

SHORELAND ORDINANCE AMENDMENT CONSIDERATIONS

- 1.) Issue: Section 5.31 has no provision controlling fertilizer or pesticide use. MN Statute 6120.330 Subp. 4 A.(3) states, " Use of fertilizer and pesticides in the shoreland management district must be done in such a way as to minimize runoff into the shore impact zone or public water by the use of earth, vegetation, or both."

Recommendation: Add a section 5.31B item 3 that states the statute language from above.

- 2.) ISSUE: 5.32B reads, "Public roads and parking areas are regulated by Section 5.4 of this ordinance." 5.4 is titled, "Placement and designs of roads, driveways, and parking areas."

Recommendation: Change 5.32B so that it reads, "Roads, driveways and parking areas are regulated by Section 5.4 of this ordinance."

- 3.) ISSUE: Section 5.4 gives requirements for placement and design of roads driveways and parking areas. Specifically, these features must take advantage of natural vegetation to achieve screening from public view. They must be designed to minimize erosion consistent with BMP's. Thirdly, they must meet structure setbacks when options exist to do so. Despite all of these requirements there is no permit to guide people in construction.

Recommendation: Add an additional provision to this section of the ordinance that states. "Construction of roads, driveways, and parking areas shall require a permit from the Department.". Staff will only make a site visit when 1 or more of the following scenarios arise 1.)concerns exist that 25% impervious surface is being approached. 2.) Site appears to be highly erodible 3.)The proposed feature is on a riparian lot or is deemed by staff to be close enough to the lake to warrant extra caution. Recommended permit application fee of \$50.00.

- 4.) ISSUE: 5.41 says "Public and private roads and parking areas must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view of public waters. Statute requires this also apply to driveways.

Recommendation: 5.41 should read "Public and private roads, driveways, and parking areas must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters."

- 5.) ISSUE: Section 5.52 requires that "Impervious surface coverage of lots must not exceed 25% of the lot area." Impervious surface is not defined.

Recommendation: Provide a definition for impervious surface: "A constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, decks, sidewalks, patios, paver block patios, storage area, and

concrete, asphalt or gravel driveways." This definition would closely resemble the DNR's alternative shoreland management standards.

- 6.) ISSUE: Patios are not regulated as a structure while decks are. Based on this ordinance a person could build a detached deck within the shore impact zone as a "water oriented accessory structure," provided it does not exceed 250 sq ft of area or 10' of height. However, a person could legally cover the entirety of their shore impact zone with concrete patio as long as their lot 25% impervious lot coverage ratio was not met. This void in the ordinance does not adequately protect County water resources.

Recommendation:

Add a special provision to Section 5.22 "Design criteria for structures," to the ordinance that would read as follows.

A. Patios within the structure setback require a permit and shall comply with the following standards:

1. Not be located in shore impact zone except as a water-oriented accessory structure according to Article 5.22B
2. Be free standing;
3. Have no railings;
4. Be a maximum of 250 square feet in size. Up to 400 square feet in size is allowed with an approved and implemented Stormwater Management Plan according to Article 5.5 of this ordinance;
5. Not be more than one foot below or above natural ground level; and;
6. Construction complies with all provisions of Articles 5.32 and 5.5 of this ordinance
7. The maximum impervious surface limits for the lot shall not be exceeded.

B. Patios are allowed behind the structure setback without a permit provided that all setbacks are met and the property does not exceed the maximum allowable impervious surface standards.

- 7.) ISSUE: Section 3.6, Variances from Standards, does not accurately reflect state statute (MN 394.27 Subdv. 7) Therefore, when the Board of Adjustment evaluates a variance application based on the Shoreland Management Ordinance they may end up granting a variance that is forbidden in State Statute. Unifying the requirements of state statute and the Shoreland Ordinance will make the process of evaluating ordinances much more transparent for the public and navigable for the BOA. The recommendation below is reflective only of state statute. Additional controls could be placed on the granting of variances.

Recommendation: Change Section 3.6 to reflect state statute. It would read as follows:

The board of adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances may only be granted in accordance with Minnesota Statutes, Chapter 394. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. Variances may be granted when all of the following conditions are met:

- The applicant's proposed use is allowed in the zoning district in which the subject property is located.
- The variance is in harmony with the comprehensive plan.
- A practical difficulty exists on the property preventing the applicant from complying with the ordinance. Practical difficulty is established when the applicant proposes to use the property in a reasonable manner not permitted by the ordinance or when the variance request is due to circumstances unique to the property not created by the landowner. Economic considerations alone do not constitute practical difficulties.
- If granted, the variance may not alter the essential character of the locality.

The board of adjustment 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.

8.) ISSUE: Item 5.32C states that "The property owner shall be required to obtain a grading and filling plan from the Pine County Soil and Water Conservation District." SWCD and Zoning have worked out that it makes more sense for the public to get grading and filling plans from Planning and Zoning. This simplifies the process for people as they only have to work with one entity to satisfy requirements of the ordinance.

RECOMMENDATION: "The property owner shall be required to obtain a grading and filling erosion control plan from the Planning and Zoning Department."

9. ISSUE: Section 5.32D part 5 lists SWCD where it should list the Planning and Zoning Dept.

Recommendation: "All grading and filling plans must be reviewed by the Planning and Zoning Department..."

10. ISSUE: MN Statute 6120.3300 Subp. 4 Section B requires a permit for movement of more than 50 cubic yards of material outside of steep slopes and shore impact zone. Our ordinance does not have this.

Recommendation: Add this requirement to section 5.32C of our ordinance.

11. ISSUE: Section 5.32D part 1 uses outdated language in relationship to grading, filling, or draining of wetlands.

Recommendation: Change language of 5.32D part 1 to reflect MN statute 6120.3300 Subp. 4 B (1).

Grading and filling in any type 1,2,3,4,5,6,7, or 8 wetland must be approved by the Pine Soil and Water Conservation District, Minnesota Department of Natural Resources, or Army Corps of Engineers.

Before authorizing any grading or filling activity in any type 1,2, 3, 4, 5, 6, 7, or 8 wetland the Department must consider how extensively the proposed activity would affect the following functional qualities of the wetland:

- (a) sediment and pollutant trapping and retention;
- (b) storage of surface runoff to prevent or reduce flood damage;
- (c) fish and wildlife habitat;
- (d) recreational use;
- (e) shoreline or bank stabilization; or
- (f) noteworthiness, including special qualities such as historic significance, critical habitat for endangered plants and animals, or others.