

## **Governor's Clean Water Initiative: Shoreland Rules Update Project Article Number 8**

**DNR NEWS**

**Fall 2005**

### **Your Lake, Our Lakes: Variances must not alter the local character of a place**

By Paul Radomski and Russ Schultz

You spent your hard-earned money on a lake lot where you want to build your dream retreat. Unfortunately, you find out you need a variance. What is a variance, when can it be granted, and what conditions may be imposed on a variance to protect adjacent property owner values and the public interest?

A variance is a process that governments use to give citizens the permission to break their own zoning ordinance rules for reasons of exceptional circumstance. Variances can only be granted when they are in harmony with the intent of the ordinance. In Minnesota, granting of variances also depends on determination of undue hardship. Undue hardship, as defined by Minnesota law, requires three conditions.

First, the property can't be put to a reasonable use if used under conditions of the ordinance. For example, if a substandard lot was created, you perhaps would not receive a variance to build a lakehome because you still could use the lot reasonably as a picnic site and a place to access the lake. Alternatively, say a property owner had a 25,000 square foot lot where 30,000 square foot lots are required, a variance to allow a building site might have a good chance of being granted.

Second, undue hardship also means that your predicament is due to circumstances unique to the property, not something you created. For example, you built a lake cabin on the lot so that the place you wish to now build your garage or addition would be closer to the lake than the required setback. You created this dilemma, and a variance might not be granted. Whereas, say a small wetland was in the middle of your lot and you request a variance such that you could build your cabin closer to the lake than the required setback. Here, since your predicament is due to the natural character of your lot, you might receive a variance.

Third, if a variance was granted it would not alter the essential character of the locality. For example, you wish to built a large, tall home on the lake that would exceed the maximum height of structures allowed of 35 feet. If the character of development in the area is mostly single story homes less than 35 feet, it is possible that a variance might not be given since a large visually dominating structure might be perceived as altering the character of the area.

All these three conditions must be considered and applied to each variance request, and the burden of establishing undue hardship rests with the person requesting the variance. And under law, economic or financial hardship alone does not constitute a hardship.

In addition, no variance can be granted that would allow any use that is prohibited in the zoning district in which the property is located. For example, you could not receive a variance to allow a commercial use in a residential district that prohibits commercial uses.

A Board of Adjustment grants or denies variance requests. People who serve on these boards deserve a lot of respect. They must make difficult, impartial decisions that often are subjective. They must determine the facts, apply the criteria in the ordinance, examine alternatives, consider conditions, make a reasoned and objective decision, and document the process. Board decisions have important consequences. Zoning ordinances and their compliance over time defines a community, and when done right they can increase the economic and natural resource value of an area.

Governor Pawlenty's Clean Water Initiative pilot project in the north central lakes area is bringing people together to create an alternative set of shoreland development standards in the lakes area. Citizens working on the project have been discussing possible conditions attached to variances to mitigate water quality impacts of shoreland development and to protect adjacent property values. The updated standards adopted through this project will give local governments an alternative for local ordinances.

Details of the Shoreland Rules Update project are online at [www.dnr.state.mn.us/waters](http://www.dnr.state.mn.us/waters) (Click on the Governor's Clean Water Initiative link). Email comments to [shorelandupdate@dnr.state.mn.us](mailto:shorelandupdate@dnr.state.mn.us) .

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