

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.35317 Variances; special exceptions; limitations; decision; environmental site assessment or environmental impact statement; annual report; forwarding application to local government; review and comment; waiver of opportunity to review; notice of opposition; determination of practical difficulty.

Sec. 35317.

(1) A local unit of government may issue variances under a zoning ordinance, or the department may issue special exceptions under the model zoning plan if a local unit of government does not have an approved zoning ordinance, if a practical difficulty will occur to the owner of the property if the variance or special exception is not granted. In determining whether a practical difficulty will occur if a variance or special exception is not granted, primary consideration shall be given to assuring that human health and safety are protected by the determination and that the determination complies with applicable local zoning, other state laws, and federal law. If a practical difficulty will occur to the owner of the property if the variance or special exception is not granted, a variance or special exception shall be granted under this section unless the local unit of government or the department determines that the use will significantly damage the public interest on the privately owned land, or, if the land is publicly owned, the public interest in the publicly owned land, by significant and unreasonable depletion or degradation of any of the following:

- (a) The diversity of the critical dune areas within the local unit of government.
- (b) The quality of the critical dune areas within the local unit of government.
- (c) The functions of the critical dune areas within the local unit of government.

(2) The decision of the local unit of government or the department shall be in writing and shall be based upon evidence that would meet the standards in section 75 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.275. A decision denying a variance or special exception shall document, and any review upholding the decision shall determine, all of the following:

- (a) That the local unit of government or the department has met the burden of proof under subsection (1).
- (b) That the decision is based upon sufficient facts or data.
- (c) That the decision is the product of reliable scientific principles and methods.
- (d) That the decision has applied the principles and methods reliably to the facts.
- (e) That the facts or data upon which the decision is based are recorded in the file.

(3) A local unit of government or the department shall not require an environmental site assessment or environmental impact statement for a variance except for a special use project.

(4) A variance shall not be granted from a setback requirement provided for under the model zoning plan or an equivalent zoning ordinance approved under section 35034 enacted pursuant to this part unless the property for which the variance is requested is 1 of the following:

- (a) A nonconforming lot of record that is recorded prior to July 5, 1989, and that becomes nonconforming due to the operation of this part or a zoning ordinance.
- (b) A lot legally created after July 5, 1989 that later becomes nonconforming due to natural shoreline erosion.
- (c) Property on which the base of the first landward critical dune of at least 20 feet in height that is not a foredune is located at least 500 feet inland from the first foredune crest or line of vegetation on the property. However, the setback shall be a minimum of 200 feet measured from the foredune crest or line of vegetation.

(5) Each local unit of government that has issued a variance for a use other than a special use project during the previous 12 months shall file an annual report with the department indicating variances that have been granted by the local unit of government during that period.

(6) Upon receipt of an application for a special exception under the model zoning plan, the department shall forward a copy of the application and all supporting documentation to the local unit of government having jurisdiction over the proposed location. The local unit of government shall have 60 days to review and comment on the proposed special exception. The department shall not make a decision on a special exception under the model zoning plan until either the local unit of government has commented on the proposed special exception or has waived its opportunity to review the special exception. The local unit of government may waive its opportunity to review the application at any time within 60 days after receipt of the application and supporting documentation by notifying the department in writing. The local unit of government also waives its opportunity to review the application if it fails to act as authorized in this subsection within 60 days. If the local unit of government waives its opportunity to review the application, the local unit of government also waives its opportunity to oppose the decision by the department to issue a special exception. If the local unit of government opposes the issuance of the special exception, the local unit of government shall notify the department, in writing, of its opposition within the 60-day notice period. If the local unit of government opposes the issuance of the special exception, the department shall not issue a special exception. The local unit of government may also consider whether a practical difficulty will

occur to the owner of the property if the special exception is not granted by the department and may make a recommendation to the department within the 60-day notice period. The department shall base its determination of whether a practical difficulty exists on information provided by the local unit of government and other pertinent information.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1995, Act 262, Imd. Eff. Jan. 8, 1996 ;-- Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012

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