

ORDINANCE NO. 539 - 2009
VILLAGE OF ELKHART LAKE
COUNTY OF SHEBOYGAN
STATE OF WISCONSIN

17.01 INTRODUCTION. (1) **AUTHORITY.** These regulations are adopted pursuant to the authorization contained in sections 30.13 (2), 61.34 (5), 61.35 and 62.23 (18) of the Wisconsin Statutes (1971).

(2) **PURPOSE.** It is the declared purpose of this ordinance to promote public health, safety, convenience and general welfare; to encourage planned and orderly use of Elkhart Lake and its shorelands; to maintain safe and healthful conditions; to prevent water pollution and protect aquatic life; to control building sites and placement of structures and to preserve shore cover and natural beauty; to uphold the public trust that recognizes that the navigable waters are a public resource; to recognize the rights of riparian landowners to the reasonable use of, access to and enjoyment of their property abutting Elkhart Lake; to foster the unique stewardship opportunities and responsibilities of lake property owners to protect and nurture the land and water under their care; to maintain the character and historical integrity of the lakeshore; and to conserve the lake environment for future generations.

(3) **INTERPRETATION.** In their interpretation and application, the provisions of this ordinance shall be held to be the minimum requirements and shall be liberally construed in favor of the Village and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

(4) **EFFECTIVE DATE.** This ordinance shall be effective after a public hearing, adoption by the Village Board of Trustees, and publication or posting as provided by law.

17.02 GENERAL PROVISIONS. (1) **JURISDICTION.** The jurisdiction of this ordinance shall include all shorelands and water within the corporate limits of the Village of Elkhart Lake.

(2) **ABROGATION AND GREATER RESTRICTIONS.** (1) It is not intended by this ordinance to repeal, abrogate or to interfere with any existing rules, regulations or permits previously adopted or issued pursuant to laws. However, the provisions of any existing Village ordinances that relate to areas covered by this ordinance are hereby incorporated by reference and shall, to the extent of greater restrictions only, be made as much a part of this ordinance as if the matter described were fully set out herein. It is not otherwise intended by this ordinance to repeal, abrogate or to interfere with any existing deed restrictions, easements, covenants or agreements. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.

17.03 DEFINITIONS - As used in this chapter, the following terms mean as follows:

(1) Accessory Structure – Detached subordinate structure incidental to, and found in connection with, the principal structure on the same lot.

(2) Berth – a space at a pier, wharf, boat hoist, boat rack, boat shelter, boathouse,

mooring buoy for a single watercraft appropriate for use at the site and commonly in use at similar sites on the waterway.

(3) Boathouse - (Dry) - any structure used for the protection or storage of watercraft and associated materials located a minimum of 20 feet from the OHWM of Elkhart Lake, including all structures that are totally closed, have roofs or walls or any combination of these structural parts.

(4) Boathouse - (Wet) – any structure used for the protection or storage of watercraft and associated materials to store boats located over the waters of Elkhart Lake that are totally enclosed, have roofs or walls or any combination of these structural parts.

(5) Boat Rack - a structure that, without mechanics and without a covering, is designed to be free standing and is designed to support watercraft out of the water (wet) or above the ground (dry).

(6) Boat Shelter - a structure designed and constructed for the purpose of providing cover or protection for watercraft. The term includes covered shelters other than boathouses and boat racks. A boat shelter shall include boatlifts or hoists even if the lift or hoist does not have a cover or roof. A boat shelter may not have walls or sides.

(7) Buffer Zones:

(a) Primary buffer zone – the portion of a shoreland lot paralleling the shoreline and extending fifty (50) feet inland from all points along the ordinary high water mark of the shoreline.

(b) Principal structure buffer zone – the portion of a shoreland lot that includes the footprint of the principal structure (and all attachments to said structure such as garages and decks) and a twenty-five (25) foot distance around the perimeter of the principal structure. The size of the principal structure buffer zone is reduced by any area that would extend into the primary buffer zone or within six (6) feet of the side yard lot lines.

(c) Secondary buffer zone – the portion, if any, of a shoreland lot beyond the primary buffer zone extending to the principal structure buffer zone. The side yard areas, adjacent to the principal structure buffer zone are included in the secondary vegetation buffer zone.

(d) Remaining buffer zone – the portion of a shoreland lot that is not included in primary and secondary buffer zones or the principal structure buffer zone.

(8) Conditional use – a use provided for in this chapter that is approved by the Village Board after a public hearing. It permits specific uses that are not otherwise allowed and which are in accordance with the purpose and intent of this chapter.

(9) Elkhart Lake - includes all areas below the ordinary high water mark and any lagoon through which there is a free flow of water to and from the lake.

(10) Fence – An enclosure or barrier, solid or otherwise, made of wood, metal, stone or other material which is used to limit ingress to or egress from a property or portion of a property or to limit or reduce viewing of, or from, a property or portion of a property. An open fence is

one that has more than 50% of the fence not composed of solid material. A railing constructed for safety purposes is not considered a fence.

(11) Finger Pier - any extension of the pier running perpendicular to the main body of the pier. Finger piers may be constructed as an L or as a T to the main body of the pier to provide mooring slips or to stabilize a pier.

(12) Hedge – a row of bushes or trees planted together that may form a barrier, enclosure or boundary.

(13) Human Habitation – Occupying on a regular or periodic basis a structure or building with living quarters and/or plumbing.

(14) Impervious Surface Area – the area of a lot, or portion of a lot covered by roofs, concrete, asphalt, compacted soils, structural additions, driveways, patios, decks, steps, walkways and other unnatural surfaces, constructed in a manner that does not provide for water to pass through it to an uncompacted ground surface below.

[15] Line of Navigation – the three feet water depth contour, or a greater depth contour if required for a boat using the pier, beyond which a pier cannot extend into the waterway.

(16) Maintain – the restoration, reinforcement, repair or similar activity necessary to preserve the structure for continued use. This term does not include and substantial alteration, enlargement, substitution, movement or extension of the structure.

(17) Mitigation – a technique used to balance or offset a property owner's request for a variance with other changes deemed to be in the public interest. The main component involves restoration and/or preservation of shoreland buffers through such means as the removal of nonconforming structures, reestablishing native vegetation, using natural or earth-toned building material or upgrading a septic system.

(18) Mooring Buoy - a white buoy with a blue stripe (conforming to the State of Wisconsin standards) used to anchor watercraft within the waters of Elkhart Lake.

[19] Nonconforming Use - A present use that may be continued even though it does not conform to the restrictions contained in this chapter. A nonconforming use cannot be expanded, extended, moved or structurally altered except when authorized by law or by obtaining an approved conditional use permit. In the case of berths, the number of them on a property cannot be increased without obtaining an approved conditional use permit.

(20) Ordinary High Water Mark (OHWM) - the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinct mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic. Where the bank or shore at any particular place is of such character that it is difficult or impossible to ascertain where the point of ordinary high-water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine where a given stage of water is above or below the ordinary high-water mark.

(21) Ordinary Low Water Mark- the lowest level of water that Elkhart Lake recedes to in periods of drought or low water intake. The ordinary low water mark is usually 1”-2” below the ordinary high water mark at any given location around the lake.

(22) Pier - a structure extending into navigable waters from the shore with water on both sides, built or maintained for the purpose of providing a berth for water craft or for loading or unloading cargo or passengers onto or from watercraft. This structure may include a boat shelter that is removed seasonally.

(23) Principal Structure - the main building on a shoreland lot including attached garages and decks. In the case of a lot zoned (R-1), this would be more narrowly defined as the house or single-family dwelling.

(24) Repair – to restore to good working condition after decay or damage.

(25) Retaining Wall – a solid barrier of any material to hold back a mass of earth.

(26) Riparian Landowner- any individual or entity holding title to land located adjacent to the waters of Elkhart Lake. For the purposes of this ordinance, land classified as condominium ownership will be deemed to be owned by the condominium association.

(27) Riparian Zone - An area extending from the riparian property lines into a water depth of 3' from the ordinary high water mark.

(28) Riparian Zone of Influence - An area extending from the riparian property lines into the waters of Elkhart Lake that provides a riparian with their due proportion of the line bounding navigability and a course of access to it from the shore exclusive of every other owner. Because it would create a navigational hazard, the zone of influence cannot extend beyond the Slow-No-Wake Buoys.

(29) Shoreland(s) – Lots or other individual parcels of property that border and are within 1000 feet of the ordinary high water mark of Elkhart Lake or 300’ of any navigable lake or stream or the flood plain, whichever is greater.

(30) Structure – any man made object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed, which includes, without limitation, objects such as patios, parking lots, decks, satellite antennas larger than three feet in diameter and windmills. The definition of structure does not include:

[a] Outdoor furniture or cooking equipment.

[b] Playground apparatus located outside the primary buffer zone.

[c] Watercraft or associated materials.

(d) Retaining walls subject to the conditions contained in Section 17.16(3)

(31) Trunk Diameter – The diameter of the trunk of a tree when measured at a distance of

fifty-four (54) inches above the ground at the base of the tree.

(32) Unnecessary Hardship – circumstances where special conditions, which were not self-created, affect a particular property and make strict conformity with restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purpose of this ordinance. An unnecessary hardship is present where in absence of a variance no reasonable use can be made of the property.

(33) Watercraft - any device used and designed for navigation on water.

(34) Wharf - a structure extending along the shore (generally connected to the uplands throughout its length), built or maintained for the purpose of providing a berth for watercraft or for loading or unloading cargo or passengers onto or from watercraft. Such a structure may include a boat shelter that is removed seasonally.

17.04 SEVERABILITY. If any section, clause, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

17.05 SETBACKS AND SHORELAND LOT DIMENSIONS

(1) Unless an existing development pattern exists, a setback of seventy-five (75) feet from the ordinary high water mark of Elkhart Lake to the nearest part of a building or structure, shall be required for all buildings or structures, except piers, boat hoists, boat racks and boathouses.

(2) A new principal structure may be constructed within the seventy-five (75) foot setback from the OHWM, if previously constructed dwellings within the seventy-five setback exist on both of the two immediately adjacent lots. In this case, the new structure may be constructed with a minimum setback equal to the farthest setback of the existing dwellings from the OHWM, but never within the primary buffer zone.

(3) The use of any type of boathouse, accessory structure or boat shelter for human habitation and the construction or placement of boathouses (Wet) beyond the ordinary high water mark of Elkhart Lake shall be prohibited.

(4) One (1) Boat House (Dry) - of a size no greater than seventy five (75) square feet and set back a minimum of twenty (20) feet from the OHWM will be allowed on each shoreland lot within the area represented by the primary or secondary buffer zones where there is no existing boathouse (wet).

(5) Lawns, gardens, and other common ground landscape techniques, including such fixtures as lawn benches and split rail fences, may be planted or constructed and maintained at the discretion of the lot owner in all areas other than the primary buffer zone. Gardens, plantings, including native plants, and other landscape treatments and techniques that protect the ground surface from eroding into Elkhart Lake may also be planted or constructed or maintained within the primary buffer zone. In order to maintain the character and historic integrity of the lakeshore, lawns, gardens, and other landscaping treatments or techniques existing as of the effective date of

this ordinance shall be allowed in perpetuity; however, existing lawns within the primary buffer zone may not be expanded.

(6) Driveways and vehicular parking areas shall not be closer than the minimum needed to service the primary structure on the shoreland lot but in no case can they be closer to the ordinary high-water mark of Elkhart Lake than the primary structure on the shoreland lot.

(7) The setback for septic tanks, holding tanks and related absorption fields, mound systems or other approved private in-ground sanitary systems must be a minimum of one hundred and fifty (150) feet from the OHWM of Elkhart Lake. Further requirements and specifications for these systems will be found in Chapters 29 and 30 of the Village Ordinances.

(8) Private water well systems for lots not serviced with water by municipal utilities can be placed at any location on the lot as long as permanent landscape damage does not result and filling or grading is not required within the primary buffer zone. Further requirements and specifications for these systems will be found in Chapters 29 and 30 of the Village Ordinances.

(9) Walkways, stairs and lifts (in each case limited in width to four feet) can be placed up to the ordinary high water mark of Elkhart Lake as needed to provide safe access to Elkhart Lake or an approved pier or wharf below the OHWM Elkhart Lake.

(10) Regulations and specifications for front and side yard setbacks are delineated in Chapter 16 of the Village Ordinance.

(11) For all new shoreland lots, the minimum lot width shall be one hundred (100) feet and the minimum lot area shall be:

- (a) 15,000 square feet for sewered lots,
- (b) 30,000 square feet for unsewered lots.

17.06 SHORELINE VEGETATION PROTECTION. (1) **PURPOSE.** Regulating shoreline vegetation is critical to preventing erosion, reducing runoff and the flow of effluents, sediments and nutrients into surface waters. Beyond water quality protection, promoting and preserving shoreline vegetation affords such benefits as providing habitat for wildlife and maintaining natural scenic beauty.

2) **GENERAL PROVISIONS.** (a) Tree cutting in the primary buffer zone shall be limited in accordance with the following provisions: No more than 30% of the trees within the primary buffer zone as of the effective date of this ordinance shall be cut but in no case shall a clear cut to the OHWM of Elkhart Lake be created within the primary buffer zone which exceeds thirty (30) feet in width or shall the total number of trees with a trunk diameter greater than four (4) inches, within the primary buffer zone be reduced below an average of one (1) tree for every five feet of shoreline. A dead, dying or hazardous tree removed from the primary buffer zone must be replaced with a tree that is recommended by the DNR for planting and growth within the primary buffer zone and has a minimum trunk diameter of three (3) inches if the removal of such tree brings the number of trees within the primary buffer zone below the minimum required or increases the width of the clear cut area beyond the maximum allowed thirty (30) feet.

(b) Tree cutting in the secondary buffer zone shall be at the discretion of the lot owner but limited to no more than 30% of the trees in the secondary buffer zone as of the effective date of ordinance. A dead, dying or hazardous tree removed from the secondary buffer zone must be replaced, with a tree that is recommended by the DNR for planting and growth within the secondary buffer zone and has a minimum trunk diameter of three (3) inches, if the removal of such tree brings the number of trees within the secondary buffer zone below the minimum required.

(c) Tree cutting in the principal structure buffer zone shall be at the discretion of the lot owner. A dead, dying or hazardous tree removed from the principal structure buffer zone does not need to be replaced but replacement should be considered to further retain the natural beauty of the shoreland lot.

(d) Tree cutting in the remaining buffer zone shall be at the discretion of the lot owner but limited to no more than 30% of the trees existing as of the effective date of ordinance. A dead, dying or hazardous tree removed in the remaining buffer zone does not need to be replaced but replacement should be considered to further retain the natural beauty of the shoreland lot.

(e) No clear cutting is allowed within six (6) feet of a neighboring lot line.

(f) Natural shrubbery (except for nuisance, e.g. wild grapevines or noxious vegetation, e.g., poison ivy) within the primary and secondary buffer zones shall be preserved insofar as possible. If any vegetation is removed, other equally effective vegetation must replace it.

(g) No fertilizers can be applied within the primary and secondary buffer zones unless free from nitrates and phosphates. No chemicals can be applied to vegetation within the primary or secondary buffer zones that would be injurious to the waters of Elkhart Lake or to wildlife.

(h) Lawns, gardens, and other common ground landscape treatments and techniques, including such fixtures as lawn benches and split rail fences, may be planted or constructed and maintained at the discretion of the lot owner in all areas other than the primary buffer zone. Gardens, plantings, including native plants, and other landscape treatments and techniques that protect the ground surface from eroding into Elkhart Lake may also be planted or constructed and maintained within the primary buffer zone. In order to maintain the character and historic integrity of the lakeshore, lawns, gardens, and other landscaping treatments or techniques existing as of the effective date of ordinance shall be allowed in perpetuity; however, existing lawns within the primary buffer zone may not be expanded.

(i) Pruning of existing trees within the primary and secondary buffer zones shall be limited to no more than 10% of the branches (in addition to dead, dying, or hazardous branches) on any one tree in any calendar year except that such pruning cannot occur on branches within the top 75% height of the tree. Topping of any trees shall not be allowed.

(j) A permit is required for the cutting or removal of any tree with a trunk diameter greater than four (4) inches within all primary and secondary buffer zones along with an approved mitigation plan, if required.

k) Failure to comply with the shoreland vegetation protection provisions of this ordinance will be subject to the penalties outlined in Section 17.09 of this ordinance.

17.07 LAND DISTURBANCE (Filling, Grading, Lagooning and Ponding)

(1) GENERAL PROVISION. Filling, grading, lagooning, ditching, dredging, excavating or ponding which results in substantial detriment to navigable waters by reason of erosion, sedimentation, or impairment of fish and aquatic life shall be prohibited. Alterations of existing areas are also prohibited as well as land disturbances in the primary buffer zone.

(2) PERMIT REQUIRED. (a) All activities mentioned in (1), above, that impact navigable waters require a permit from the Wisconsin Department of Natural Resources. All other land disturbance activities within the area of jurisdiction of this Ordinance shall require a permit from the Village of Elkhart Lake. A permit application can be obtained from the Village Clerk-Treasurer. The filed application must set forth in detail what is planned and when the restoration of the land disturbance will be completed. Based on the facts of the application, a determination will be made to approve or disallow the permit application.

(b) In addition, a permit shall be obtained from the Wisconsin Department of Natural Resources where more than 10,000 square feet of the bank is proposed to be exposed by grading as provided for in Section 30.19 of the Wisconsin Statutes.

17.08 REGULATION OF STRUCTURES BELOW THE ORDINARY HIGH WATER MARK

(1) REQUIRED PERMIT. No person may build, alter, place, restore, reinforce, repair or extend any wharf, pier, boat shelter, boat house, swimming raft, boat rack or mooring buoy within the waters of Elkhart Lake without the issuance of a permit by the Village. Except for wharves, piers, boat shelters, existing boat houses, swimming rafts, boat racks and mooring buoys, no permits will be issued for building, altering, placing, restoring, reinforcing, repairing, or extending any structure which is moored or attached to the bed of Elkhart Lake in any manner, including and without limitation to, ski jumps, water trampolines or water slides.

(2) APPLICATION FOR PERMIT. Any riparian land owner desiring to build, alter, place, restore, reinforce, repair or extend any wharf, pier, boat shelter, existing boathouse, swimming raft, boat rack, or mooring buoy within the waters of Elkhart Lake, must make official application with the Elkhart Lake Village Clerk. In the case of a pier, minor repairs can be made without a permit but no repair(s) or restoration(s) may exceed 50% of the surface (deck) of the pier or 50% of the supporting structure over the life of the pier. No application shall be accepted for building, altering, placing, restoring, reinforcing, repairing, or extending any other structure which is moored to or attached to the bed of Elkhart Lake in any manner including, and without limitation to, such prohibited structures or configurations as ski jumps, water trampolines or water slides. Applications in the form designated by the Village Clerk must show all structures located below the ordinary high water mark for the property. Dimensions of all structures, as well as appropriate distances to the corresponding property lines of the abutting riparian land owners, must be detailed on official application drawings. Types of materials and color of materials used to construct the structures must also be detailed on the application. Applications must be fully

completed. Partial applications or incomplete applications will be denied. An application fee of \$10.00 will be due for each application submitted for inspection.

(3) INSPECTION BY POLICE DEPARTMENT AND GRANTING OF PERMIT.

Upon the filing of such an application, the Village Police Department shall, either personally or through designated agents, make an investigation of the assertions and facts made in the application, and after considering the application and making a determination regarding whether the application and proposed action complies with the provisions of this chapter, may then grant or deny such application. In the case of a pier, no matter when an application is made it will be necessary for the Village Police Department to inspect and photograph the existing structure before it is moved, stored or destroyed. Any permit issued by the Village for a structure which would not be permitted by Chapter 30 of the Wisconsin State Statutes, unless a permit has been granted by the Department of Natural Resources, shall be void and be of no force and effect.

(4) PERMIT REVIEW BY THE VILLAGE BOARD. The Village Board shall have the power to hear and decide appeals where it is alleged that the Village Police Department has made an erroneous finding or order with respect to this chapter. Appeals shall be filed with the Village Clerk. The Village Board may reverse or affirm wholly or in part or may modify any order, requirement, decision or determination appealed from, and shall make such order, requirement, decision or determinations as in its opinion ought to be made. The minutes of proceedings and hearings before the Village Board will be filed with the office of the Village Clerk and shall be open for public inspection during normal office hours.

(5) REVOCATION OF PERMIT. In the event the structure for which a permit has been granted will not be built, maintained, placed or extended in accordance with the plans, specifications, details and drawings submitted, and in the event such structure shall not be used as specified, or if the application contains a material misrepresentation or inaccuracy, then the Police Department may cancel and/or revoke the permit. Within twenty (20) days after such revocation, the owner can file in writing with the Village Clerk a request for public hearing to be held at the next Village Board meeting, provided time permits the Village Clerk to give five (5) days notice by mail to the applicant and any adjoining riparian landowners. If such notification is not possible, the public hearing will be held at the following Village Board meeting with the same notice provisions as detailed above.

(6) WISCONSIN DEPARTMENT OF NATURAL RESOURCES REQUIREMENTS - The Wisconsin Department of Natural Resources has independent jurisdiction over the waters of Elkhart Lake and the lake bed. Any permit issued by the Village for structures below the ordinary high water mark will also be subject to the provisions of all rules and regulations adopted by the State of Wisconsin. If a permit is granted by the Village, the permittee may also be required to obtain a permit from the Wisconsin Department of Natural Resources.

(7) BERTHING OF WATERCRAFT RESTRICTIONS.

(a) The total number of berthing spots a riparian owner may use for overnight docking of watercraft is restricted to two (2) berths for the first 50 feet of shoreline owned and one (1) additional berth for each additional full 50 feet of shoreline owned, except in certain environmentally sensitive cases, as determined by the *Wisconsin* Department of Natural Resources, when fewer berths may be deemed appropriate. Berthing spots include all forms of

watercraft storage below the ordinary high water mark including watercraft tied to piers and/or wharves, to watercraft placed on boat racks and/or boat shelters, to watercraft stored on piers or in other watercraft, as well as to watercraft tied to mooring buoys. However, the number of berthing spots existing as of October 20, 2003 shall be recognized as having nonconforming status. The requirements to receive nonconforming recognition, as well as certain restrictions, are set forth in 17.08 [15], below.

(b) The shoreline shall be measured along the waters edge where the property lines meet the ordinary high water mark. Property owned by more than one person, including the common elements of condominiums, shall be deemed a single property. Adjacent legal lots under common ownership shall be considered a single property.

(c) Conditional use permits to allow more berths may be granted if the specific conditions outlined in section 17.13 of this ordinance are established. All conditional use permits must be granted by the Village Board.

(8) BOAT SHELTER STANDARDS

(a) A boat shelter shall not interfere with public rights and shall not have an adverse effect on aquatic habitat.

(b) A boat shelter shall not interfere with the rights of other riparians, as determined under Section NR 326.07 of the Wisconsin Administrative Code.

(c) A boat shelter shall allow the free movement of water underneath and shall not cause the formation of land on the bed of Elkhart Lake.

(d) Only seasonal boat shelters will be permitted. All boat shelters must be removed from Elkhart Lake from December 1 of each year through March 31 of the following year.

(e) Each boat shelter shall be designed and used exclusively for the berthing of a single watercraft. A boat shelter originally placed or permitted after September 1, 1991 shall not exceed an outside dimension of 12 feet wide by 24 feet long; a boat shelter originally placed or permitted on or prior to September 1, 1991 which does not comply with this size requirement shall be considered a nonconforming use. A seasonal boat shelter shall be deemed to be in continuous use if it is placed in the waters of Elkhart Lake each summer season. The burden of proving that a boat shelter was in place on or prior to September 1, 1991 shall be on the owner of the boat shelter.

(f)) A boat shelter shall be adjacent to a pier, wharf or shoreline.

(g) A boat shelter may include a roof but shall not include walls, sides or equivalent construction. A boat shelter roof shall be pitched not less than 1 foot nor more than 2.5 feet from the roof peak to the bottom of the eaves. Only the size and number of vertical components required to support the watercraft and any roof are permitted.

(h) Storage facilities may only be included above the eaves of a boat shelter so as to be hidden from sight.

(i) A boat shelter may include only a single sign necessary to identify the property and shall not include lighting except as provided for in 17.08(10)(i), below.

(j) A boat shelter may not be placed to extend beyond the maximum allowable length of the pier under subsection (7).

(9) BOAT RACK STANDARDS

(a) Boat racks may not be placed in water depths of greater than two (2) feet.

(b) Boat racks and the corresponding boat hulls placed on those boat racks must not exceed a maximum height of 36 inches above the ordinary high water surface.

(10) GENERAL REQUIREMENTS OF PIERS AND WHARVES

(a) No wharf or pier shall be placed or constructed so as to interfere with the public's rights in the waters of Elkhart Lake or with the rights of neighboring riparian owners. (See addendum for the Wisconsin Department of Natural Resource's —coterminous riparian rights diagram). If there is a question concerning, or conflict over, riparian rights, the neighboring riparian owners on both sides will be notified, and the applicant must produce and pay for a survey to show riparian zones by extension of lot lines or by coterminous riparian right lines (riparian zone of influence) to the line of navigation. If a question still remains about riparian zones, the Wisconsin Department of Natural Resources shall be consulted and its decision on the question shall be binding.

(b) Pier length is limited to the greater of (1) distance to the three foot water depth (2) the length of the boat normally berthed at the pier (3) depth required by the boat normally berthed at the pier unless a conditional use permit is granted under Section 17.13 of this ordinance. (See addendum for information on Wisconsin Department of Natural Resources pier length specifications).

(c) Any wharf or pier extending beyond the shoreline (ordinary high-water mark) shall be so constructed as to allow the free movement of water underneath and in such manner as will not cause the formation of land upon the bed of Elkhart Lake.

(d) A pier shall not exceed six (6) feet in width measured at its widest portion (except as noted in 17.08(10)(e)).

(e) A main pier shall be permitted to have a single L or a single T shaped finger pier as long as the L or T finger pier does not exceed sixteen (16) feet in length. The sixteen (16) feet maximum length includes the width of the main pier. The maximum width of an L or T is eight (8) feet, unless a conditional use permit is granted under section 17.13 of this ordinance.

(f) Every riparian owner may install one (1) pier or one (1) wharf but not both.

(g) A wharf must be constructed immediately adjacent to and touching the shoreline. Such wharf must not extend into the water more than 8 feet from the high water mark of the shoreline. The length of a wharf shall not exceed the total amount of feet needed to berth the allowable number of boats.

(h) Acceptable uses for piers and wharves: As stated in the definitions (17.03), piers and wharves are built and maintained for the purpose of providing a berth for watercraft or for loading and unloading cargo or passengers onto or from watercraft. In addition to their purpose, other acceptable uses for lot owners, their family and guests include sunbathing, fishing, sitting, entertaining and observation of both the lake and people using the lake.

(i) Lighting to facilitate docking or for safety while docking may be used and must be down-focused with a non-intermittent white light. The light must be fitted with an opaque shield to prevent direct visibility to a person on the public waters or on adjacent lands more than 50 feet beyond the berthing structure. The light must be extinguished when not being used for docking purposes.

(11) GENERAL REQUIREMENTS OF SWIMMING RAFTS. Every riparian owner may install one (1) swimming raft subject to the following provisions:

(a) The swimming raft may not exceed 144 square feet in deck size or 38 inches in height.

(b) The swimming raft must be anchored within the defined riparian zone of influence.

(c) The swimming raft must be confined to the riparian zone of influence and may not interfere with public rights in the waterway.

(12) COMMERCIAL MARINAS AND BOAT STORAGE PROHIBITED. No commercial marina, boat storage service, mooring facilities, or any related services, including but not limited to boat fueling, shall be constructed or operated on or within 1000 feet of the high water mark of Elkhart Lake.

(13) GENERAL REQUIREMENTS FOR MOORING BUOYS

(a) No person shall place or use a mooring buoy in the waters of Elkhart Lake without first obtaining a permit as described in (2), above, Application For Permit. - Applications for mooring buoys must comply with the provisions of this ordinance and with the requirements of Wisconsin Statutes 30.772 and Wisconsin Administrative Code NR 5.09, as amended.

(b) Mooring Buoy applications shall clearly indicate the mooring buoy location and the distance of the mooring buoy to the abutting neighboring riparian landowners.

(c) Mooring Buoy applications will take into consideration the following:

(i) The number of boats to be attached to the mooring buoy. (See (7), above, Berthing of Watercraft Provisions for maximum boat berths allowed.)

(ii) The boat(s) that will be tied to a mooring buoy must remain in the permit holder's coterminous riparian zone. (See addendum for diagram of riparian zone specifications) If there is a question about riparian zones, the Wisconsin Department of Natural Resources will be consulted.

(iii) Under no circumstances will a mooring buoy be approved for use on Elkhart Lake if any of the following conditions exist:

(a) The mooring buoy obstructs or interferes with public rights or interest in the navigable waters of Elkhart Lake.

(b) The mooring buoy or use of the mooring buoy interferes with the rights of other riparian land owners.

(c) The mooring buoy or use of the mooring buoy adversely affects critical or significant fish or wildlife habitat.

(d) The mooring buoy is to be placed outside the slow-no-wake zone.

(14) **RESTRICTION OF BOATHOUSES (WET)** No new boathouses may extend into the waters of Elkhart Lake. Existing boathouses may be maintained as allowed by the *Wisconsin* Department of Natural Resources.

(15) **EXISTING STRUCTURES AND USES** – structures and uses existing as of October 20, 2003, that do not comply with the provisions of this chapter will be recognized as having nonconforming status unless they are in violation of state law. - Except as provided in this ordinance, such structures and uses cannot be expanded, extended, enlarged, modified, restored, reinforced, repaired or altered without obtaining a conditional use permit. For existing structures and uses to receive recognition as a nonconforming use or structure, the lake property owner has the legal burden to prove the conditions that exist as of October 20, 2003. The methodology and specific requirements to prove the existing conditions will be set forth in a letter to existing lake property owners in the Village of Elkhart Lake.

17.09 PENALTY (1) **GENERAL PROVISIONS.** Any person or entity that does any of the following shall be subject to a forfeiture of not less than \$50.00 nor more than \$200.00 for each offense, together with the taxable cost of the enforcement action:

(a) Unlawfully obstructs the navigable waters of Elkhart Lake and thereby impairs the free navigation thereof.

(b) Unlawfully places in the navigable waters of Elkhart Lake any substance that may float into and obstruct such waters or impede this free navigation.

(c) Constructs or places any structure or deposits any material in navigable waters in violation of this ordinance.

(d) Fails to comply with any of the provisions of this ordinance including but not limited to setbacks; habitation restrictions; tree cutting, removal and replacement; pruning; land

disturbance; structures below the OHWM; nonconforming uses; obtaining necessary permits; and impervious surface regulations.

(2) EACH DAY A SEPARATE VIOLATION. Each day during which an obstruction exists or provision not complied with in violation of this ordinance is a separate offense.

(3) PUBLIC NUISANCE. Every obstruction constructed or maintained in or over the navigable waters of Elkhart Lake in violation of this ordinance is declared to be a public nuisance, and the construction thereof may be enjoined and the maintenance thereof may be abated by action at the suit of the Village or any citizen thereof.

17.10 NONCONFORMING USES AND STRUCTURES The lawful use of a building, structure or property that existed on October 20, 2003, which is not in conformity with the provisions of this ordinance, may be continued, including the maintenance and repair of such a building or structure, subject to the following conditions:

(1) If such use is discontinued for 12 consecutive months and a future use of the building, structure or property shall conform to this ordinance.

(2) The maintenance and repair of nonconforming structures extending beyond or below the OHWM shall comply with the requirements of Chapter 30 of the Wisconsin Statutes. Structures and uses below the OHWM existing as of October 20, 2003, can be recognized as having a nonconforming status as provided for in Chapter 17.08, above, and as specifically stated in Chapter 30. Wharves, piers, boat shelters, existing boat houses, swimming rafts, boat racks and mooring buoys may not be restored, reinforced repaired, altered, modified, extended or expanded without obtaining a conditional use permit. No application for a conditional use permit will be accepted for building, altering, placing, restoring, reinforcing, repairing or extending any other structure which is moored to, or attached to, the bed of Elkhart Lake in any manner including, and without limitation to, such prohibited structures or configurations ski jumps, water trampolines or water slides.

(3) No modification, alteration, addition or structural repair to any existing building or structure with a nonconforming use or any nonconforming building or structure above the OHWM may exceed 50% of its current equalized value over the life of the building or structure. In the case of piers, minor repair(s) or restoration(s) can be made without a permit but no repair(s) or restoration(s) may exceed 50% of the surface (deck) of the pier or 50% of the supporting structure over the life of the pier. A change in the materials and/or color of the surface of a pier or a change in the materials of the supporting structure shall be considered to be repair or restoration.

(4) If a modification, alteration, addition or structural repair is in excess of 50% of the current equalized value, or for a pier, 50% of its surface (deck) or 50% of the supporting structure that was in place on October 20, 2003, of a existing nonconforming use or nonconforming structure is disallowed by the Village, the property owner may still make the proposed modification, alteration, addition or structural repair if (a) a building or structure with a nonconforming use is permanently changed to a conforming use or, (b) the property owner appeals the Village's decision and obtains relief from a court of competent jurisdiction.

(5) Uses that are nuisances shall not be permitted to continue as nonconforming uses.

(6) If a property owner can establish that a nonconforming structure has been destroyed or damaged after October 20,2003, by violent wind, fire, flood or vandalism, the structure may be reconstructed or repaired to the size, location and use it had immediately before the damage occurred, subject to the following conditions:

(a) A structure that is destroyed or damaged due to a deliberate act by the property owner or his or her agent or due to general deterioration or dilapidated condition may not be reconstructed or repaired except in conformance with the requirements of this ordinance.

(b)The property owner shall bear the burden of proof as to the size, location or use of a destroyed or damaged nonconforming structure had immediately before the destruction or damage occurred.

(c)Repairs are authorized under this provision only to the extent that they are necessary to repair the specific damaged caused by violent wind, fire, flood or vandalism, and then only that portion of the nonconforming structure that has been destroyed may be reconstructed.

(7) The issuance of a building permit does not confer nonconforming status if the building permit was issued erroneously.

17.11 CONFLICT WITH ORDINANCES. The provisions of this Chapter 17 and the provisions of other chapters in the ordinances of the Village of Elkhart Lake are intended to supplement and compliment each other and shall, where possible, be thus interpreted. If, however, any provisions of this Chapter 17 irreconcilably conflicts with a provision of any other ordinance adopted by the Village of Elkhart Lake, the provision imposing the greater duty or obligation shall govern.

17.12 ACCESSORY STRUCTURES (1) Accessory structures (except piers, wharves, boat hoists, boathouses, one boat rack [dry] and decks) shall not be placed within the primary and secondary buffer zones. Accessory structures can be placed in the principal structure and remaining buffer zone.

(2) In addition to the provisions of this Chapter, accessory structures must meet the underlying provisions contained in Chapter 16 of the Village Ordinances.

(3) The boat rack (dry) must be screened with common and usual vegetation found along the shoreland of Elkhart Lake in order to make it as inconspicuous as possible.

(4) Use of accessory structures for human habitation is prohibited.

(5) A building permit is required for the construction, remodeling, repair or renovation of an accessory structure.

17.13 CONDITIONAL USE PERMITS (1) 1) Conditional use permits may be granted by the Village Board provided the riparian landowner applies for a permit with the Elkhart Lake

Village Clerk. Conditional use permit applications must show all structures, dimensions of structures, as well as appropriate distances to the corresponding property lines of the abutting riparian land owners. Applications shall also contain compelling evidence and substantial reasons why a conditional use permit is being requested. These applications may include requests where nonconforming piers, wharves, berths and boat racks may be involved.

(2) Conditional use permits may include requests for:

(a) A pier to exceed the length or width restrictions of this ordinance to accommodate the mooring or berthing of a specific watercraft

(b) Swim rafts to exceed the allowable square footage in planned unit developments (FR Zoning) or a resort (C-2 zoning), provided there is no restriction contained in a development agreement or similar legal document and the raft size does not exceed the Wisconsin Department of Natural Resources maximum square footage limit.

(c) An additional pier or wharf if the riparian landowner demonstrates there is a need to provide proper berthing for water craft, to provide for the safe loading and unloading of people and gear, or to provide accessibility for the supervision of bathers.

(d) An additional boat berth.

(e) An additional boat rack (dry).

(f) An alternate location for a boat shelter.

(g) Repairs as restricted in 17.10.

(3) In passing upon a conditional use permit, the Village Board shall evaluate the effect of the proposed use upon:

(a) Proximity of slow-no-wake zones.

(b) Water quality and/or aquatic life.

(c) Other similar permitted structures/cumulative impact.

(d) Safety and welfare of lake users.

(e) Location of swim areas, mooring buoys, piers, rafts and other permitted structures.

(f) Location and impact on neighboring riparian landowners.

(g) Lakeshore topography (impact on shoreline and on lake aesthetics).

(h) Adequate and safe navigation.

(4) Physical permanent structures (such as wet-boat houses) that existed on October 20, 2003, may continue to be used under a conditional use permit provided that the following provisions are met:

(a) The structure has not and not be extended, enlarged, reconstructed, substituted, moved or structurally altered except when required to do so by State Law or order or to comply with the provisions of this ordinance, and

(b) Total lifetime repairs to the structure do not exceed fifty (50) percent of the current assessed value of the structure, and

(c) Provided that the nonconforming structure is registered with the Village Clerk-Treasurer, the registration of which must include the riparian landowner's name, address, and the current use of the structure.

(5) Upon consideration of the factors listed above, the Village Board shall attach such conditions as are necessary to further the purposes of this ordinance. Violations of any of these conditions shall be deemed a violation of this ordinance. Such conditions may include specifications for, without limitation: type of shore cover; increased setbacks; landscaping and planting screens; term of permit; period of operation; operational controls; sureties; deed restrictions; and type of construction. Unless otherwise specified in the permit, all conditional use permits issued under this section are personal and may not be assigned or transferred.

17.14 SHORELAND MITIGATION. (1) GENERAL PROVISIONS: The construction, alteration, reconstruction or structural repair of structures, as well as impervious surfaces, located in close proximity to the shoreline can cause severe erosion, sedimentation pollution and nutrient loading of such waters. Shoreland mitigation can be used to minimize the impact of shoreland development, to compensate for the loss of shoreland buffer functions, to provide the means to filter runoff, establish ground cover, improve the health of the aquatic community structure and create a shoreline that blends into the natural surroundings. Prior to the construction, alteration, reconstruction or structural repair of any structure that does not meet the setback provisions of this Chapter, or the impervious surface requirements, the land owner shall be required to submit a plan to mitigate the adverse effects of such structures. The plan must detail what ordinance provisions mitigation is being applied for and what mitigation action(s) will be taken to obtain relief from the normal setback or impervious surface requirements. Following submission of the plan to the Village Clerk-Treasurer, the Planning Commission will make a recommendation to the Village Board for approval or disapproval.

(2) Among possible actions, mitigation may involve, *but are not limited to*, one or more of the following:

(a) Restoring a functioning Shoreland buffer area by reestablishing native vegetation, including trees and shrubs, in the prescribed buffer zone

(b) Restoring aquatic habitat

(c) Installing or modifying exterior building materials to blend into surroundings

- (d) Minimizing land disturbance
- (e) Blending the principal and accessory structures into the natural surroundings
- (f) Removing nonconforming accessory structures
- (g) Removing excess fill, rock or material and removing it from the lot
- (h) Creating runoff detention areas, runoff diversion, berms and swales
- (i) Further limitations on tree cutting than provided for in this chapter
- (j) Planting and maintaining additional trees over that provided for in this chapter.

(3) With the submittal of a mitigation plan, the following circumstances, as well as others that could be added from time-to-time, may be allowed:

- (a) Certain improvements and repair involving nonconforming structures
- (b) Certain landward expansions of nonconforming structures

17.15 IMPERVIOUS SURFACE AREA REGULATIONS (1) PURPOSE:

Regulating impervious surface areas is critical because they can adversely impact water quality and aquatic habitat by allowing runoff to cause erosion, pollution, influx of sediments and water temperature fluctuations. In addition, impervious surfaces prevent natural filtration and biological processes that remove nutrients and other pollutants.

(2) GENERAL PROVISIONS:

(a) Impervious surfaces shall be limited to 4% of the total area within the primary buffer zone, 8% of the total area within the secondary buffer zone and for lots zoned R-1, 20% of the total area of a lot but not to exceed 5,000 square feet within the principal structure buffer zone and 15% of the remaining buffer zone. For lots zoned other than R-1, the development shall require the review and approval of the planning commission and the village board. Existing impervious surface areas as of the effective date of this ordinance may be maintained but not improved or expanded if the total impervious surface area enumerated within this paragraph is currently exceeding or would be exceeded.

(b) In order to encourage the maintenance and improvement of the pathway which encircles the lake, the impervious area (to a maximum of four feet in width), needed to provide a pathway that generally runs parallel to the lake and provides passage to the public, will not be included in the restrictions specified above.

(c) The mitigation process delineated in section 17.14 of this ordinance can be used to obtain relief from the impervious surface areas restrictions if the conditions set forth in that section are met.

(d) The normal building permit process must be followed in making application for construction of impervious areas.

17.16 FENCES AND RETAINING WALLS (1) Purpose: Regulation of fences in the shoreland zone is necessary to protect the natural scenic beauty and to allow for the free movement of wildlife along the shore.

(2) Village Ordinance 31.01 shall be in effect for securing a fence permit and the construction and placement of fences except as written in this section.

(3) Retaining walls and terracing shall be allowed in the primary and secondary buffer zones only where it is conclusively demonstrated that there is an ongoing erosion problem. Walls and terraces cannot be used to provide additional outdoor living space in the primary and secondary buffer zones. Walls and terracing cannot be used to provide additional outdoor living space in the primary and secondary buffer zones. Retaining walls shall be allowed in the principal and remaining buffer zones.

(4) No fence or a portion of a fence shall be constructed in the primary buffer zone.

(5) A conditional use permit may be granted to allow for the construction of a privacy pattern fence not to exceed six (6) feet in height on the common border that an R-1 zoned lot shares with a commercial or public use lot. The conditional use permit shall not conflict with 17.16(2), above.

(6) A building permit is required for the construction of all fences, including-retaining walls and terraces.

17.17 BOATHOUSES. GENERAL PROVISIONS: (1) Boathouses cannot be used for human habitation and shall not contain living quarters or plumbing. They shall be used for the storage of watercraft and associated materials only. Boathouses cannot be altered in any fashion that would change the basic exterior or interior of the structure.

(2) Boathouses (Wet). No new boathouses (wet) can be built but existing boathouses can be maintained and repaired but not expanded. Repair and maintenance is limited to 50% of the current equalized value that is on record with the Village Clerk-Treasurer.

(3) Boathouses (Dry). A new boathouse (dry) can be constructed if there is not an existing boathouse (wet) or boathouse (dry) on the same lot. A new boathouse (dry) cannot exceed seventy-five (75) square feet in size and cannot be more than ten (10) feet in height. A new boathouse (dry) must be set back a minimum of 20 feet from the OHWM. Existing boathouses (dry) can be maintained and repaired but not expanded.

(4) The exterior of the boathouse must be painted and/or finished in a natural tone or in a color that is consistent with the finish of the principal structure on the same lot.

(5) Planting of trees or shrubs around boathouses (dry) is required in order for them to better blend with the natural shoreland in order to make them as inconspicuous as possible.

(6) A building permit is required for the construction, remodeling, repair or renovation of any boathouse.

17.18 SHORELAND WALKWAYS

(1) Stairways, elevated walkways and lifts that are essential to access the shoreline because of a steep slope, or wet, unstable soil are permitted in the primary and secondary buffer zones. The site selected for the walkway should be chosen to minimize land disturbance, to minimize erosion, to avoid environmentally sensitive areas and to provide an inconspicuous setting for the structure.

(2) Canopies, roofs and closed railing/walls on stairways and walkways are prohibited.

(3) Stairways shall be supported on piles or footings rather than being excavated. Landings are permitted only where required by safety concerns and shall not exceed forty (40) square feet unless a conditional use permit is obtained.

(4) Maximum width of walkways is four (4) feet in the primary and secondary buffer zones. Where railings are required for reasons of safety, they must be open.

(5) Insofar as possible, the stairways, walkways and lifts should be setback at least six (6) feet from the side yard lot line.

(6) A building permit is required to construct stairways, walkways or a lift.

17.19 ARCHITECTURAL AND CONSTRUCTION CONTROL: (1) The purpose of this section is to provide a process and basis for maintaining harmony in the character and appearance of primary and other structures on the shoreland of Elkhart Lake thus protecting the character and historic integrity of the lakeshore. The regulation of architecture and appearance of buildings erected, remodeled, maintained or repaired will result in the preservation of property values, natural beauty, community stability, and the quality of structures on the shorelands of Elkhart Lake.

(2) No buildings or uses within the Village are permitted that are blighted because of faulty design or construction, failure to maintain them in a proper state of repair, improper management, or due to the accumulation of junk outside of any building or within an open porch or a vehicle used for storage purposes, or other unsightly debris, structurally-unsound fences, construction debris or materials, trash, wood, brick, appliances, and airtight containers, and other items that may depreciate property values or be detrimental to the appearance, neatness, health and cleanliness of the neighborhood.

(3) No building shall be permitted where an exposed façade is not constructed or faced with a finish aesthetically compatible with other facades on the shoreland of Elkhart Lake.

(4) An application for a building permit detailing the intended appearance of the building upon completion is required prior to the construction of any building or the physical alteration of the exterior of any building on the shoreland of Elkhart Lake including painting, staining, re-

siding, or other constructive techniques that could be used to change the physical appearance of the building.

(5) The building inspector or village clerk can approve or disapprove permit. If disapproved, the applicant can appeal to the Village Board of Appeals.

17.20 PERMITS: Shoreland owners will be required to obtain a permit, prior to any of the following activities in addition to requirements delineated in other sections of the Village Ordinances:

- | | |
|---|-------------------|
| (1) Tree Cutting | See Section 17.06 |
| (2) Land Disturbances | See Section 17.07 |
| (3) Structures below OHWM | See Section 17.08 |
| (4) Nonconforming Uses and Structures | See Section 17.10 |
| (5) Accessory Structures | See Section 17.12 |
| (6) Conditional Use | See Section 17.13 |
| (7) Impervious Surface Areas | See Section 17.15 |
| (8) Fences and Retaining Walls | See Section 17.16 |
| (9) Boathouses | See Section 17.17 |
| (10) Stairways, Walkways and Lifts | See Section 17.18 |
| (11) Construction/Alteration of Buildings | See Section 17.19 |