



## Legislation Text

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**File #:** 17-0757R, **Version:** 1

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RESOLUTION AFFIRMING THE DECISION OF THE PLANNING COMMISSION TO DENY A VARIANCE TO CONSTRUCT A STAIRWAY WITHIN THE FIFTY-FOOT GENERAL DEVELOPMENT WATERS SHORELAND SETBACK AT 4814 LONDON ROAD.

### CITY PROPOSAL:

RESOLVED that the city council finds as follows:

- a. On July 3, 2017, David Larsen applied for a variance to construct a stairway within the fifty-foot general development waters shoreland setback on property located at 4814 London Road; and
- b. The planning commission considered the request as outlined in file number PL 17-103 at its September 12, 2017 meeting after holding a public hearing on the matter; and
- c. The staff report (Attachment 1) from the planning commission meeting is incorporated herein by reference; and
- d. The planning commission voted 6-0 to deny the variance based on the following findings:
  1. The request is not in harmony with the purposes and intent of the zoning code related to the planned and orderly development within the city, as reflected by the shoreland setback requirements within general development waters, such requirements are met by having structures outside of the 50 foot shoreland buffer. This proposal is encroaching over halfway within the required setback; and
  2. The request is inconsistent with the comprehensive plan (shoreland setback), the proposed expansions of the property to improve safety and increase property values are not supported by the adopted criteria of the UDC for the approval of a shoreland variance; and
  3. The applicant has not established practical difficulty because:
    - i. The plight of the landowner is due to the convenience of accessing the lakeshore; with a lot size of 100 x 300 feet the applicant is not at risk of losing enjoyment of his property; and
    - ii. The property already has a large deck (approximately 14' x 18') that faces Lake Superior providing views and reasonable use of the lake in a manner that is comparable to nearby properties; direct access to Lake Superior is unusual and in some cases like this dangerous, due to physical characteristics of the lake; and

- iii. Per Section 50-37.9.L of the UDC no variance shall be granted that compromises the general purposes or intent of Section 50-18.1.D. or results in adverse consequences to the environment. In this case, the applicant is proposing to build within 35 of the 50 feet that structures cannot be built within the general development waters of the shoreland setback area.
  4. Approving the variance, given the negative impacts of disturbing Lake Superior shoreland, and the impediments that it will have on the lake, would result in concerns and could prompt a need for further review of the proposal and the city's program for protecting shoreland areas by the Minnesota Department of Natural Resources; and
  5. The request is not in harmony with the general purposes or intent of the city's zoning code or comprehensive plan for all the reasons previously stated.
- e. The applicant, David Larsen, filed an appeal of the planning commission's decision to the city council on July 13, 2017, pursuant to Section 50-37.1.O of the Duluth Legislative Code, on the grounds that the proposed use is a reasonable use; and
  - f. The city council heard the appeal to the denial of the variance at its October 23, 2017 meeting.

RESOLVED FURTHER, that the decision of the planning commission to deny the application for the variance is affirmed on the findings listed above.

STATEMENT OF PURPOSE: The resolution affirms the decision of the planning commission to deny a variance allowing the construction of a set of stairs leading to the shoreland on the applicant's property. The set of stairs is located over halfway into the fifty-foot general development waters shoreland setback.

The applicant purchased the property in June, 2017. The house is 1,672 square feet and is situated on a 100' x 300' lot, which is larger than average lots in Lakeside. The requested variance is not necessary for the preservation and enjoyments of a substantial property right.

Shoreland setbacks were introduced into the UDC in 2010, as a replacement to the Water Resources Management Ordinance (WRMO). The WRMO limited impervious surfaces as a way to reduce water run-off sedimentation of water ways, and the increase in temperature of cold-water streams, which is determined to trout. Shoreland setbacks are a part of the State of Minnesota's Department of Natural Resources Shoreland Management Act. These standards are required by the state. Development within required shoreland setback areas, particularly on significant bodies of water such as Lake Superior, are frequently monitored by the Minnesota DNR.

The variance, if granted, may result negative environmental impacts to the city and to Lake Superior. Many recent major precipitation events have resulted in erosion from properties along Lake Superior, including the applicant's property, where quantities of sediment from the clay cliffs has fallen into Lake Superior. It is in the best interest of the public health, safety, and welfare of the city to protect Lake Superior from alteration of shoreland areas when possible. Documentation was submitted to the planning commission by interested property owners related to erosion in the area of the requested variance (Attachment 2).

Granting the variance may result in additional requests for similar variances. There are 123 single family homes along London Road with lakefront similar to this application that may someday wish to create a similar direct access to the lake. The appeal states that the request is "consistent with other properties on the lakeshore." While the two immediately adjacent properties do have stairs to access the lake, staff research indicates that those stairs were constructed prior to the 2010 adoption of shoreland setbacks. One nearby

property owner appears to potentially have constructed stairs to the lake without a permit; staff is now aware of this and will be contacting the owner.

The applicant states that the proposed stairway encroaches 15 feet into the shoreland setback. According to the applicant's site plan, the encroachment is 35 feet, as measured from the contour lines on the site plan (Attachment 3). The UDC Section 50-18.1 states that "No shoreland permits shall be approved unless the standards... are met." In this case, the standards have not been met, and the variance should not be approved.

Variance Petition Received: July 3, 2017  
Action Deadline: October 31, 2017

Petitioner:  
Dave Larsen  
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Duluth, MN 55810

PL 17-103