

Community Development Department

222 Lewis Street
River Falls, WI 54022
715.425.0900
www.rfcity.org



PLAN COMMISSION WORKSHOP JUNE 18, 2019 STAFF REPORT

ITEM: Chapter 17.124 Shoreland – Wetland Protection Regulations Update

APPLICANT: Not Applicable

STAFF: Sam Wessel, Planner

INTRODUCTION

Last fall staff briefly introduced Plan Commission to a few issues with the City's current shoreland ordinance. The ordinance modifications were added to Community Developments 2019 work plan and staff has researched the ordinance, state statutes and options. In discussions with the Wisconsin Department of Natural Resources (DNR) statute changes as far back as 2013 make portions of our ordinance out of compliance. In fact, these statute changes create a situation quite the opposite of what the City of River Falls current ordinance works to achieve.

Taking this information into consideration, the focus of this project has now shifted to bringing the code into compliance with the state and making changes that respect and benefit the community's growth and the protection of the Kinnickinnic River. This workshop will be Part 1 of 3 that staff is planning: tonight's introduction, meeting #2 to discuss a few more policy items, and meeting #3 for the draft ordinance review. Plan Commission may choose to move at its own pace with this project, so please communicate your interest and needs with staff.

Workshop Goals:

- Inform the Plan Commission on "shoreland" and "shoreland-wetland" zoning compliance issues with state statutes
- Seek Plan Commission direction on policy items for shoreland-related zoning

BACKGROUND

The City has strong shoreland-wetland and shoreland zoning regulations in place to protect the Kinnickinnic River, a Class 1 trout stream, from the impacts of land development that can quickly cause erosion and degrade water quality. Specifically, the City's ordinance:

- Establishes minimum shoreland setbacks that range between 75-125 feet;
- Prohibits building or paving within those setbacks;
- Increases the setbacks where floodplains and steep slopes are present;
- Restricts land use activities within the zones, such as clear-cutting vegetation, near lakes and streams; and
- Requires redevelopment within the downtown overlay to reduce runoff by 50% compared to pre-redevelopment conditions to encourage high-quality infill development as aging structures are replaced.

Shoreland setbacks are measured from the Ordinary High Water Mark (OHWM). These regulations, while

beneficial to the riparian environment, have been noted to impact the development potential for some properties in the City by limiting buildable lot area. Staff brought some of these issues to the Plan Commission's attention during the October 2018 bus tour.

Compliance with Wisconsin Act 80 (2013) and Act 55 (2013)

Shoreland zoning law in Wisconsin requires separate provisions for lands incorporated or annexed prior to May 7, 1982, and lands annexed after May 7, 1982. The provisions the City may or may not enforce differ between lands that fall into either category (referred to in this report as "pre-1982" and "post-1982" lands). For pre-1982 lands, the City determines structure and pavement setbacks from rivers and lakes. However, in post-1982 lands, state statutes changed in 2013, and the City's current standards can't continue to be enforced.

Exhibit A, attached to this report, shows lands that were annexed before and after 1982. The most significant change to the shoreland zoning ordinance will involve creating separate rules for pre-1982 lands and post-1982 lands, and this report presents available options and recommendations for the two areas.

New requirements for post-1982 lands

In 2013, the Wisconsin State Legislature adopted Act 80, which requires cities to enact a shoreland zoning ordinance specifically for post-1982 lands by July 1, 2014. At a minimum, the ordinance must include the following provisions for all lands annexed after May 7, 1982:

- Establishes minimum 50-foot shoreland setback from the OHWM;
- An exception that allows a site to build a structure in the shoreland if:
 - Land on either side of the lot in question has a principal building; if so, then
 - The setback for the lot in question may be the average of the setbacks of those main buildings on the adjacent lots, or 35 feet from the OHWM, whichever distance has greater setback (this is the "averaging rule" explained in the next section of this report)
- The owner of shoreland property that contains vegetation must maintain a vegetative buffer zone extending 35 feet from the OHWM.
 - The owner may create a viewing or access corridor of 30-feet for every 100-feet of shoreline frontage that extends no more than 35-feet inland from the OHWM.

In 2015, the Wisconsin State Legislature adopted Act 55, which states a City can't regulate a matter more restrictively than the matter is regulated by shoreland zoning standard. The shoreland zoning standard found in NR 115 (Wisconsin's shoreland protection program) is 75' from the OHWM. Therefore, state statutes limit setback options for post-1982 lands to between 50 and 75 feet, which is less than the City's 75'-125' minimum setback.

The "averaging rule", explained

Exhibit B depicts the minimum setback currently required and how the "averaging rule" applies. Several of these already-developed parcels are located mostly or entirely within the shoreland setback, making these sites nonconforming and thus difficult to redevelop. To address this issue, the existing code offers an exception to allow sites platted prior to 2003 to encroach on the minimum standards in the following manner:

- There must be a main building on both lots or one lot on either side of the lot in question; and
- The main buildings on said lots must be located within 200 feet of the lot in question; and
- The main buildings on said lots must be closer than the minimum setback standard; then,
- The setback for the lot in question may be the average of the setbacks of those main buildings on the adjacent lots; or
- If there is only one adjacent building, the setback is the average of the minimum setback required by code and the adjacent building's setback

While this exception provides some flexibility to allow redevelopment to occur in shoreland areas, there is the potential negative impact that over time, buildings will become closer to the river because there is no minimum setback in the City’s existing code that the averaging rule cannot exceed.

It’s important to note that, in 2017, the Wisconsin State Legislature adopted Act 67 which removes municipal authority to prohibit, or limit based on cost, repair, maintenance, renovation, or remodeling of a nonconforming structure. This means, that structures in the City’s shoreland buffer, if removed can be replaced with a new structure within the same footprint. Prior to this Act, if a structure was removed by means other than an Act of God (i.e. tear down), the City would have prohibited a new nonconforming structure to take its place. While this rule change provides a way for nonconforming properties to be redeveloped, many nonconforming properties on small lots along the South Fork do not have configurations suitable for the type of redevelopment desired.

ISSUE 1- DETERMINING SETBACKS FOR PRE-1982 LANDS

Minimum Setback

For lands incorporated or annexed prior to 1982, the City can determine the minimum setback of any distance. Currently, the City ordinance specifies a minimum 75’ to 125’ shoreland setback (depending on stream order), with additional setbacks for wetlands, steep slopes and floodplains, in all lands regardless of annexation date. Regardless of floodplain and wetland width, there is always an additional 25’ setback for each feature. For steep slopes, 15%-25% slopes add a 25-foot setback and slopes greater than 25% add a 50-foot setback. In the downtown overlay, structures may approach 75’ from the OHWM.

Averaging Rule

For lands incorporated or annexed prior to 1982, the City decides which “averaging rule” provisions, if any, may be imposed, opening up the possibility that a minimum setback may be established for structures following the “averaging rule”. As stated before, the City’s current “averaging rule” applies to lands platted prior to 2003. This ordinance update must change its applicability to lands annexed prior to 1982. Many of the existing structures downtown are in the 50-foot to 100-foot setback range, with some approaching as little as 15 feet from the river on North Main Street. In summary:

Pre-1982 lands	Minimum setback	Averaging Rule minimum setback
Current Ordinance	75’-125’ City-wide (75’ possible in downtown overlay)	None
State Requirements	City determines rules	City determines rules

Policy Items –

- 1. Should the City maintain its current 75-125-foot shoreland setback in pre-1982 annexation areas?**
This is the piece that hinders redevelopment on sites like 641 S Main (graphic above, Exhibit B). In this policy question, staff is interested in Plan Commissions views of maintaining a large shoreland buffer or shrinking it to potentially allow for more redevelopment sites in the city’s core. A smaller setback already exists within the downtown overlay, where the minimum setback is only 75 feet. Examples of various setbacks the City could consider are depicted in Exhibit C.
- 2. Should the City continue to allow setback averaging in lands incorporated or annexed prior to 1982?**
Staff recommends allowing averaging.
- 3. If so, should the City establish a minimum setback to ensure a specified distance from the OHWM on these lands?**
Staff recommends setting a minimum setback of 35’ to be consistent with the state standard found in NR 115.

ISSUE 2- DETERMINING SETBACKS FOR POST-1982 LANDS

Ideally, the City would impose larger setbacks in newly-annexed, undeveloped lands, where the potential for greenfield development is great. However, state statute only allows the City to impose setbacks between 50’-75’ in post-1982 lands. The current ordinance requires larger setbacks 50’-75’ which is now unenforceable, so the City must decide on new setbacks.

Additionally, Act 80 requires the City to provide the “averaging rule” to lands annexed after 1982, with a required 35-foot minimum setback for structures using the “averaging rule”. The City cannot choose a minimum setback other than 35 feet for structures following the “averaging rule” in post-1982 lands.

Post-1982 lands	Minimum setback	Averaging Rule minimum setback
Current Ordinance	75’-125’ City-wide (downtown overlay not located here)	None. No averaging in areas platted after 2003.
State Requirements	Between 50’ and 75’ (City determines)	35’

Policy Items

1. What minimum shoreland setback between 50 and 75 feet should the City require in lands annexed after 1982?

Staff recommends adopting a 75’ setback in post-1982 lands. Ideally staff would prefer a larger setback, similar to the City’s current ordinance to protect the southwest Kinni, the Southfork and their tributaries. However, 75’ is now the maximum setback the City may enforce in post-1982 lands.

OTHER CONSIDERATIONS

The City’s current shoreland zoning ordinance requires an additional 25’ setback around floodplains and wetlands, as well as a 25’ setback for slopes between 15%-25% and a 50’ setback for slopes 25% or greater. DNR has advised City staff that these setbacks may not be enforced under shoreland zoning provisions, however there is a possibility they could be adopted as a separate ordinance, such as an escarpment setback ordinance. Plan Commission will discuss these setbacks in greater detail in a future workshop. Generally, the area’s topographical features are make development challenging with or without these additional setbacks. The City’s subdivision ordinance restricts building on steep slopes, and many of the steep cliffs near the Kinnickinnic and its tributaries may be difficult or impossible to build on.

On the attached map (Exhibit A) it is important to note that, although setbacks must be measured from the OHWM (light blue), the City’s floodplain ordinance prohibits structures in the floodplain (dark blue), which in many cases extends beyond 75’ from the OHWM. Therefore, in many areas where the existing setback is reduced to a shorter distance to comply with state statute, buildings won’t automatically be able to move closer to rivers, as they are subject to the City’s floodplain ordinance.

SUMMARY

- The City’s shoreland-wetland and shoreland zoning provisions are not in compliance with state statute
- Other than choosing a minimum setback between 50’ and 75’ from the OHWM, the City has limited options for shoreland zoning standards for lands annexed post-1982 beyond the state model provisions
- The City has an opportunity to modify shoreland setbacks for lands incorporated or annexed pre-1982 where barriers to infill development currently exist while strengthening river protections where the setback “averaging rule” applies
- While this project entails more work than a simple revision of the City’s existing ordinances, it will bring both shoreland-wetland and shoreland zoning ordinances in compliance with state code while addressing

a variety of issues in the City's current code

- The DNR provides model ordinances that staff plans to utilize, with some modifications; staff is working closely with DNR staff to ensure ordinance compliance with state statute

NEXT STEPS

At the next meeting staff will discuss a couple more minor recommendations including separating the wetlands section from the shoreland ordinance, and vegetative requirements for shoreland.

EXHIBITS

- **Exhibit A: Annexation Map**
- **Exhibit B: Averaging Rule Map**
- **Exhibit C: Examples of setbacks**
- **City of River Falls Chapter 17.124 Shoreland Wetland Ordinance**

Exhibit C: Setback Examples

