

## **ARTICLE XI. SHORELAND-WETLAND ZONING DISTRICT REGULATIONS**

### **Sec. 23-326. Regulations for the protection of wetlands within the shoreland.**

- (a) **Statutory Authority.** This article is adopted pursuant to the authorization in §62.231, Wisconsin State Statutes (2023-2024) and Chapter NR 117, Wisconsin Administrative Code (November 2024), as amended from time to time.
- (b) **Definitions.** All definitions identified in Chapter NR 117, Wisconsin Administrative Code (November 2024), as amended from time to time, are hereby incorporated by reference. For the purpose of administering and enforcing this ordinance, the terms or words used herein shall be interpreted as follows: Words used in the present tense include the future; words in the singular number include the plural number; words in the plural number include the singular number. The word "shall" is mandatory, not permissive. All distances unless otherwise specified, shall be measured horizontally.
- (1) **Boathouse** means a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of structural parts.
  - (2) **Development** means any man-made change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of buildings or structures; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of earthen materials.
  - (3) **Drainage system** means one or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.
  - (4) **Fixed houseboat** means a structure not actually used for navigation which extends beyond the ordinary high-water mark of a navigable waterway and is retained in place either by cables to the shoreline or by anchors or spud poles attached to the bed of the waterway.
  - (5) **Permit** means written authorization made by the City of Appleton to the applicant to undertake certain activities in accordance with provisions of the Municipal Code of the City of Appleton.
  - (6) **Wetlands** means those areas where water is at, near or above the land surface long enough to support aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.
  - (7) **Wetland alteration** means any filling, flooding, draining, dredging, ditching, tiling, excavating, temporary water level stabilization measures or dike and dam construction in a wetland area.
  - (8) **WDNR** means the Wisconsin Department of Natural Resources.
- (c) **Finding of Fact and Purpose.** Uncontrolled use of the shoreland-wetlands and the pollution of navigable waters adversely affect public health, safety, convenience, and general welfare. The Wisconsin Legislature has delegated responsibility to all municipalities to:

- (1) Promote public health, safety, convenience, and general welfare;
- (2) Maintain storm and floodwater storage capacity of wetlands;
- (3) Prevent and control water pollution by preserving wetlands which filter or store sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
- (4) Protect fish, their spawning grounds, other aquatic life, and wildlife by preserving wetlands and aquatic habitat;
- (5) Prohibit certain uses detrimental to the shoreland-wetland area; and
- (6) Preserve shore cover and natural beauty by restricting the removal of natural shoreland cover and controlling shoreland-wetland excavation, filling, and other earth-moving activities.

(d) **Shoreland-wetland zoning maps.** The following maps are hereby adopted and made part of this article:

- (1) The most recent version of the Wisconsin Wetland Inventory as depicted on the Wisconsin Department of Natural Resources (WDNR) Surface Water Data Viewer.
- (2) City of Appleton Official Shoreland Zoning District Map, effective July 23, 2014, as amended.
- (3) City of Appleton Zoning Map, effective May 22, 1994, as amended.
- (4) Flood Insurance Rate Maps adopted in subsection 23-205(b)(1)-(2), as amended.
- (5) United States Geological Survey Maps titled and dated.

(e) **District Boundaries.** The Shoreland-Wetland Zoning District includes all mapped wetlands in the city which:

- (1) Are five (5) acres or larger in size;
- (2) Are designated wetlands as depicted in the most recent version of the WDNR Surface Water Data Viewer or SWDV, the official record of the Wisconsin Wetland Inventory (WWI); and
- (3) Are located within the shoreland zoning district, defined as:
  - a. Within 1,000 feet of the ordinary high-water mark of a navigable lake, pond, or flowage. Lakes, ponds, or flowages in the City of Appleton shall be presumed to be navigable if they are listed in the most recent version of the WDNR' publication "Surface Water Resources of Outagamie County" or shown on U.S. Geological Survey Quadrangle maps, or other zoning base maps which have been incorporated by reference and made a part of this article; or
  - b. Within 300 feet of the ordinary high-water mark of a navigable river or stream, or to the landward side of the floodplain, whichever distance is greater. Rivers and streams shall be presumed to be navigable if they are designated as either continuous or intermittent waterways on the United States Geological Survey quadrangle maps or other zoning base maps which have been incorporated by reference and made a part of this ordinance. Floodplain Insurance Rate Maps adopted in section 23-326(d)(4) shall be used to determine the extent of floodplain areas.

(f) **Director of Public Works.** The Director of Public Works or designee is authorized to administer this article and shall have the following duties and powers:

- (1) Develop and maintain a system for issuing and keeping permits for all new construction, development, reconstruction, structural alteration or moving of buildings and structures, and for other types of development, including the construction and reconstruction of roads.
- (2) Conduct on-site inspections of approved projects to ensure compliance with this article and terms of approval, revoke permits where the conditions of a permit are violate and issue certificates of compliance.
- (3) Maintain a complete record of all proceedings before the Board of Appeals, Plan Commission, and Common Council.
- (4) Determinations of navigability and ordinary high-water mark location shall initially be made by the Director of Public Works or designee. When questions arise, the Director of Public Works or designee shall contact the appropriate district office of the WDNR for a final determination of navigability or ordinary high-water mark.
- (5) When an apparent discrepancy exists between the shoreland-wetland zoning district boundary shown on the Wisconsin Wetland Inventory as depicted on the WDNR's Surface Water Data View or SWDV and actual field conditions at the time the maps were adopted, the Director of Public Works or designee shall contact the appropriate office of the WDNR to determine if the shoreland-wetland zoning district boundary as mapped, is in error. If WDNR concurs with the Director of Public Works or designee that a particular area was incorrectly mapped as a wetland, the Director of Public Works or designee shall have the authority to immediately direct the Zoning Administrator to grant or deny a land use or building permit in accordance with the regulations applicable to the respective zoning district.
- (6) Provide written notice to the appropriate district office of the WDNR as required by this article, including variance applications and decisions, administrative appeals for map or text interpretations to this article, and proposed amendments to map or text to this article within 10 days after the decision is made.
- (7) Maintain the Official Shoreland Zoning District Map, along with all approved map amendments.
- (8) The enforcement, issue violations, citations and penalty to any person, partnership, corporation or other legal entity that fails to comply with the provisions of this subsection shall be subject to penalty provisions as prescribed in §23-69 of this chapter. Enforcement of this subsection is prescribed in §23-69 of this chapter.
- (9) Any other duty or power necessary in the administration of this article.

(g) **Board of Appeals.** The Board of Appeals, created under §62.23(7)(e), Wisconsin State Statutes (2023-2024), as amended from time to time is hereby authorized or shall be appointed to act for the purposes of this article. The Board shall exercise the powers conferred by Wisconsin State Statutes and §23-63 and §23-67 of this chapter.

(h) **Exemptions.**

(1) Filled Wetlands. Wetlands which are filled prior to the effective date of this article, in a manner which affects their wetland characteristics to the extent that the area can no longer be defined as wetland in Section NR 117.03, are not subject to this article.

(2) Wetlands Landward of a Bulkhead Line. Wetlands located between the original ordinary high water mark and a bulkhead line established prior to May 7, 1982 under § 30.11, Wisconsin State Statutes, that are located on the landward side of the bulkhead line are not subject to this article.

(i) **Permitted uses in the Shoreland-Wetland Zoning District.** The following uses are permitted in the Shoreland-Wetland Zoning District subject to the provisions of Chapters 30 and 31, Wisconsin State Statutes and the provisions of the Municipal Code of the City of Appleton, state and federal laws, if applicable.

(1) Activities and uses which do not require the issuance of a permit, and do not involve wetland alterations, such as the following:

- a. Hiking, fishing, trapping, hunting, swimming, snowmobiling and boating;
- b. The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops;
- c. The practice of silviculture, including the planting, thinning and harvesting of timber;
- d. The pasturing of livestock;
- e. The cultivation of agricultural crops; and
- f. The construction and maintenance of duck blinds.

(2) Activities and uses which do not require the issuance of a permit and which may involve wetland alterations but only to the extent specifically provided below:

- a. The practice of silviculture, including limited temporary water level stabilization measures which are necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the conduct of silvicultural activities if not corrected;
- b. The cultivation of cranberries, including limited wetland alterations necessary for the purpose of growing and harvesting cranberries;
- c. The construction and maintenance of fences for the pasturing of livestock, provided that including limited filling and excavating necessary for the construction and maintenance of fences;

- d. The maintenance and repair of existing drainage systems to restore pre-existing levels of drainage, including the minimum amount of filling necessary to dispose of dredged spoil, provided that the filling is otherwise permissible and that dredged spoil is placed on existing spoil banks where possible;
  - e. The construction and maintenance of piers, docks, walkways, observation decks and trail bridges built on pilings, including limited filling and excavating necessary for the installation of pilings;
  - f. The installation and maintenance of sealed tiles for the purpose of draining lands outside the shoreland-wetland zoning district provided that such installation or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the shoreland-wetland listed in Section 23-326(1)(3) of this article; and
  - g. The maintenance, repair, replacement and reconstruction of existing highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.
- (3) Uses which are allowed upon the issuance of a permit which may include wetland alterations only to the extent specifically provided below:
  - a. Roads. The construction and maintenance of roads which are necessary for the continuity of the municipal street system, the provision of essential utility and emergency services or to provide access to allow activities and the uses permitted under Section 23-326(i) of this article, provided that:
    - 1. The road cannot, as a practical matter, be located outside the wetland;
    - 2. The road is designed and constructed to minimize adverse impacts upon the natural functions of the wetland listed in Section 23-326(1)(3) this article;
    - 3. The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use;
    - 4. Road construction activities are carried out in the immediate area of the roadbed only; and
    - 5. Any wetland alteration must be necessary for the construction or maintenance of the road.
  - b. Nonresidential buildings. The construction and maintenance of nonresidential buildings provided the following conditions are met:
    - 1. The building is used solely in conjunction with a use permitted in the shoreland-wetland district or for the raising of waterfowl, minnows or other wetland or aquatic animals;
    - 2. The building cannot, as a practical matter, be located outside the wetland;
    - 3. The building does not exceed 500 square feet in gross floor area; and

4. Only limited filling and excavating necessary to provide structural support for the building is allowed.

c. Public and private facilities. The establishment and development of public and private parks and recreation areas, outdoor education areas, historic, natural and scientific areas, game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms, wildlife preserves and public boat launching ramps, provided the following conditions are met:

1. Only limited filling and excavating necessary for the development of public boat launching ramps, swimming beaches or the construction of park shelters or similar structures is allowed;

2. Any private development allowed under this subsection shall be used exclusively for the permitted purpose;

3. Construction and maintenance of roads necessary for the uses permitted under this subsection is allowed only if such construction and maintenance meets the criteria in Section 23-326(i)(3)a. of this article; and

4. Wetland alterations in game refuges and closed areas, fish and wildlife habitat improvement projects, game farms, and wildlife areas provided that they are done for the purpose of improving wildlife habitat or to otherwise enhance wetland values.

d. Transportation and utility services. The construction and maintenance of electric and telephone transmission lines, water and gas distribution lines and sewerage collection lines and related facilities and the construction of railroad lines provided the following conditions are met:

1. The utility transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the wetland;

2. Only limited filling or excavating necessary for such construction or maintenance is allowed; and

3. Such construction or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the wetland listed in Section 23-326(k)(3) of this article.

(j) ***Prohibited uses.*** Any use not listed in Section 23-326(i) of this article is prohibited, unless the wetland or a portion of the wetland has been rezoned by amendment of this article in accordance with Section 23-326(l) of this article.

(1) The use of a boathouse for human habitation and the construction or placement of a boathouse or fixed houseboat below the ordinary high-water mark of any navigable waters are prohibited.

(k) ***Nonconforming structures and uses.*** The lawful use of a building, structure or land which existed at the time this article, or an applicable amendment to this article, took effect and which is not in conformity with the provisions of this article, including the routine maintenance of such a building or structure, may be continued, subject to the following conditions

- (1) The shoreland-wetland provisions of this article authorized by §62.231, Wisconsin State Statutes (2023-24), as amended from time to time, shall not limit the repair, reconstruction, renovation, remodeling or expansion of a nonconforming structure or of any environmental control facility related to such a structure in existence on the effective date of the shoreland-wetland provisions or of any environmental control facility in existence on May 7, 1982, related to such a structure. All other nonconforming uses and structures shall comply with the provisions of the Section 23-42 of the Zoning Code for the City of Appleton.
- (2) If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, any future use of the building, structure or land shall conform to this article.
- (3) Any legal nonconforming use of land which does not involve the use of a structure and which existed at the time of the adoption or subsequent amendment of this article adopted under §62.231, Wisconsin State Statutes (2023-24), as amended from time to time, may be continued although such use does not conform to the provisions of this article. However, such nonconforming use may not be extended.
- (4) The maintenance and repair of nonconforming boathouses which are located below the ordinary high-water mark of any navigable waters shall comply with the requirements of §30.121, Wisconsin State Statutes (2023-24), as amended from time to time.

(1) **Amending shoreland-wetland zoning district regulations.** The Common Council may alter, supplement or change the zoning district boundaries and the regulations contained in this article in accordance with the requirements of §62.23(7)(d)2, Wisconsin State Statutes (2023-24), as amended from time to time, Chapter NR 117, Wisconsin Administrative Code, and the following:

- (1) A copy of each proposed text or map amendment shall be submitted to the appropriate district office of the WDNR within 5 days of filing of the proposed amendment with the City Clerk;
- (2) All proposed text and map amendments to the shoreland-wetland zoning district regulations shall be referred to the Planning Commission, and a public hearing shall be held after Class 2 notice as required by §62.23(7)(d)2, Wisconsin State Statutes (2023-24), as amended from time to time. The appropriate district office of the WDNR shall be provided with written notice of the public hearing at least 10 days prior to such hearing.
- (3) In order to ensure that this article will remain consistent with the shoreland protection objectives of §281.31, Wisconsin State Statutes (2023-24), as amended from time to time, the Common Council may not rezone a wetland in a Shoreland-Wetland Zoning District, or any portion thereof, where the proposed rezoning may result in a significant adverse impact upon any of the following wetland functions:
  - a. Stormwater and floodwater storage capacity;
  - b. Maintenance of dry season stream flow or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area or the flow of groundwater through a wetland;
  - c. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
  - d. Shoreline protection against soil erosion;
  - e. Fish spawning, breeding, nursery or feeding grounds;

- f. Wildlife habitat; or
        - g. Areas of special recreational, scenic or scientific interest, including scarce wetland types and habitat of endangered species.
  - (4) If the district office of the WDNR determines that a proposed rezoning may have a significant adverse impact upon any of the criteria listed in Section 23-326(1)(3) of this article, the WDNR shall so notify the City of its determination either prior to or during the public hearing held on the proposed amendment.
  - (5) The appropriate district office of the WDNR shall be provided with:
    - a. A copy of the recommendation and report, if any, of the Planning Commission on a proposed text or map amendment within 10 days after the submission of those recommendations to the Common Council.
    - b. Written notice of the action on the proposed text or map amendment within 10 days after the action is taken.
  - (6) If the WDNR notifies the Planning Commission in writing that a proposed amendment may have a significant adverse impact upon any of the criteria listed in Section 23-326(1)(3) of this article that the proposed amendment, if approved by the Common Council, shall contain the following provision:
    - a. “ This ordinance amendment shall not become effective until more than 30 days have elapsed since written notice of the Common Council’s approval was mailed to the district office of the WDNR, as required by Section 23-326(1)(5) of this article. If within the 30 day period the district office of the WDNR notifies the City that the WDNR intends to adopt a superseding shoreland-wetland zoning ordinance for the city as provided by § 62.231(6), Wisconsin State Statutes (2023-24), as amended from time to time, the proposed amendment shall not become effective until the ordinance adoption procedure under § 62.231(6), Wisconsin State Statutes (2023-24), as amended from time to time, is completed or otherwise terminated.”

**23-327– 23-389. Reserved.**

## **ARTICLE XIX. SHORELAND ZONING**

### **Sec. 23-752. Jurisdiction.**

The jurisdiction of this chapter shall include all the shorelands of the City which are:

- (a) Within 1,000 feet of the ordinary high water mark of navigable lakes, ponds or flowages. Lakes, ponds, or flowages in the City shall be presumed to be navigable if they are listed in the Wisconsin Department of Natural Resources’ publication “Surface Water Resources of Outagamie County” or shown on U.S. Geological Survey Quadrangle maps. If evidence to the contrary is presented, the Director of Public Works shall make the initial determination whether or not the lake, pond, or flowage in question is navigable under the laws of the State. The Director of Public Works shall also make the initial determination of the location of the Ordinary High Water Mark.



(b) Within 300 feet of the ordinary high water mark of navigable rivers or streams. For the purposes of this subsection, rivers and streams in the City shall be presumed to be navigable if they are designated under one of the following categories on the City of Appleton Official Shoreland Zoning District Map:

(1) Navigable Stream

*Comments: Recommend to amend the language in subsection (2) to be consistent with proposed ARTICLE XI. SHORELAND-WETLAND ZONING DISTRICT REGULATIONS Sec. 23-326(d)(3)b.*

(2) ~~Probable Non~~-Navigable Stream

*Comments: Recommend to delete the language in subsection (3) to be consistent with proposed ARTICLE XI. SHORELAND-WETLAND ZONING DISTRICT REGULATIONS Sec. 23-326(d)(3)b.*

~~(3) Probable Non-Navigable Stream~~

~~If evidence is presented that the stream is Non-Navigable, then the Director of Public Works shall make the initial determination of whether or not the stream is navigable under the laws of the State. The Director of Public Works shall also make the initial determination of the location of the Ordinary High Water Mark.~~