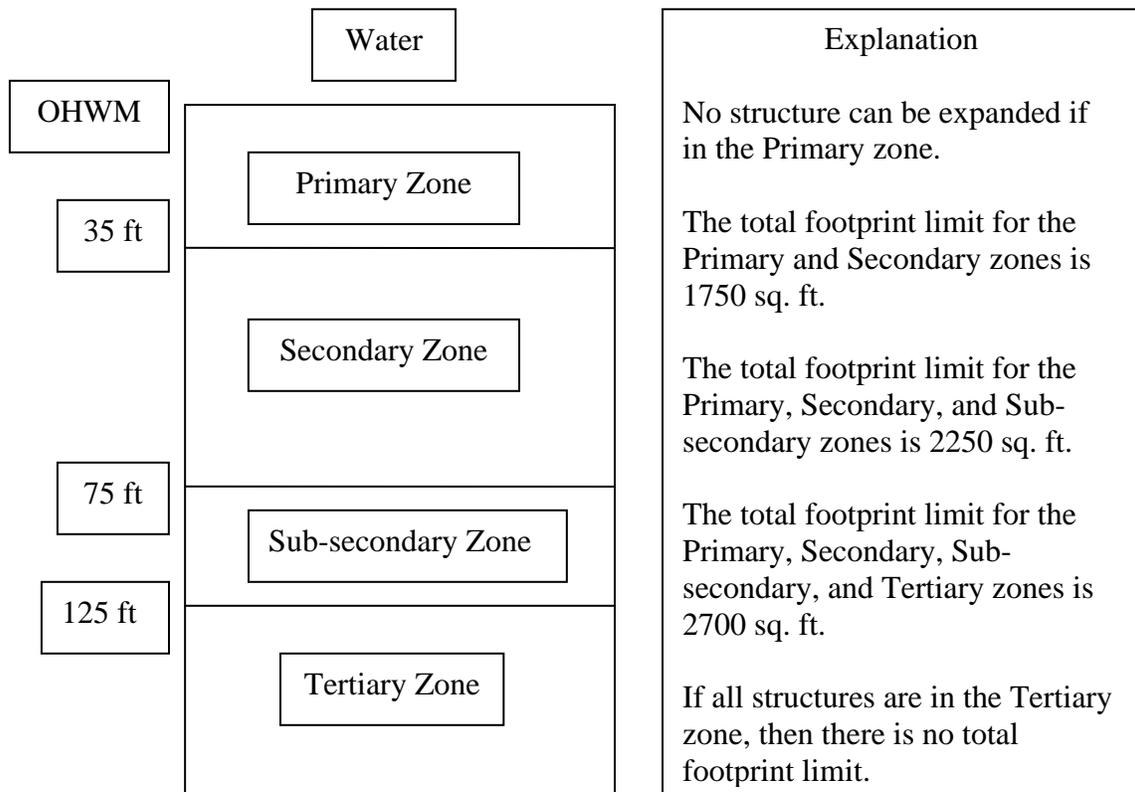
Secondary zone – 35 ft. to 75 ft.

Subsecondary zone – 75 ft. to 125 ft.

Tertiary zone – Beyond 125 ft.

No expansion shall occur in the primary zone. Total footprint is limited to 1750 sq. ft. in the combined primary and secondary zones. Total footprint is limited to 2250 sq. ft. in the combined primary, secondary, and subsecondary zones. Total footprint is limited to 2700 sq. ft. in the combined primary, secondary, subsecondary, and tertiary zones. Unlimited total footprint in the tertiary zone provided no primary and accessory structures are located in the primary, secondary, and subsecondary zones. See Figure 3.

Figure 3 Class 1 Lots - Zones and total footprint limits.



Example

Another example clarifies the advantage of replacing the 50% rule with the total footprint limit. Let's take an example where a property owner with a one story primary structure on a waterfront lot wanted to expand the primary structure by putting a second story addition on. In short, the property owner wants to build up, not out. More than likely, the cost of the second story addition will exceed 50% of the structure's value. Under the current ordinance, the property owner would be limited to an addition of 50%; most likely the addition would be smaller than what was desired. Or, perhaps the property owner expanded the primary structure in the past and used the 50%. Then no second story addition could be made. Under the proposed ordinance; however, the total footprint limit rule would allow additions upwards, even if the total footprint limit was met. Because the addition is not increasing the exterior dimensions of the primary structure, the total footprint remains the same. As long as the primary structure does not exceed the height limitation of 35 ft., the addition can be made.