

## Considerations for Managing Nonconforming Lots in Shoreland Areas

### Purpose

The purpose of this document is to help local governments administer their shoreland ordinances in a manner that is consistent with Minnesota laws and that minimizes impact to shoreland resources. The issues covered in this document involve nonconforming lots in shoreland as regulated under Minnesota Statutes, § 394.36, subd. 5 (for counties), § 462.357 subd. 1e(d) (for cities), and Minnesota Rules, parts 6120.2500 to 6120.3900.

### Resource Concerns with Nonconforming Lots

Small shoreland lots created before the adoption of local shoreland ordinances are often not suitable for the size and intensity of contemporary lakeshore development. It may be difficult for development on these small lots to meet the 25% impervious surface limit in state shoreland standards, provide space for septic systems, and provide enough vegetation to filter and treat stormwater. Development of small lots can result in an increased risk of nutrient flow into surface waters, drainage problems between lots, crowding of docks and recreational facilities, and degradation of near shore habitat.



### Statutory Standards for Managing Nonconforming Lots in Shoreland

The nonconforming lot provisions in the shoreland rules (Minnesota Rules 6120.3300, subp. 2(D)) work to bring nonconforming shoreland lots into conformance over time. In 2009, the Minnesota Legislature amended certain portions of Minnesota Statutes, Chapters 394 and 462, giving nonconforming shoreland lots greater protections to continue. The changes to Chapters 394 and 462 are the same, supersede some provisions in the shoreland rules, and were made to ensure that the sale and development of small shoreland lots is consistently administered across the state. The changes affect:

1. when variances are not needed for single nonconforming lots of record, and
2. when multiple contiguous nonconforming lots under common ownership must be combined.

## Single Nonconforming Lots of Record

According to statute, a single nonconforming lot of record **MAY** be allowed as a building site **without a variance** from lot size requirements specified in the ordinance, even if the required lot sizes are larger than those in state rules, when:

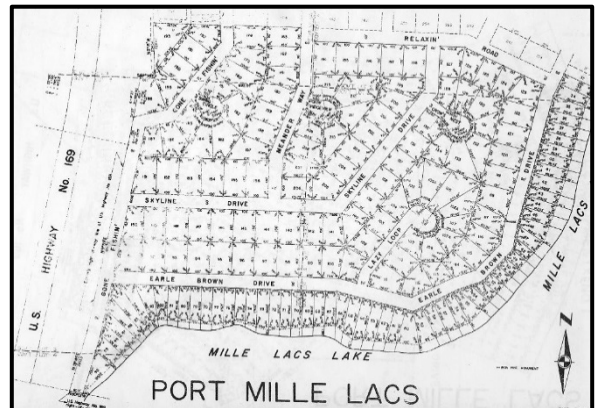
1. all structure and septic system setbacks are met,
2. a type 1 sewage treatment system can be installed or a connection can be made to a public sewer, **and**
3. impervious surface does not exceed 25%.

If all three of these criteria can be met, the statute provides local governments with an expedited manner for approving the development of nonconforming shoreland lots of record without a variance. If all of these criteria cannot be met, then a variance is required and the local government processes the variance according to its variance procedures and statutory criteria for variances. Local governments **MAY** be stricter and require a variance for developing nonconforming lots, even if the lots do meet the three criteria.

## Multiple Contiguous Nonconforming Lots Under Common Ownership

According to statute, an individual nonconforming lot that is part of a contiguous group of lots under common ownership **MUST** be considered a separate parcel for **sale or development**, if:

1. the lot is at least 66% of lot area and width requirements in Minnesota Rule, part 6120.3300, subp. 2a;
2. the lot is connected to a public sewer or a Type 1 sewage system;
3. the impervious surface does not exceed 25%; and
4. the development is consistent with the comprehensive plan.



If the lot does not meet all of these criteria, the lot **MUST** be combined with one or more of the contiguous lots so they equal a conforming lot as much as possible. **Because the statutory language is mandatory, local governments cannot grant a variance to this requirement.**

### **Local governments cannot grant variances to mandatory statutes.**

Although Minnesota Statutes (§ 394.27, Subd. 7 for counties and § 462.357 Subd. 6 for cities) permits local governments to grant variances, the authority extends only to variances from “official controls” or “zoning ordinances.” Official controls and zoning ordinances are defined as actions taken by local governments that are adopted by ordinance. Neither statute authorizes local governments to grant variances to a mandatory statutory requirement.

However, the statute includes an “out” for the sale of certain lots. Contiguous lots under common ownership that don’t meet the above four criteria may be **sold** if each lot contained a habitable residential dwelling at the time they came under common ownership, and:

1. the lots are suitable for, or served by, a sewage system consistent with Minnesota Rules, chapter 7080, or
2. the lots are connected to a public sewer.

### **Application to Wild & Scenic River and the Lower St. Croix Riverway Districts**

Local governments should administer the substandard lot provisions in their Wild & Scenic and Lower St. Croix Riverway ordinances consistent with Minnesota Rules, part 6105.0110, subp. 1 (Wild & Scenic) and Minnesota Rules, part. 6105.0380, subp. 2 (Lower St. Croix).

### **Summary**

Minnesota law affords certain protections for the continuance, repair, replacement, restoration, maintenance and improvement of legal nonconformities. It is notable, however, that the law specifically limits when these protections apply, requiring that multiple contiguous nonconforming lots under common ownership **must** be combined unless certain requirements are met. To alleviate potential confusion, local governments should amend their ordinances for consistency with Minnesota statutes governing nonconforming lots in shoreland areas.

The statements in this document do not have the force and effect of law. This document is informational only and should not be interpreted as creating new criteria or requirements beyond what is already established in the relevant statutes and rules. Whether a local shoreland ordinance or zoning decision complies with the relevant statutes and rules will be determined on a case-by-case basis. Nothing in this document should be considered legal advice. Local governments should consult their attorney for specific advice in adopting, amending, and administering ordinances.