

This Document can be made available in alternative formats upon request

State of Minnesota

Printed Page No. 127

HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH SESSION

HOUSE FILE No. 519

February 5, 2009

Authored by Nelson, Hilstrom, Howes and Urdahl

The bill was read for the first time and referred to the Committee on State and Local Government Operations Reform, Technology and Elections

March 25, 2009

Committee Recommendation and Adoption of Report:

To Pass as Amended

Read Second Time

By motion, re-referred to the Committee on Environment Policy and Oversight

March 30, 2009

Committee Recommendation and Adoption of Report:

To Pass

Read Second Time

1.1 A bill for an act
1.2 relating to local government; regulating nonconforming lots in shoreland areas;
1.3 amending Minnesota Statutes 2008, sections 394.36, subdivision 4, by adding a
1.4 subdivision; 462.357, subdivision 1e.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2008, section 394.36, subdivision 4, is amended to read:

1.7 Subd. 4. Nonconformities; certain classes of property. This subdivision
1.8 applies to homestead and nonhomestead residential real estate and seasonal residential
1.9 real estate occupied for recreational purposes. Except as otherwise provided by law, a
1.10 nonconformity, including the lawful use or occupation of land or premises existing at the
1.11 time of the adoption of an official control under this chapter, may be continued, including
1.12 through repair, replacement, restoration, maintenance, or improvement, but not including
1.13 expansion. If the nonconformity or occupancy is discontinued for a period of more than
1.14 one year, or any nonconforming building or structure is destroyed by fire or other peril
1.15 to the extent of greater than 50 percent of its estimated market value, as indicated in
1.16 the records of the county assessor at the time of damage, and no building permit has
1.17 been applied for within 180 days of when the property is damaged, any subsequent
1.18 use or occupancy of the land or premises must be a conforming use or occupancy. If a
1.19 nonconforming building or structure is destroyed by fire or other peril to the extent of
1.20 greater than 50 percent of its estimated market value, as indicated in the records of the
1.21 county assessor at the time of damage, the board may impose reasonable conditions upon
1.22 a zoning or building permit in order to mitigate any newly created impact on adjacent
1.23 property or water body. When a nonconforming structure in the shoreland district with
1.24 less than 50 percent of the required setback from the water is destroyed by fire or other

2.1 peril to greater than 50 percent of its estimated market value, as indicated in the records
2.2 of the county assessor at the time of damage, the structure setback must be increased if
2.3 practicable and reasonable conditions may be placed upon a zoning or building permit to
2.4 mitigate created impacts on the adjacent property or water body.

2.5 Sec. 2. Minnesota Statutes 2008, section 394.36, is amended by adding a subdivision
2.6 to read:

2.7 Subd. 5. **Existing nonconforming lots in shoreland areas.** (a) This subdivision
2.8 applies to shoreland lots of record in the office of the county recorder on the date of
2.9 adoption of local shoreland controls that do not meet the requirements for lot size or lot
2.10 width. A county shall regulate the use of nonconforming lots of record and the repair,
2.11 replacement, maintenance, improvement, or expansion of nonconforming uses and
2.12 structures in shoreland areas according to this subdivision.

2.13 (b) A nonconforming single lot of record located within a shoreland area may be
2.14 allowed as a building site without variances from lot size requirements, provided that:

2.15 (1) all structure and septic system setback distance requirements can be met;

2.16 (2) a Type 1 sewage treatment system consistent with Minnesota Rules, chapter
2.17 7080, can be installed or the lot is connected to a public sewer; and

2.18 (3) the impervious surface coverage does not exceed 25 percent of the lot.

2.19 (c) In a group of two or more contiguous lots of record under a common ownership,
2.20 an individual lot must be considered as a separate parcel of land for the purpose of sale
2.21 or development, if it meets the following requirements:

2.22 (1) the lot must be at least 66 percent of the dimensional standard for lot width and
2.23 lot size for the shoreland classification consistent with Minnesota Rules, chapter 6120;

2.24 (2) the lot must be connected to a public sewer, if available, or must be suitable for
2.25 the installation of a Type 1 sewage treatment system consistent with Minnesota Rules,
2.26 chapter 7080, and local government controls;

2.27 (3) impervious surface coverage must not exceed 25 percent of each lot; and

2.28 (4) development of the lot must be consistent with an adopted comprehensive plan.

2.29 (d) A lot subject to paragraph (c) not meeting the requirements of paragraph (c) must
2.30 be combined with the one or more contiguous lots so they equal one or more conforming
2.31 lots as much as possible.

2.32 (e) Notwithstanding paragraph (c), contiguous nonconforming lots of record
2.33 in shoreland areas under a common ownership must be able to be sold or purchased
2.34 individually if each lot contained a habitable residential dwelling at the time the lots came
2.35 under common ownership and the lots are suitable for, or served by, a sewage treatment

3.1 system consistent with the requirements of section 115.55 and Minnesota Rules, chapter
3.2 7080, or connected to a public sewer.

3.3 (f) In evaluating all variances, zoning and building permit applications, or
3.4 conditional use requests, the zoning authority shall require the property owner to address,
3.5 when appropriate, storm water runoff management, reducing impervious surfaces,
3.6 increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water
3.7 supply capabilities, and other conservation-designed actions.

3.8 (g) A portion of a conforming lot may be separated from an existing parcel as long
3.9 as the remainder of the existing parcel meets the lot size and sewage system requirements
3.10 of the zoning district for a new lot and the newly created parcel is combined with an
3.11 adjacent parcel.

3.12 Sec. 3. Minnesota Statutes 2008, section 462.357, subdivision 1e, is amended to read:

3.13 Subd. 1e. **Nonconformities.** (a) Except as otherwise provided by law, any
3.14 nonconformity, including the lawful use or occupation of land or premises existing at
3.15 the time of the adoption of an additional control under this chapter, may be continued,
3.16 including through repair, replacement, restoration, maintenance, or improvement, but
3.17 not including expansion, unless:

3.18 (1) the nonconformity or occupancy is discontinued for a period of more than one
3.19 year; or

3.20 (2) any nonconforming use is destroyed by fire or other peril to the extent of greater
3.21 than 50 percent of its estimated market value, as indicated in the records of the county
3.22 assessor at the time of damage, and no building permit has been applied for within 180
3.23 days of when the property is damaged. In this case, a municipality may impose reasonable
3.24 conditions upon a zoning or building permit in order to mitigate any newly created impact
3.25 on adjacent property; or water body. When a nonconforming structure in the shoreland
3.26 district with less than 50 percent of the required setback from the water is destroyed by
3.27 fire or other peril to greater than 50 percent of its estimated market value, as indicated
3.28 in the records of the county assessor at the time of damage, the structure setback must
3.29 be increased if practicable and reasonable conditions may be placed upon a zoning or
3.30 building permit to mitigate created impacts on the adjacent property or water body.

3.31 (b) Any subsequent use or occupancy of the land or premises shall be a conforming
3.32 use or occupancy. A municipality may, by ordinance, permit an expansion or impose upon
3.33 nonconformities reasonable regulations to prevent and abate nuisances and to protect the
3.34 public health, welfare, or safety. This subdivision does not prohibit a municipality from

4.1 enforcing an ordinance that applies to adults-only bookstores, adults-only theaters, or
4.2 similar adults-only businesses, as defined by ordinance.

4.3 (c) Notwithstanding paragraph (a), a municipality shall regulate the repair,
4.4 replacement, maintenance, improvement, or expansion of nonconforming uses and
4.5 structures in floodplain areas to the extent necessary to maintain eligibility in the National
4.6 Flood Insurance Program and not increase flood damage potential or increase the degree
4.7 of obstruction to flood flows in the floodway.

4.8 (d) Paragraphs (d) to (j) apply to shoreland lots of record in the office of the
4.9 county recorder on the date of adoption of local shoreland controls that do not meet
4.10 the requirements for lot size or lot width. A municipality shall regulate the use of
4.11 nonconforming lots of record and the repair, replacement, maintenance, improvement,
4.12 or expansion of nonconforming uses and structures in shoreland areas according to
4.13 paragraphs (d) to (j).

4.14 (e) A nonconforming single lot of record located within a shoreland area may be
4.15 allowed as a building site without variances from lot size requirements, provided that:

4.16 (1) all structure and septic system setback distance requirements can be met;

4.17 (2) a Type 1 sewage treatment system consistent with Minnesota Rules, chapter
4.18 7080, can be installed or the lot is connected to a public sewer; and

4.19 (3) the impervious surface coverage does not exceed 25 percent of the lot.

4.20 (f) In a group of two or more contiguous lots of record under a common ownership,
4.21 an individual lot must be considered as a separate parcel of land for the purpose of sale
4.22 or development, if it meets the following requirements:

4.23 (1) the lot must be at least 66 percent of the dimensional standard for lot width and
4.24 lot size for the shoreland classification consistent with Minnesota Rules, chapter 6120;

4.25 (2) the lot must be connected to a public sewer, if available, or must be suitable for
4.26 the installation of a Type 1 sewage treatment system consistent with Minnesota Rules,
4.27 chapter 7080, and local government controls;

4.28 (3) impervious surface coverage must not exceed 25 percent of each lot; and

4.29 (4) development of the lot must be consistent with an adopted comprehensive plan.

4.30 (g) A lot subject to paragraph (f) not meeting the requirements of paragraph (f) must
4.31 be combined with the one or more contiguous lots so they equal one or more conforming
4.32 lots as much as possible.

4.33 (h) Notwithstanding paragraph (f), contiguous nonconforming lots of record in
4.34 shoreland areas under a common ownership must be able to be sold or purchased
4.35 individually if each lot contained a habitable residential dwelling at the time the lots came
4.36 under common ownership and the lots are suitable for, or served by, a sewage treatment

5.1 system consistent with the requirements of section 115.55 and Minnesota Rules, chapter
5.2 7080, or connected to a public sewer.

5.3 (i) In evaluating all variances, zoning and building permit applications, or
5.4 conditional use requests, the zoning authority shall require the property owner to address,
5.5 when appropriate, storm water runoff management, reducing impervious surfaces,
5.6 increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water
5.7 supply capabilities, and other conservation-designed actions.

5.8 (j) A portion of a conforming lot may be separated from an existing parcel as long as
5.9 the remainder of the existing parcel meets the lot size and sewage treatment requirements
5.10 of the zoning district for a new lot and the newly created parcel is combined with an
5.11 adjacent parcel.

5.12 Sec. 4. **EFFECTIVE DATE.**

5.13 Sections 1 to 3 are effective the day following final enactment.