
CITY OF LONG BEACH

ZONING MEETING PACKET FOR March 14, 2018



CITY OF LONG BEACH
AGENDA
BOARD OF ADJUSTMENT / PLANNING AND ZONING COMMISSION
March 14, 2018
6:30 PM

1. Call to Order
2. Roll Call
3. Additions or Deletions to the Agenda
4. Public Hearings
 - a. Variance request to allow for 45 recreational vehicle campsites (max. allowed is 32) for a new commercial planned unit development (RV resort).
 - i. Applicant: Dave Schroeder.
 - ii. Property Owner: DMZ Properties LLC.
 - iii. Partial Legal Description: Subd of Govt Lot 6, Part of Government Lots 1 and 6 as recorded on Doc#248145 and Doc#235791. Sections 10 and 11, Township 125, Range 38.
 - iv. Property Address: 23948 North Lakeshore Drive.
 - v. Parcel number(s): 24-0113-000, 24-0113-003 and 24-0069-000.
5. Zoning Administrator's Report
 - a. Permits
 - b. Correspondence
 - c. Enforcement Actions
6. Other Business
7. Adjournment

This agenda is not exclusive. Other business may be discussed as deemed necessary.

STAFF REPORT

Application: Variance request to allow for 45 recreational vehicle campsites (max. allowed is 32) for a new commercial planned unit development (RV resort).

Applicant: Dave Schroeder

Property Owner: Loren Schroeder

Agenda Item: 4(a)

Background Information:

- **Proposal:** The applicants are proposing to create a new RV Resort Commercial Planned United Development to include 45 recreational campsites (38 units are proposed initially, and shown on the attached site plan – an additional 7 would be for a future time period and would be in the second tier of both Shallow Pond and Lake Minnewaska). A variance is required since the maximum allowed by ordinance is 32 campsites. In exchange for granting the variance, the applicant states he would give up all building rights in Tier 1 of Lake Minnewaska.

Standards for the Shoreland Management Overlay District apply as the property proposed for development is within 1000 feet of Shallow Pond to the north and Lake Minnewaska to the south. Required setbacks from each of the lakeshores are met and the camping sites proposed starting at approximately 1144 feet elevation are more than three feet above the ordinary high water (OHW) level of 1138.1, required by ordinance.

Campsite areas are a permitted use for PUDs in the Tier One and Tier Two shoreland areas proposed, provided development density standards are met.

- **Location:**
 - Property address: 23948 North Lakeshore Drive
 - Sec/Twp/Range: 11-125-38
 - Parcel number(s): 24-0113-000, 24-0113-000, 24-0069-000
- **Zoning:** RC - Residential/Commerical, Shallow Pond (Recreational Development lake) and Lake Minnewaska (General Development lake)
- **Lot size:** Approx. 8 acres according to Pope County parcel data (9 acres when including parts of Shallow Pond that are within the parcel boundaries).
- **Septic System Status:** The campsites would need to be served by public sewer and water. The City of Glenwood would need to approve accepting the additional sewage. Councilmember Pfeiffer is in the process of checking with Glenwood regarding this matter.
- **Natural Features:**
 - Floodplain: The proposed RV sites are not within an identified floodplain.
 - Bluff/Steep Slopes: The lot does contain steep slopes near the shorelines. The area of the proposed campsites is relatively flat.

- Wetlands: There do not appear to be any wetlands that would impact this proposal. There are wetlands near the shoreline of both Shallow Pond and Lake Minnewaska.
- Current Shoreline Conditions: The parcels to be developed abut the shoreland of Shallow Pond to the north and Lake Minnewaska to the south. The Shallow Pond shoreline has a heavy band of bulrushes/cattails. The Lake Minnewaska shoreline is a narrow strip of land between the road and the lake and has some aquatic vegetation.

Applicable Statutes/Ordinances:

Minnesota Statutes

462.357 (2016) OFFICIAL CONTROLS: ZONING ORDINANCE.

Subd. 6. Appeals and adjustments.

Appeals to the board of appeals and adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The board of appeals and adjustments has the following powers with respect to the zoning ordinance:

(1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.

(2) To hear requests for variances from the requirements of the zoning ordinance including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the ordinance. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The board or governing body as the case may be may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

City of Long Beach – Zoning Ordinance

28.08: PLANNED UNIT DEVELOPMENTS (PUD'S).

- A. Types of PUD's Permissible. Planned unit developments (PUD's) are allowed for new projects on undeveloped land, redevelopment of previously built sites, or conversions of existing buildings and land. The land use districts in which they are an allowable use are identified in the land use district descriptions in Section 28.04 Letter B of this Chapter and the Zoning Map of Long Beach.
- B. Processing of PUD's. Planned unit developments must be processed as a conditional use, except that an expansion to an existing commercial PUD involving six (6) or less new dwelling units or sites since the date this section was adopted is permissible as a permitted use provided the total project density does not exceed the allowable densities calculated in the project density evaluation procedures in Section 28.08 Letter E of this Chapter. Approval cannot occur until the environmental review process (EAW/EIS) is complete.
- D. Site "Suitable Area" Evaluation. Proposed new or expansions to existing planned unit developments must be evaluated using the following procedures and standards to determine the suitable area for the dwelling unit/dwelling site density evaluation in Section 28.08 Letter E of this Chapter.
1. The project parcel must be divided into tiers by locating one or more lines approximately parallel to a line that identifies the ordinary high water level at the following intervals, proceeding landward.

Shoreland Tier Dimensions

	Unsewered (feet)	Sewered (feet)
General development lakes – first tier	200	200
General development lakes – second & additional tiers	267	200
Recreational development lakes	267	267
Natural environment lakes	400	320
All river classes	300	300

2. The suitable area within each tier is next calculated by excluding from the tier area all wetlands, bluffs, or land below the ordinary high water level of public waters. This suitable area and the proposed project are then subjected to either the residential or commercial planned unit development density evaluation steps to arrive at an allowable number of dwelling units or sites.
- E. Residential and Commercial PUD Density Evaluation. The procedures for determining the "base" density of a PUD and density increase multipliers are as follows. Allowable densities may be transferred from any tier to any other tier further from the waterbody, but must not be transferred to any other tier closer.
2. Commercial PUD "Base" Density Evaluation:

- a. Determine the average inside living area size of dwelling units or sites within each tier, including both existing and proposed units and sites. Computation of inside living area sizes need not include decks, patios, stoops, steps, garages, or porches and basements, unless they are habitable space.
- b. Select the appropriate floor area ratio from the following table.

*Average environment unit floor transition and lakes area (sq. ft.)	Commercial Planned Unit Development		
	Floor Area Ratios*	Public waters classes	
	Sewered general Second and additional tiers lakes; first on unsewered tier on general unsewered development general lakes; development recreational lakes; urban, agricultural, tributary	development lakes; development Natural lakes; and forested river segments	
200	.040	.020	.010
300	.048	.024	.012
400	.056	.028	.014
500	.065	.032	.016
600	.072	.038	.019
700	.082	.042	.021
800	.091	.046	.023
900	.099	.050	.025
1,000	.108	.054	.027
1,100	.116	.058	.029
1,200	.125	.064	.032
1,300	.133	.068	.034
1,400	.142	.072	.036
1,500	.150	.075	.038

*For average unit floor areas less than shown, use the floor area ratios listed for 200 square feet. For areas greater than shown, use the ratios listed for 1,500 square feet. For recreational camping areas, use the ratios

listed at 400 square feet. Manufactured home sites in recreational camping areas shall use a ratio equal to the size of the manufactured home, or if unknown, the ratio listed for 1,000 square feet.

- c. Multiply the suitable area within each tier by the floor area ratio to yield total floor area for each tier allowed to be used for dwelling units or sites.
- d. Divide the total floor area by tier computed in subsection c above by the average inside living area size determined in subsection a above. This yields a base number of dwelling units and sites for each tier.
- e. Proposed locations and numbers of dwelling units or sites for the commercial planned unit development are then compared with the tier, density and suitability analyses herein and the design criteria in Section 28.08 Letter F of this Chapter.

3. Density Increase Multipliers:

- a. Increases to the dwelling unit or dwelling site base densities previously determined are allowable if the dimensional standards in Section 28.05 of this Chapter are met or exceeded and the design criteria in Section 28.08 Letter F of this Chapter are satisfied.
 - b. The allowable density increases in Item b. below will only be allowed if structure setbacks from the ordinary high water level are increased to at least fifty percent (50%) greater than the minimum setback, or the impact on the waterbody is reduced an equivalent amount through vegetative management, topography, or additional means acceptable to the local unit of government and the setback is at least twenty-five percent (25%) greater than the minimum setback.
- b. Allowable Dwelling Unit or Dwelling Site Density Increases for Residential or Commercial Planned Unit Developments.

Density evaluation tiers	Maximum density increase within each tier (percent)
First	25
Second	50
Third	100
Fourth	100
Fifth	100

F. Maintenance and Design Criteria.

1. Maintenance and Administration Requirements.

- a. Before final approval of a planned unit development, adequate provisions must be developed for preservation and maintenance in perpetuity of open spaces and for the continued existence and functioning of the development.
- b. Open space preservation. Deed restrictions, covenants, permanent easements, public dedication and acceptance, or other equally effective and permanent means must be provided to ensure long-term preservation and maintenance of open space. The instruments must include all of the following protections:
 - (1) Commercial uses prohibited (for residential PUD's).
 - (2) Vegetation and topographic alterations other than routine maintenance prohibited.
 - (3) Construction of additional buildings or storage of vehicles and other materials prohibited.
 - (4) Uncontrolled beaching of watercraft prohibited.
- c. Development organization and functioning. Unless an equally effective alternative community framework is established, when applicable, all residential planned unit developments must use an owners association with the following features.
 - (1) Membership must be mandatory for each dwelling unit or site purchaser and any successive purchasers.
 - (2) Each member must pay a pro rata share of the association's expenses, and unpaid assessments can become liens on units or sites.
 - (3) Assessments must be adjustable to accommodate changing conditions.
 - (4) The association must be responsible for insurance, taxes, and maintenance of all commonly owned property and facilities.

2. Open Space Requirements. Planned unit developments must contain open space meeting all of the following criteria:

- a. At least fifty percent (50%) of the total project area must be preserved as open space.
- b. Dwelling units or sites, road rights-of-way, or land covered by road surfaces, parking areas, or structures, except water-oriented accessory structures or facilities, are developed areas and shall not be included in the computation of minimum open space.

- c. Open space must include areas with physical characteristics unsuitable for development in their natural state, and areas containing significant historic sites or unplatted cemeteries.
 - d. Open space may include outdoor recreational facilities for use by owners of dwelling units or sites, by guests staying in commercial dwelling units or sites, and by the general public.
 - e. Open space may include subsurface sewage treatment systems if the use of the space is restricted to avoid adverse impacts on the systems.
 - f. Open space must not include commercial facilities or uses, but may contain water oriented accessory structures or facilities.
 - g. The appearance of open space areas, including topography, vegetation, and allowable uses, must be preserved by use of restrictive deed covenants, permanent easements, public dedication and acceptance, or other equally effective and permanent means.
 - h. The shore impact zone, based on normal structure setbacks, must be included as open space. For residential PUD's, at least fifty percent (50%) of the shore impact zone area of existing developments or at least seventy percent (70%) of the shore impact zone area of new developments must be preserved in its natural or existing state. For commercial PUD's, at least fifty percent (50%) of the shore impact zone must be preserved in its natural state.
3. Erosion Control and Stormwater Management. Erosion control and stormwater management plans must be developed and the PUD must include the following.
- a. Be designed and the construction managed, to minimize the likelihood of serious erosion occurring either during or after construction. This must be accomplished by limiting the amount and length of time of bare ground exposure. Temporary ground covers, sediment entrapment facilities, vegetated buffer strips, or other appropriate techniques must be used to minimize erosion impacts on surface water features. Erosion control plans approved by a soil and water conservation district may be required if project size and site physical characteristics warrant.
 - b. Be designed and constructed to effectively manage reasonably expected quantities and qualities of stormwater runoff. Impervious surface coverage within any tier must not exceed twenty-five percent (25%) of the tier area, except that for commercial PUD's thirty-five percent (35%) impervious surface coverage may be allowed in the first tier of general development lakes with an approved stormwater management plan and consistency with Section 28.05 Letter C of this Chapter.

4. Centralization and Design of Facilities. Centralization and design of facilities and structures must be done according to the following standards.
 - a. Planned unit developments must be connected to publicly owned water supply and sewer systems, if available. On-site water supply and sewage treatment systems must be centralized and designed and installed to meet or exceed applicable standards or rules of the Minnesota Department of Health and Section 28.05 Letter B and Letter H of this Chapter. On-site sewage treatment systems must be located on the most suitable areas of the development, and sufficient lawn area free of limiting factors must be provided for a replacement soil treatment system for each sewage system.
 - b. Dwelling units or sites must be clustered into one or more groups and located on suitable areas of the development. They must be designed and located to meet or exceed the following dimensional standards for the relevant shoreland classification: setback from the ordinary high water level, elevation above the surface water features, and maximum height. Setbacks from the ordinary high water level must be increased in accordance with Section 28.08 Letter E Number 3 of this Chapter for developments with density increases.
 - c. Shore recreation facilities, including but not limited to swimming areas, docks, and watercraft mooring areas and launching ramps, must be centralized and located in areas suitable for them. Evaluation of suitability must include consideration of land slope, water depth, vegetation, soils, depth to groundwater and bedrock, or other relevant factors. The number of spaces provided for continuous beaching, mooring, or docking of watercraft must not exceed one for each allowable dwelling unit or site in the first tier, notwithstanding existing mooring sites in an existing commercially used harbor. Launching ramp facilities, including a small dock for loading and unloading equipment, may be provided for use by occupants of dwelling units or sites located in other tiers.
 - d. Structures, parking areas, and other facilities must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks, color, or other means acceptable to the local unit of government, assuming summer, leaf-on conditions. Vegetative and topographic screening must be preserved, if existing, or may be required to be provided.
 - e. Accessory structures and facilities, except water oriented accessory structures, must meet the required principal structure setback and must be centralized.

- f. Water-oriented accessory structures and facilities may be allowed if they meet or exceed design standards contained in Section 28.05 Letter B of this Chapter and are centralized.

28.05: ZONING, WATER SUPPLY AND SANITARY SEWER PROVISIONS.

- A. Lot Area and Width Standards. The lot area and lot width standards for single, duplex, triplex and quad residential lots created after the date of enactment of this section for the lake and river/stream classifications are the following:

2. Sewered Lakes.

b. Recreational Development.

	Riparian Lots		Nonriparian
	Area	Width	Area
Single Family Dwelling 75	20,000	75	15,000
Two Family Dwelling 135	35,000	135	26,000
Multiple Family or Townhouse (3 dwelling units) 190	50,000	195	38,000
Multiple Family or Townhouse (4 dwelling units) 245	65,000	255	49,000

c. General Development.

	Riparian Lots		Nonriparian
	Area	Width	Area
Single Family Dwelling 75	15,000	75	10,000
Two Family Dwelling 135	26,000	135	17,500
Multiple Family or Townhouse (3 dwelling units) 190	38,000	195	25,000
Multiple Family or Townhouse (4 dwelling units) 245	49,000	255	32,500

4. Additional Special Provisions.

- a. Residential subdivisions with dwelling unit densities exceeding those in the tables in Section 28.05 Letter A Number 2-3 of this Chapter can only be allowed if designed and approved as residential planned unit developments under Section 28.08 of this Chapter. Only land above the ordinary high water level of public waters can be used to meet lot area standards, and lot width standards must be met at both the ordinary high water level and at the building line. The sewer lot area dimensions in Section 28.05 Letter A Number 2 of this Chapter can only be used if publicly owned sewer system service is available to the property.

B. Placement, Design, and Height of Structures.

1. Placement of Structures on Lots. When more than one setback applies to a site, structures and facilities must be located to meet all setbacks.

- a. Structure and On-site Sewage System Setbacks from Ordinary High Water Level*.

Classes of Public Treatment Waters System Lakes	Setbacks (in feet)*		
	Structures		Sewage
	Unsewered	Sewered	
Natural Environment	150	150	150
Recreational Development	100	75	75
General Development	75	50	50

- b. Additional Structure and On-site Sewage System Setbacks. The following additional setbacks apply, regardless of the classification of the waterbody:

Setback From: System	Structure Setback	On-site Sewage
(1) Top of bluff.	30 feet	50 feet

- c. Bluff Impact Zones. Structures, impervious surfaces and accessory facilities, except stairways and landings, must not be placed within bluff impact zones.

Findings of Fact: The following findings of fact are presented by Staff for consideration by the Board of Adjustment:

1. **Will the granting of the variance be in harmony with the general purposes and intent of the City of Long Beach Land Use (Zoning) and/or Subdivision Ordinance?**

The zoning ordinance would allow for a RV campground through an appropriate PUD design, however the spirit and intent of the ordinance (maximum development density) is to create uniformity in the number of RV units or sites on a lot (in a ratio to its lot size). This analysis allows for a "density bonus" if certain conditions are met, which the applicant has used to arrive at the allowable 32 units total. The applicant's request, however, is to increase the number of units by an additional 13 to a total of 45 units. As there is no provision in the ordinance to go this high, they are requesting a variance.

The applicant proposes to build 13 more camping sites than is allowable according to the standard which includes the added 50 percent multiplier. What has been proposed would violate the intent of the ordinance to impose limits on the development of shoreland areas.

2. Will the granting of the variance be consistent with the City of Long Beach Comprehensive Plan?

The Comprehensive Plan states that within the Recreational Commercial Land Use and Zoning the City will allow space for resort areas and commercial properties including new or expanded commercial activities. In this respect, the proposal is consistent with the Plan. However, the Land Use Plan also states that the minimum standards from overlay districts are appropriate and applicable. Shoreland development standards are exceeded with the proposal provided and in this respect it would be inconsistent with the Plan.

3. Is the proposed use of the property reasonable?

An RV resort is an allowable use for a PUD in this area provided it is within the maximum allowable development density. The design proposed does not meet the density requirement for a PUD without a variance. It would appear the site could be put to reasonable use and meet the ordinance requirements with fewer camping units. The applicant indicates that it would not be financially feasible to have an RV campground, given the costs of installing utilities, etc., without the additional units allowed.

4. Is the plight of the landowner due to circumstances unique to the property not created by the landowner?

The need for the variance appears to be due to the applicants desire to more fully develop the site with additional camping units, many more than are allowable. They also indicate the cost of providing sewer and other utilities to the site. The owner proposes a trade-off, that in exchange for allowing for the variance as proposed with this PUD, he would give up all building rights in Tier 1 of Lake Minnewaska.

5. Will the variance, if granted, alter the essential character of the locality?

The essential character of the area is residential while allowing for resorts and other transitional uses as appropriate through the conditional use/PUD process. This proposed use providing RV campsites seems consistent with nearby land uses and the overall plan for this transitional lake area. The high number of units,

however, compared to what is allowed could be considered out of character with the area.

6. Are economic considerations the only reason the applicant cannot meet the strict requirements of the ordinance?

The applicant has indicated that the costs of providing sewer and other utilities necessitate the additional revenue that 45 sites would provide. They also indicate that the site would be a better use than what has been there in the past and an overall benefit to the City.

7. Could the practical difficulty be alleviated by a feasible method other than a variance (taking into account economic considerations)?

The development could proceed without exceeding the maximum allowable units. The practical difficulty for the applicant in presenting a proposal that would include fewer units is unclear, but relates to the cost of providing sewer and other utilities and indicating they feel the use would be of a benefit to the City.

8. Will the granting of the variance adversely affect the environmental quality of the area?

If the site is managed properly, environmental impacts should be minimal. This depends largely on how the site is used by people leasing sites and the overall management of the site. While the applicant does not anticipate further erosion and runoff, the proposal would place more camping sites with potential for full seasonal usage in close proximity to the lake. Exceeding the density standard would arguably result in more risk of environmental impacts to sensitive shorelands and lakes.

Board of Adjustment Direction: The Board of Adjustment may approve the variance request, deny the request(s), or table the request(s) if the Board should need additional information from the applicant. If the Board should approve or deny the request, the Board should state the findings which support either of these actions.

Staff Recommendation: Based on the findings of fact noted above, **Staff cannot recommend approval of the requested variances as presented**, unless the applicant is able to present an argument meeting the requirements for a variance for how meeting the density limitations presents a practical difficulty to their use of the property. The applicant has the option of creating an RV campground that does not go beyond the maximum allowable 32 units for the area defined. Increasing the campsite density beyond what is allowed does not appear reasonable or in keeping with the spirit of the ordinance.

Also, note the comment letter from the MN DNR regarding this matter, recommending denial of the requested variance and their comment that they feel "that the City would be negligent in its administration of their Shoreland Ordinance if they approve this variance. If the variance is not denied, the decision should be tabled until a CUP for the commercial PUD can be evaluated concurrently."

If the Council is to approve the variance, it would need to establish findings of fact that support why keeping density within the allowed limits would represent a practical difficulty justifying a variance.

If the Council is inclined to approve a higher number of units, Staff would recommend tabling of the variance application, so as to allow for the related Planned Unit Development application to be submitted, so as to allow a full review of the proposed development prior to making a final decision on the current variance application. This would be consistent with the DNR recommendation and allow for the City to review all aspects of the proposed development before making any final decisions.

If the Council decides to approve the variance requested without tabling of the application (or with a lesser number of units over the maximum allowed), Staff would recommend the following conditions:

1. That the variance will not be valid unless all related applications required by City and state regulations (not including the number of units) for the proposed development (including those applicable to planned unit developments and any environmental review required by state law under MN Rules 4410.4300 or other applicable regulations) are approved and the related requirements are met, unless separate variances are approved.
2. That the variance will not be valid unless the City of Glenwood accepts the sewage generated by the development, or another plan for sewage treatment acceptable to the City Council is approved (this shall be addressed prior to any approval of the planned unit development).
3. That the applicant provides a stormwater management plan, prepared by a qualified professional or professional engineer, to show that the stormwater from the site will be adequately treated prior to entering either Shallow Pond or Lake Minnewaska, consistent with best management practices and related state or local regulations.
4. That the applicant submits a screening plan acceptable to the City Council to ensure that the development does not create an unusual negative visual impact as viewed from the lake or neighboring properties.
5. That the applicant provides a wetland delineation of all wetlands on the site that may be impacted by the proposed RV sites or other improvements on the lot. No filling of wetlands shall be permitted without approval of the appropriate regulatory agency.
6. That the number of slips allowed at any marina shall not be increased beyond what would be allowed for the number of allowable RV units within the planned unit development.
7. That no RV units shall be allowed, now or in the future, within the 1st Tier of Lake Minnewaska.

VARIANCE SKETCH
PRELIMINARY PLANNED UNIT DEVELOPMENT,
IMPERVIOUS SURFACE STUDY, DENSITY STUDY &
OPEN-SPACE CALCULATIONS OF
SCHROEDER CAMPGROUND

STOECKEL-JAHNER SURVEYING FILE NO. 6186-A

DEVELOPMENT DATA:

OWNER:
Loren Schroeder
23948 North Lakeshore Drive
Glenwood MN 56334

DEVELOPER:
Dave Schroeder
725 Hwy 55 N.
Glenwood MN 56334
(320) 491-2361

SURVEYOR:
Stoeckel-Jahner Surveying Inc
1206 3rd Avenue East
Alexandria MN 56308
(320) 763-6855

DENSITY CALCULATIONS

Shallow Pond Drainage

Tier One Base Density

Suitable area in Tier One equals 159,046 Sq.Ft.

$159,046 (.028) = 4,451 / 400 = 11.13$ or

11 units allowed in Tier One

MULTIPLIER: $1.25 (11.13) = 13.91$ or

14 units allowed with multiplier

Tier Two Base Density

Suitable area in Tier Two equals 51,133 Sq.Ft.

$51,133 (.028) = 1,432 / 400 = 3.58$ or

4 units allowed in Tier Two

MULTIPLIER: $1.5 (3.58) = 5.37$ or

5 units allowed with multiplier

Lake Minnewaska Drainage

Tier One Base Density

Suitable area in Tier One equals 49,215 Sq.Ft.

$49,215 (.056) = 2,756 / 400 = 6.89$ or

7 units allowed in Tier One

MULTIPLIER: $1.25 (6.89) = 8.61$ or

9 units allowed with multiplier

Tier Two Base Density

Suitable area in Tier Two equals 21,323 Sq.Ft.

$21,323 (.056) = 1,194 / 400 = 2.99$ or

3 units allowed in Tier Two

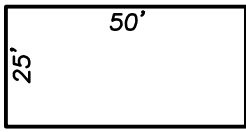
MULTIPLIER: $1.5 (2.99) = 4.48$ or

4 units allowed with multiplier

25 total units allowed

32 total units allowed with multiplier

TYPICAL UNIT AS SHOWN



PROPOSED ROAD 20' WIDE

LEGEND

● IRON MONUMENT FOUND

- GAS VALVE
- POLE GUY
- SIGN
- UTILITY MANHOLE
- MAILBOX
- TELECOMMUNICATIONS RISER
- ELECTRIC METER
- LIGHT POLE
- AIR CONDITIONER
- POWER POLE
- SANITARY MANHOLE
- SEPTIC RISER
- WELL
- CHAIN-LINK FENCE
- WIRE FENCE
- OVERHEAD ELECTRIC
- SANITARY SEWER
- SANITARY FORCEMAIN

- INDEX CONTOUR
- INTERMEDIATE CONTOUR
- WETLAND
- BITUMINOUS SURFACE
- BARRIER CURB (TYP.)
- CONCRETE SURFACE
- LANDSCAPING
- GRAVEL SURFACE
- RIP-RAP
- CULVERT

ZONING INFORMATION:

EXISTING ZONING: Within 1000' of Lakes Shoreland District Boundary

EXISTING LAKE ZONING: Lake Minnewaska - General Development

OHW (Ordinary High Water Level) of Lake Minnewaska = 1138.1 (NGVD 29)

EXISTING LAKE ZONING: Shallow Pond - Recreational Development

NOTE:

The information provided herein was established using the criteria set forth by The Long Beach City Code for residential Planned Unit Developments.

SEC. TWP. RING: 11-125-38

DATE: 01-23-18

DRAWN BY: DLS

CHECKED BY: MEFJ

FILE NUMBER: 6632

PREPARED FOR: DAVE SCHROEDER

MARK F. JAHNER - LICENSE NO. 44493
1206 3rd Avenue East P.O. Box 366 Alexandria, MN 56308
Phone 320-763-6855 Fax 320-763-6941
Website: mnsurveying.com Email: mark@msurveying.com

STOECKEL
JAHNER
SURVEYING INC.

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

LS 44493
01-23-18
Date

March 6, 2018

City of Long Beach Planning Commission
c/o Ben Oleson, Hometown Planning
PO BOX 124
Glenwood, MN 56334

**RE: VARIANCE REQUEST, SCHROEDER CAMPGROUND, PARCELS #24-0069-000, 24-0113-000,
24-0113-003, LONG BEACH**

Dear Planning Commission;

On 2/28/2018, DNR received a hearing notice regarding a variance request for Schoeder Campground within the overlapping shoreland district of Lake Minnewaska (General Development) and Shallow Pond (Recreational Development) in Long Beach, MN. **DNR recommends denying this variance request** on the following merits.

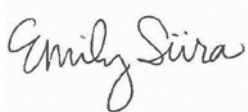
- 1) The City has not approved a Conditional Use Permit (CUP) to allow a commercial Planned Unit Development (PUD) (campground) at this location. The City should consider an application for development prior to evaluating the need for a variance.
- 2) A site analysis has not been completed. The submitted site plan is not an accurate assessment of the development potential of this site. It would be negligent to consider a variance without understanding what is allowed under the city's ordinance. A complete site analysis would include suitable area evaluation, density calculations based on the overlapping shoreland districts, impervious surface coverage, open space (50% required), sewer (individual or city), and stormwater management. It is unclear if setbacks from OHWL of Shallow Pond will be met. The plan shows 37 sites, however the variance request is for 45 sites. The site plan should show the complete development plan even if it may be built out in phases. The plan as presented is misleading and vague. A site analysis is needed in order to adequately evaluate the variance request.
- 3) A variance application has not been provided. A complete variance application would state the reason why a variance is needed. The city needs to understand why a variance is needed in order to evaluate the variance under Minnesota Statutes 462.357 Subd. 6. Economic reasons alone cannot create practical difficulties. If the City doesn't have a variance application form, DNR recommends one should be created. An example can be

found [here](#).

DNR feels that the City would be negligent in its administration of their Shoreland Ordinance if they approve this variance. If the variance is not denied, the decision should be tabled until a CUP for the commercial PUD can be evaluated concurrently.

Please provide a notice of decision, with Findings of Fact, within 10 days of the decision to emily.siira@state.mn.us.

Sincerely,

A handwritten signature in black ink that reads "Emily Siira". The signature is written in a cursive, flowing style.

Emily Siira, Area Hydrologist
(320) 634-7345

Attachments: Variance Guidance, Formula for Variance Findings

cc: Dan Petrik, DNR Land Use Program
Ben Oleson



Shoreland & Floodplain Variance Guidance Series

The Basics: What Communities Need to Know

This document provides an overview of the statewide regulations governing development and land use along lakes and rivers; the roles of local governments in enforcing these regulations; and what local governments need to know when considering variances to these regulations.

The Variance Guidance Series

Considering variances is an important but very challenging job. The DNR – in collaboration with the League of Minnesota Cities, Association of Minnesota Counties, and the Minnesota Council on Environmental Advocacy – has developed a series of resources to help local governments make informed decisions on variances affecting Minnesota’s shorelands, floodplains, and designated riverways. The purpose of the series is to:

- Ensure that Minnesota’s lakes and rivers are not compromised through the variance process,
- Guide communities in balancing legal protection of water resources with property use,
- Minimize legal challenges, and
- Empower communities to enforce their shoreland, floodplain, and riverway ordinances through better understanding of the variance process and state laws governing variances.

Why do we have Shoreland & Floodplain Regulations?

The health of Minnesota’s lakes and rivers are affected by our activities in the watershed. How we develop land and alter the landscape affects water quality and the health of fish and animal habitat associated with water bodies.

The DNR oversees five statewide programs that regulate the use of land abutting lakes and rivers: Shoreland Management, Floodplain Management, Wild and Scenic Rivers, Lower St. Croix National Scenic Riverway, and the Mississippi River Corridor Critical Area. While the specific purposes of each program vary, their common goal is to guide development in a manner that protects public waters for all Minnesotans.

Under each program, the DNR establishes, through rule, minimum land use standards that communities must adopt and enforce through local zoning ordinances. The responsibility for protecting our lakes and rivers lies largely with local governments and the decisions they make in administering and enforcing their ordinances. Local governments have some flexibility in adopting zoning regulations to address specific concerns within the context of local goals and policies, but they must look beyond local needs to protect public water resources for everyone.



What are Variances? Why are they Granted?

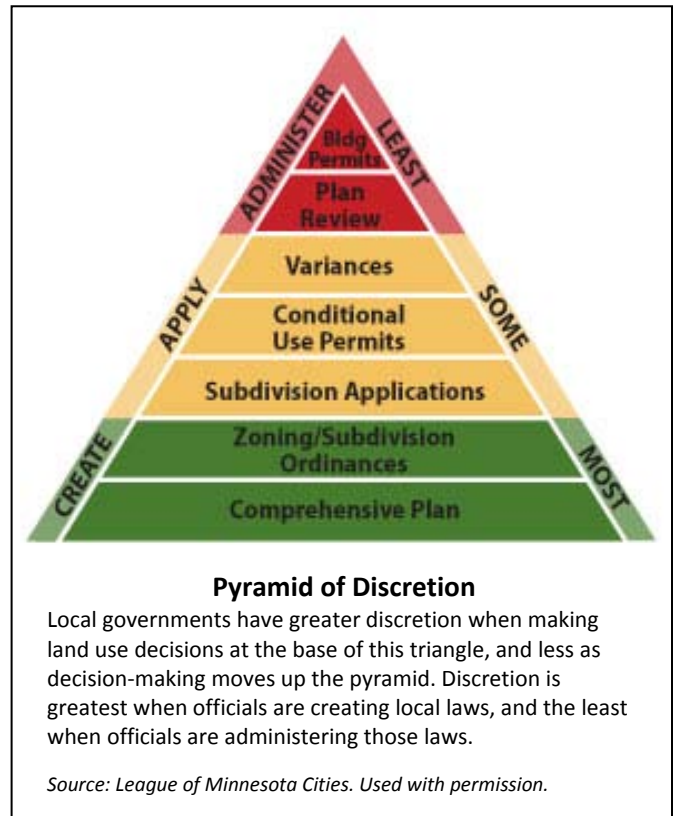
Variances are a means for departing from the strict enforcement of an ordinance as applied to a specific property. Variances may be approved for **area** or **dimensional standards** such as structure setbacks, limitations on impervious surface, bluff protection, lot size, grading and filling, and other similar provisions, but only if all criteria under state law are met. State law prohibits allowing, by variance, any **use** that is not allowed in a zoning district.

Variances allow the property owner to use his/her property in a manner that is not allowed by the ordinance, but is basically consistent with the established regulations with minor variations. Occasionally, a situation will arise where the regular application of ordinance requirements is inappropriate or unfair. In these situations, a variance may provide an equitable solution. Variances should be rare and for reasons of exceptional circumstance.

Local Authority and Discretion

Local governments have two types of authority in making decisions. When adopting or amending a zoning ordinance, a city council or county board is exercising so-called “legislative” authority. Here, the body is advancing health, safety, and welfare by making rules that apply throughout the entire community. When acting legislatively, the body has broad discretion and will be afforded considerable deference by any reviewing court.

In contrast, when administering an existing zoning ordinance and considering a variance, discretion is much more limited. When considering a variance application, the local unit of government is exercising “quasi-judicial” authority. Here, the local government is making a judge-like determination about whether an individual variance application meets all of the legal criteria. Decisions on variances are often made by a body called the board of adjustment and appeals; in some communities the planning commission serves this function. The board’s decision may be appealed, so it is important to make legally sound decisions.



State Criteria for Variances

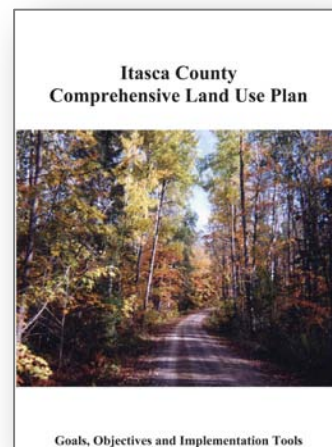
In 2011 the State Legislature revised the laws that govern the granting of variances (Minnesota Statutes, section 394.27, subd. 7 for counties, and section 462.357, subd. 6 for municipalities). Local governments may grant a variance if **all five** of the following criteria are satisfied:

- Would granting the variance be *consistent with the comprehensive plan*?
- Would granting the variance be *in harmony with the general purposes and intent of the ordinance*?
- Are there *unique circumstances to the property* not created by the landowner?
- Would granting the variance allow the *essential character* of the locality to stay the same?
- Does the property owner propose to use the property in a *reasonable manner not permitted by the ordinance*?

The last three criteria address whether **practical difficulties** exist in complying with the ordinance. Minnesota statutes state that economic considerations alone cannot create practical difficulties.

Evaluating Variances against the Statutory Criteria

Shorelands, floodplains, and riverways are sensitive areas that need special consideration because **public resources** are at stake. Local governments must consider each criterion on its own merit, and make findings and conclusions based on the following considerations:



1) The variance is consistent with the comprehensive plan.

The comprehensive plan serves as a citizen-derived policy foundation for the zoning ordinance. Comprehensive plans include goals and policies for protecting natural resources. They may also contain maps that identify areas of high risk or with high ecological value where development should be avoided or carefully planned. The variance request must consider these goals, policies, and maps.

Considerations: Which goals and policies apply? Is allowing deviation from the ordinance consistent with these goals and policies? Why/why not?

2) The variance is in harmony with the purposes and intent of the ordinance.

A variance decision is a balancing test that requires weighing the need of an individual property owner against the interests of other shoreland residents and all state residents. Ordinances will typically state the purpose for a particular set of standards or requirements. (*Note: If the purposes for specific standards are not clearly articulated in the local ordinance, a resource for determining the purposes is the [Statement of Need and Reasonableness \(SONAR\)](#) that accompanied the statewide rules on which the ordinance standards are based.*)

Considerations: What are the purposes and intent of the Ordinance? What is the particular standard being deviated from intended to prevent or protect? Will deviating from the required standard on this property undermine the purposes and intent? Why/why not?

3) The problem is due to unique circumstances of the property not created by the landowner.

Unique circumstances relate to physical characteristics of the land such as lot shape and dimensions. Unique circumstances do **not** include personal matters unrelated to the property itself, such as health difficulties, a growing family, or design preferences, or changes made to the property by the property owner that prevent compliance with the ordinance.

Steep slopes, floodplains, riparian vegetation, and erodible soils are common, and not usually unique, in shoreland areas. Owning and developing land in these sensitive areas requires acknowledgment of these conditions and designing with them in mind; that is the point of shoreland and floodplain regulations.

Considerations: What distinguishes this property from other properties subject to the shoreland regulations to justify deviation from the requirements when others must comply? Has the applicant demonstrated that no feasible alternatives exist that would not require a variance? Is the application motivated by economic concerns or design preferences?

4) The variance, if granted, will not alter the essential character of the locality.

This criterion requires assessing whether the resulting structure or land disturbance will alter the hydrology, soil stability, vegetation, aesthetics, and landscape features on the site, or be out of place or scale, or otherwise inconsistent with the surrounding area.

Considerations: How does the size and character of the structure compare to other structures in the area or expectations as described in the comprehensive plan or other policy

documents? To what extent does the structure encroach into sensitive natural areas such as bluffs or shores? Is significant soil disturbance or vegetation removal required? What is the long-term risk from changing hydrology and increasing erosion and subsequent sediment in public waters? Do the structure and shoreline alterations affect the character of the area?

5) The proposal puts the property to use in a reasonable manner.

The standards in the local ordinance are established to protect public water resources and adjoining property. It may not be reasonable to deviate from them if doing so would undermine those protections. For example, a minor deviation on a setback may not reduce the protective function of the setback, but a major deviation would. Variance requests should only be considered reasonable when no other alternatives exist, particularly if the public water at stake is impaired or at risk of becoming impaired.

Considerations: *How substantial is the request in relation to the standard? What might be considered a reasonable deviation from the rules in a non-riparian area could have significant impacts in a riparian zone. How justifiable are the reasons for the variance request in the context of sensitive shoreland areas and the potential impacts on public waters?*



Owner's design preference for a walkout is not reasonable in a sensitive bluff area.

A Note on Floodplains...

FEMA requires that in floodplains, the requirements of 44 Code of Federal Regulations (CFR), Section 60.6 (variances and exceptions) be met. These requirements specify that variances: 1) can only be granted for lots of one-half acre or less; 2) cannot cause any flood stage increase or additional threats to public safety; 3) cannot cause extraordinary public expense; and 4) the variance is the minimum necessary to afford relief. Specific language that complies with FEMA's requirements is provided in the DNR's sample floodplain ordinances.

Minnesota Rules, part 6120.6100 also talk about allowing variances where there is "undue hardship" if consistent with state and national laws and programs. It also specifies that *"although variances may be used to modify permissible methods of flood protection, no variance shall provide for a lesser degree of flood protection than stated in these standards."* This has been interpreted to mean that a variance can be given to allow an alternate form of flood protection not allowed in the local government's floodplain ordinance (e.g., "wet" instead of "dry" floodproofing of principal non-residential structures), but the level of floodproofing must always be to the regulatory flood protection elevation.

The community granting the variance must always be mindful of FEMA's additional variance criteria noted above and that variances that modify the method of floodproofing will likely result in expensive flood insurance premiums.

Making a Decision

After evaluating the variance application against the criteria, several outcomes can occur:

- If the applicant fails to prove that **all** criteria are met, then the variance should be denied.
- If the applicant demonstrates that **all** criteria are met, then the variance may be granted.
- If findings support granting the variance, but the project will impact the public resource, then the variance may be granted but conditions should be imposed to mitigate the impacts.

Conditions of Approval

If findings support granting the variance, impacts to the lake or river and riparian areas should be considered in developing appropriate conditions to mitigate them. Minnesota law allows communities to impose conditions when granting a variance as long as the conditions are **directly related and roughly proportional to the impact created by the variance**.

When the variance involves nonconforming lots of record in shorelands, Minnesota law¹ states that communities **shall require** the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setbacks, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.



Vegetative restoration may be an appropriate condition to mitigate the impacts associated with a variance.

Variance conditions serve to ensure that the intent of the regulation is met or to mitigate the impact of the proposed activity. Through thoughtful conditions that can be enforced long-term, the intent of the regulation can often be achieved.

Best Practices in Considering Variances

In making a quasi-judicial decision that is likely to stand up in court, the decision-making body should apply the following best practices, some of which are required by law. Following these practices will also increase public acceptance of the decision, though not necessarily agreement with the decision.

Support the decision with “findings of fact”

The local government should make “findings of fact.” Findings of fact is a legal term for simply saying “the reasons used to support a decision.” Findings are very important. To be legally defensible, findings should not just state that legal criteria have been met, but explain *how* the criteria are met. The purpose for making findings is to bridge the gap between the facts and the ultimate decision. Variance findings should explain how the relevant facts support or do not support the legal criteria described above. The DNR’s [“Formula for Variance Findings”](#) will help guide the development of good findings. An [“example of Good Findings”](#) was developed with the formula to demonstrate what good findings might look like.

Discrimination and prejudice should not play a role in deciding on a variance request, nor should a poll of those attending a public meeting. General statements of support or opposition should not be used as a finding of fact. Statements made by the public that are concrete and factual relating to the criteria can be useful in developing findings. Findings should be more than a mere recitation of statutory criteria; they must provide the factual basis that leads to a rational conclusion.

¹ Minnesota Statute, section 462.357, subd. 1e, item (i)

Create a public record that supports the decision

Minnesota law requires that the reasons for a variance decision be articulated in the record. A written document (such as the DNR's "Formula for Variance Findings") clearly stating the findings and adopted by the community is recommended to supplement meeting minutes. The law also **requires written findings** whenever an application is denied. Findings should explain the decision by listing relevant facts, addressing each of the legal criteria, and explaining how each criterion is/is not satisfied as part of the conclusions.

Use an open and transparent process for making the decision

Facts or evidence used for making findings should be available for the public to observe and review. Typical sources for gathering relevant evidence include: the variance application documents, documents submitted by the public (paper or digital), public meetings and hearings. Holding a public hearing is an important component in developing the record and eliciting facts. State statute requires that counties hold a public hearing for variances.



Notices of public hearings should be sent to nearby property owners, the DNR, and other interested parties. The body making the decision should discuss the facts, deliberate on the decision and make the decision at a public meeting. Public officials should refrain from prejudging a situation or advocating for a decision before the facts are established. The burden of proof that a variance is warranted lies with the applicant, not the board, planning commission, or staff.

Under all statewide land use programs, local governments are required to provide the DNR with copies of notices for public hearings to consider variance requests, as well as the final decisions. Decisions should include the complete record for the decision, including findings of fact.

A variance application is subject to Minnesota's "60-day rule²." This means that a variance request must be approved or denied within 60 days from the date the application was submitted. The rule allows one 60-day extension, if done in writing and within the initial 60-day period. Failure to approve or deny a request within the statutory time period is deemed an approval.

Further Considerations

Be aware of the rules for Open Meetings, Conflicts of Interest, the 60-day Rule, and the constitutional limits on government regarding Takings, Due Process and Equal Protection.

Resources on Variances

Additional resources, including example variance requests, FAQs, sample variance forms and resolutions, sample mitigation scoring systems, review checklists, stormwater management best management practices, native plant listings, rare species information, training opportunities, and more, visit:

http://www.dnr.state.mn.us/waters/watermgmt_section/shoreland/variances.html

References

Statewide Wild & Scenic River and Lower St. Croix Rules – *Minnesota Rules, Chapter 6105*

Statewide Shoreland Management & Floodplain Management Rules- *Minnesota Rules, Chapter 6120*

Variance Criteria for Counties - *Minnesota Statutes, §394.27, subd. 7*

Variance Criteria for Municipalities - *Minnesota Statutes, §462.357, subd. 6*

² MS 15.99 Time Deadline for Agency Action



Shoreland and Floodplain Variance Guidance Series

Formula for Variance Findings

This is part of a series of documents to help local governments make good variance decisions. The complete series may be found at http://www.dnr.state.mn.us/waters/watermgmt_section/shoreland/variances.html.

#1: Is the request *in harmony with the general purposes and intent of the ordinance*?

The Shoreland Ordinance **states** _____
(state ordinance requirement), **the purpose of which is to** _____

_____ (explain what the ordinance requirement is intended to prevent or protect; check SONAR if not sure).

The proposed variance **is for:** _____
_____ (explain proposal and potential effects).

This variance **is/is not** in harmony with the purpose and intent of the Shoreland Ordinance **because:** _____

_____ (explain how the proposal is in harmony with or undermines the purpose of the ordinance).

#2: Would granting the variance be *consistent with the comprehensive plan*?

The Comprehensive Plan contains **the following policies and goals regarding this request:** _____

_____ (list applicable policies, goals, and maps, including citations).

Granting the variance **is/is not** consistent with the comprehensive plan **because:** _____

_____ (explain how; relate details of the request to specific policies, goals, and maps).

#3: Are there *unique circumstances to the property not created by the landowner*?

There **are/are no** circumstances unique to the property that would prevent compliance with the Shoreland Ordinance **because:** _____

(describe any physical characteristics of the land that are unique to this property that prevent compliance with the ordinance requirement, and whether the applicant has demonstrated that no other feasible alternative exists that would comply with the ordinance; explain what makes this property different from other shoreland properties to justify why this applicant should be able to deviate from the ordinance when others must comply - if there are unique circumstances, describe whether they were created by some action of property owner).

#4: Would granting the variance allow the *essential character* of the locality to stay the same?

Granting the variance **will/will not** alter the essential character of the locality **because:** _____

_____ (explain whether the variance would provide minimal relief or a substantial deviation from the ordinance requirement, and describe how it affects the natural appearance and ecological function of the shore or alters the flow of water across the land).

#5: Does the property owner propose to use the property in a *reasonable manner not permitted by the ordinance*?

The property owner **does/does not** propose to use the property in a reasonable manner not permitted by the ordinance, given the purpose of the protections **because:** _____

_____ (explain whether the applicant has demonstrated that the proposed variance is reasonable in this location given the sensitivity of the resource being protected, any known water quality impairments, and the purposes of the ordinance requirement).

What is your decision? (Approve or Deny)

Remember - ALL statutory criteria *MUST* be satisfied to approve.

If approved, what conditions will you impose?

*(Findings must support the conditions; explain the impacts of the proposed development and the conditions that address those impacts. Remember that findings must be **directly related** and **proportional** to the impacts created by the variance. Set specific timeframes and deadlines, and consider requiring the following to help ensure compliance with the conditions:*

- financial sureties to ensure that the required activities are completed within specified deadlines,*
- as-built drawings and/or photos as proof of completion within the terms of the conditions, and/or*
- long-term maintenance and operation agreements for stormwater best management practices and vegetation that must be protected or restored as a condition of approval, along with notices of restrictions recorded against properties to ensure that future property owners are aware of their responsibilities and don't unknowingly "undo" any conditions.)*