

Waterfront/Shoreland Zoning Variances - As Clear as Mud

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Real Estate E-Newsletter
04.01.2010

Obtaining approval for a waterfront development can be especially difficult due to Minnesota's waterfront/shoreland ordinances. These ordinances add a layer of regulation to the requirements of the underlying zoning district. The specific requirements will depend on the type of water affected (lake, stream, river, scenic river, etc.) and the specific language of the local ordinance. The Minnesota Department of Natural Resources ("DNR") has established minimum requirements for local ordinances, and local governments may adopt rules or ordinances which are more protective than the DNR's minimum standards and criteria.

As with requirements of the underlying zoning district, it may be impossible or impractical to comply with all of the requirements of the ordinance. In this situation, the landowner or developer needs to request a variance from the local authority, and the DNR will be able to comment on the request. A number of issues may arise during the process.

1. **Inconsistent and/or Confusing Requirements.** Unlike lots on city blocks, lots or proposed lots on a waterfront are rarely rectangular, and requirements such as minimum lot width and setbacks will need to be met at a number of locations, including the waterfront. This can result in disputes on the correct application of the requirements and the correct locations to make measurements. Also, due to the overlapping regulations, it is not uncommon for planning staff to change its initial opinion on what is actually required to obtain approval for the project.
2. **Incorrect Statements of the Law.** The local zoning authority, whether a city or County, will apply a "standard" or "rule of law" when deciding whether to grant a variance. The ordinance will usually try to restate the statutory language for the variance standard, with numerous variations in the exact wording. The planning staff's or municipal attorney's statement on the criteria to meet the standard may not be consistent with case law. The Minnesota Supreme Court recently held that a variance to a setback requirement for a lake lot must be permitted by a county zoning authority when the applicant makes a showing of "practical difficulties." Whether this same standard applies to a variance request before a city zoning authority has not been decided by the Supreme Court.
3. **Undue Deference to the DNR's Position.** Again, the DNR will be able to comment on the proposed variance, and the applicant should contact DNR staff to explain the project and its impact on the affected body of water. Otherwise, there is a chance that the DNR will simply recommend denial, and the local zoning authority may take the path of least resistance and defer to the DNR.

4. **Environmental Impacts.** When faced with the need to obtain a variance from a waterfront/shoreland ordinance, the applicant should explain how the proposal is in keeping with the spirit and intent of the ordinance by, for example, conserving the economic and natural environmental value of the body of water. The applicant also should consider offering additional voluntary controls that add environment value, such as changing the flow of stormwater, installing rain gardens or agreeing to additional setbacks from the water.

(April, 2010)

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