

ORDINANCE NO. 533 - 2008
VILLAGE OF ELKHART LAKE
COUNTY OF SHEBOYGAN
STATE OF WISCONSIN

**AN ORDINANCE TO RECREATE PORTIONS OF CHAPTER 17 OF THE MUNICIPAL
CODE OF THE VILLAGE OF ELKHART LAKE RELATING TO SHORELAND
ZONING**

The Board of Trustees of the Village of Elkhart Lake, Sheboygan County, Wisconsin, do ordain as follows:

Section 1. The following portions of Chapter 17 of the Municipal Code of the Village Of Elkhart Lake, Wisconsin, entitled “Shoreland Ordinance” are hereby repealed and recreated as follows:

17.06 SHORELINE VEGETATION PROTECTION.

(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.

(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.

**17.08 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 and review.

(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.

(8) BOAT SHELTER STANDARDS

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

(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.

(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.**

(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. **Following the sale of a property or transfer of title, a nonconforming pier must be brought into compliance with provisions and pier specifications outlined in Section 17.08 (10) of this ordinance.**

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:

(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.

17.13 CONDITIONAL USE PERMITS (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.

Section 2. This Ordinance shall become effective upon adoption and publication as required by law.

Adopted this _____ day of _____, 2009

Village of Elkhart Lake

By: _____
Village President

Attest:

Village Clerk/Treasurer