

## 301. ZONING CODE: GENERAL PROVISIONS

301.010. TITLE. Chapters 301 through 307 shall be known and may be cited as the "Zoning Code of the City of Birchwood Village" or "the Zoning Code."

301.020. COMPLIANCE WITH THE ZONING CODE. No structure or premises may hereafter be used or occupied, and no structure may be erected, constructed, reconstructed, moved or structurally altered that does not conform with the regulations of the Zoning Code, except as permitted in 301.050.

301.030. INTERPRETATION.

1. In their interpretation and application the provisions of the Zoning Code shall be held to be minimum requirements. Wherever the Zoning Code imposes greater restrictions than are imposed or required by other provisions of law rules or regulations, the provisions of the Zoning Code shall govern.
2. Nothing contained in this Code shall be deemed to be a consent, license, or permit to use any property or to locate, construct, or maintain any building, structure, or facility, or to carry on any trade, industry, occupation, or activity.
3. In event of conflicting provisions in the text of this code, the most restrictive provision shall apply. The City Planning Commission shall rule on what is more "restrictive" and appeals from said decision may be made to the City Council.

301.040. PERMITTED USES. The following land uses are permitted on any lot of record except as prohibited or restricted under provisions of the Zoning Code:

1. A single dwelling having no more than two dwelling units and occupied by not more than two families.
2. Public municipal building; public park; public playground; public recreational structure.
3. Open Space.
4. Accessory use to any of the above (1) through (3).
5. No more than 2 accessory structures.

**“AMENDED BY ORDINANCE 2000-1; FEBRUARY 8, 2000.”**

301.050. NON-CONFORMING USES.

**A. Definition:** Non-Conforming Use. See definition in Section 300.020.34

**B. Pre-Existing Structures or Uses:** A non-conforming use may be continued so long as it remains otherwise lawful, subject to the provisions of paragraphs (1) through (7) below, in order to ensure that the non-conforming use will not be intensified and that, over time, the non-conforming use will, where possible, be brought into conformity with the Zoning Code.

1. A Non-Conforming Pre-Existing Structure shall not be enlarged, modified, changed, extended (either horizontally or vertically) or structurally altered, unless such changes bring the Non-Conforming Pre-Existing Structure into conformity with the Zoning Code. (Exception: A non-conforming use, lawfully located within 60% of all required setbacks, may be structurally altered if the alterations do not change the horizontal or vertical dimensions of the structure and otherwise conform to the Zoning Code.)
2. A non-conforming use shall not be moved to any other part of the parcel of land upon which the same was constructed unless the move would bring the structure and its use into conformity with the Zoning Code.
3. If any Non-Conforming Pre-Existing Structure or Use is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged, any replacement or reconstruction must conform to the provisions of the Zoning Code. Exception: If the non-conforming use that is to be reconstructed came into being as the result of a previously granted variance, the Council, after review, may continue the variance if the owner demonstrates that the conditions under which that variance was granted continue to exist.
4. Normal maintenance of a Non-Conforming Pre-Existing Structure is permitted, including necessary non structural repairs and incidental alterations which do not physically extend or intensify the non-conforming use.
5. Notwithstanding paragraph (1) above, a Non-Conforming Pre-Existing Structure may be expanded, provided:
  - a. That such expansion does not increase the non-conformity in any dimension (vertical or horizontal), does not create a new non-conforming use, and in itself conforms with the Zoning Code; and
  - b. The sum of the setbacks on either side of the structure is not LESS than 20 feet.
6. When any Non-Conforming Pre-Existing use of land or of a building or structure is discontinued for a period in excess of one year, such land, building, or structure shall thereafter be used only as allowed by this Code.
7. No provision of this section shall be interpreted as negating the provisions of 302.015 (Undersized Lots).

**C. Illegal Structures, Uses, or Lots:** Any replacement or reconstruction of any kind of a Non-Conforming Illegal Structure, Use, or Lot must conform to the provisions of the Zoning Code.

**“AMENDED BY ORDINANCE 2018-05-02; OCTOBER 9, 2018.”**

301.055. **PERMIT REQUIREMENTS.** Unless otherwise specifically provided, the following are required for all activity in the City that requires a permit to be issued to conduct the activity:

1. **Certificate of insurance; coverage.** If the applicant is a licensed contractor or is using a licensed contractor in conjunction with a permit under this section they must furnish the city with a certificate of insurance evidencing the following required coverage:

A. Commercial general liability, including XCU (explosion, collapse and underground) coverage.

1. Bodily injury.

(i) \$1,000,000.00 each occurrence.

(ii) \$1,000,000.00 aggregate products and completed operations.

2. Property damage.

(i) \$1,000,000.00 each occurrence.

(ii) \$1,000,000.00 aggregate.

B. Comprehensive automobile liability (owned, nonowned, hired).

1. Bodily injury.

(i) \$1,000,000.00 each occurrence.

(ii) \$1,000,000.00 each accident.

2. Property damage. Property damage: \$1,000,000.00 each occurrence.

C. The minimum insurance coverage must be maintained until six months after the project has been completed or, if a new dwelling is being constructed, a certificate of occupancy has been issued. The city must be named as an additional insured.

2. **Cash escrow.** If the applicant is the homeowner, they must furnish the city a cash escrow as set forth in Section 701 of the City Code. The City may draw on the cash escrow to reimburse the City for the repair of damage to public property or to remedy permit violations. If the City draws on the cash escrow, upon the City's demand the permit holder must deposit in escrow additional funds to restore the escrowed amount set forth in Section 701. The cash escrow must remain in place until the work under the permit for which the escrow was made has been completed.

- A. The cash escrow amount will be required at the time of application fees and the application is received by the City. This charge will be used to cover additional staff time required and the cost of repair for any damage to City infrastructure or resources.
  - B. Unused cash escrow will be returned to the applicant upon completion of the project.
  - C. The applicant will be responsible for damages or costs in excess of the cash escrow, if applicable.
3. **Soils investigation report and shoring plan.** Based upon soil types, topography, the location of adjacent structures and other pertinent information, the building official shall determine if a soils investigation report and/or shoring plan is necessary. If the building official determines that a soils report is necessary, the applicant shall have a soil report prepared and signed by a licensed professional soil scientist or licensed professional engineer. If the building official determines a shoring plan is necessary, the applicant must provide a detailed plan to ensure that adjacent property will not be damaged by reducing lateral support for driveways, foundations, fences or lawns caused by excavation, demolition or construction activity. The soils report and shoring plan must be approved by the building official. The permit holder must adhere to the approved plan(s).
  4. **Existing condition of property.** Before a permit is issued, the building official must photograph the existing condition of the property, curbs, sidewalks, streets, boulevard and trees adjacent to the property and any other public property that may be impacted by the permitted activity.
  5. **Written notification of demolition.** For a demolition permit, at least 15 calendar days before demolition commences, the permit holder must provide written notification to all property owners within 300 feet of the perimeter of the demolition site notifying the property owners of the proposed demolition and building plans, if applicable, and invite them to a neighborhood meeting. The neighborhood meeting must be held at least five days before demolition commences. A sign must also be posted on the demolition site at least five days before demolition commences identifying the nature of the demolition, the permit holder, a contact name and phone number, and the site address. The sign must also provide a city phone number to call with any questions, complaints or concerns. The dimension of the sign must be between five and six square feet. The sign and the content of the sign must be visible from the street. The sign must be kept in place until the completion of demolition.
  6. **Signage of construction.** For a building permit, a sign must be posted on the permit site at least five days before construction commences identifying the nature of the construction, the permit holder, a contact name and phone number, and the site address. The sign must also provide a city phone number to call with any questions, complaints or concerns. The dimension of the sign must be between five and six

square feet. The sign and the content of the sign must be visible from the street. The sign must be kept in place until a certificate of occupancy has been issued.

7. **Stormwater and erosion control plans.** For a building permit, the applicant must submit stormwater and erosion control plans prepared and signed by a licensed professional engineer. The plans must be approved by the city engineer and the permit holder must adhere to the approved plans. The stormwater management plan must detail how stormwater will be controlled to prevent damage to adjacent property and adverse impacts to the public stormwater drainage system. The erosion control plan must document how proper erosion and sediment control will be maintained on a continual basis to contain on-site erosion and protect on- and off-site vegetation. Permit holder must protect all storm drain inlets with sediment capture devices at all time during the project when soil disturbing activities may result in sediment laden stormwater runoff entering the inlet. The permit holder is responsible for preventing or minimizing the potential for unsafe conditions, flooding, or siltation problems. Devices must be regularly cleaned out and emergency overflow must be an integral part of the device to reduce the flooding potential. Devices must be placed to prevent the creation of driving hazards or obstructions.

**“AMENDED BY ORDINANCE 2019-03-01; NOVEMBER 12, 2019.”**

301.060. PERMIT STANDARDS. For building permits.

- A. The permit holder must otherwise comply with the requirements of Section 203 as it relates to Building Regulations.
- B. Deliveries of equipment and material to the site, work crews on site and construction and demolition activity are prohibited except between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, and 9:00 a.m. and 6:00 p.m. on Saturday. Work is prohibited on Sundays and holidays.
- C. The permit holder must repair any damage to public property, streets, and sidewalks. If damage occurs to the foregoing, it must be repaired within three working days after the damage occurs, unless the permit holder has received written permission from the building official to delay repairs to a later specified date.
- D. The permit holder must maintain a five-foot parking setback from driveways and a 30-foot parking setback from intersections. When parking on a street, a vehicle must be completely located on the street surface, parallel to and within 12 inches of the curb. Vehicles in violation of these requirements may be towed in accordance with Minn. Stats. § 168B.035. On-street parking of equipment other than licensed motor vehicles is prohibited. Stopping, standing or parking a vehicle is prohibited, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device, in any of the following places:
  1. On a boulevard between the sidewalk and roadway;

2. Within five feet of the intersection of any public or private driveway or alley with any street or highway;
3. Where the vehicle will block a fire escape or the exit from any building;
4. Where temporary signs prohibit parking.

Parking is allowed on local streets if a 12-foot wide area is open for the traveled portion of the road. Off-street and off-site parking for on-site workers is required to the extent practicable.

City Parks and Open Spaces shall not be used for parking vehicles or staging of any materials or equipment.

Any violation shall be prosecuted as a misdemeanor offense.

Police officers, community service officers, and City Staff shall be responsible for enforcing the parking requirements and parking regulations of this section.

- E. The site must be maintained in a neat and orderly condition. Prior to leaving the construction site at the end of each day, the permit holder must remove empty cans, paper, plastic and other material that is not needed for construction from the site or deposit them in a dumpster. The permit holder must sweep streets and boulevard areas and keep adjacent properties clean from waste, materials or refuse resulting from operations on the site. Inoperable equipment and equipment not being used on the site must be removed within 24 hours after it becomes inoperable or is no longer in use. All materials related to the project must be stockpiled in appropriate areas on-site.
- F. Deliveries of materials that need to be unloaded from a truck and transported to the project site will be done so with care and consideration of the pavement surface. Protection from a tractor or forklift consist of plywood or boards laid out to protect the pavement and removed after the load has been transferred. This also applies to trailers parked temporarily on roads or streets to unload equipment.
- G. No building material, temporary sanitary facilities, dumpster or equipment may be placed within street right-of-way, or on a sidewalk. Motor vehicles may not be parked or stopped on a sidewalk. Public sidewalks must be left open and unobstructed at all times.

**“AMENDED BY ORDINANCE 2019-03-01; NOVEMBER 12, 2019.”**

- 301.065. PROVISION FOR VARIANCES. Where enforcement of the strict provisions of the Zoning Code would cause undue hardship a variance may be granted to allow deviation from the requirements, in accordance with Minnesota Statutes, Chapter 462. (See Section 304. VARIANCES AND APPEALS.)

**“AMENDED BY ORDINANCE 2019-03-01; NOVEMBER 12, 2019.”**

301.070. CONDITIONAL USES. Certain accessory uses permitted within the City have greater than usual chances to present safety hazards, impact on neighboring people and property, and nuisance situations. Because of these greater effects, the City requires these uses to be covered under Conditional Use Permits. Applications for Conditional Use Permits must comply with all provisions of Section 306. CONDITIONAL USE PERMITS.

1. A Conditional Use Permit shall be required for the following projects:
  - a. Any land disturbance activity where the slope is toward a lake, pond, wetland, or watercourse leading to such waters, and the alteration is closer to such waters than the structure setback requirement. See Note at end of Section 301.070.
  - b. Any land disturbance activity where such work involves an area greater than four hundred (400) square feet and/or more than fifty (50) cubic yards in volume. See Note at end of Section 301.070.
  - c. Any swimming pool with a capacity over three thousand (3000) gallons or with a depth of over three and one-half (3 1/2) feet of water.
  - d. Any tennis court.
  - e. Any solar energy system for heating, cooling, electrical generation or other purposes.

NOTE: A separate Conditional Use Permit is not required for a land disturbance activity in conjunction with construction as part of a building permit as granted. However, as part of the Building Permit Application, the applicant shall provide information required pursuant to Section 306.030 and shall follow all provisions of Sections 302.050 IMPERVIOUS SURFACES and 302.055 LAND DISTURBANCE ACTIVITY STANDARDS.

**"AMENDED BY ORDINANCE 2012-04; APRIL 10, 2012."**

**"AMENDED BY ORDINANCE 2018-01-02; MAY 8, 2018."**

301.080. ZONING PERMIT. Certain uses and activities not requiring a Building Permit or a Conditional Use Permit have the potential of adverse impact on neighboring property, storm water runoff, and soil erosion. The City is especially concerned that landowners comply with Setback and Impervious Surface coverage requirements. Therefore, the City requires these uses and activities to be covered under Zoning Permits. Applicants for Zoning Permits must comply with all provisions of Section 307 ZONING PERMIT and Section 302 REQUIREMENTS AND PERFORMANCE STANDARDS. If a Building or Conditional Use Permit is applied for and issued, the applicant is not required to apply for a Zoning Permit.

1. A Zoning Permit shall be required for the following projects:
  - a. Retaining Walls. See special requirements in Section 302.070

- b. Fences. See special requirements in Section 302.070
- c. One-story detached accessory structures, used as tool and storage sheds, playhouses, and similar uses, with a structure of one hundred forty-four (144) or less square feet and greater than twenty five (25) square feet. (Note: Larger structures require Building Permits.)
- d. Sidewalks, driveways, and patios whose area is greater than one hundred (100) square feet.
- e. Decks and platforms less than thirty (30) inches above adjacent grade and not attached to a structure with frost footings. (Note: Other decks and platforms require Building Permits.)
- f. Land Disturbance Activities greater than one hundred (100) square feet or greater than ten (10) cubic yards. (Note: Land Disturbance Activities greater than four hundred (400) square feet or greater than fifty (50) cubic yards require Conditional Use Permits pursuant to Section 306.030 or Building Permits pursuant to Section 301.070.)
- g. Stairs and lifts to lake or water body. See special requirements in Section 302.080.
- h. Beach sand replacement (above the OHWL) not to exceed four hundred (400) square feet and/or fifty (50) cubic yards in volume.

**“AMENDED BY ORDINANCE 2018-01-02; MAY 8, 2018.”**

- 2. Landowners constructing structures or conducting activities similar to those in part 1 a. through e. and for Land Disturbance Activities in part f, but which do not require Zoning Permits, are required to comply with all provisions of Section 302 REQUIREMENTS AND PERFORMANCE STANDARDS.

**“AMENDED BY ORDINANCE 2005-1; APRIL 12, 2005.”**

- 301.090. INTERIM USES. An "interim use" is a temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it. An interim use permit is not required if a Building Permit or a Conditional Use Permit or a Zoning Permit is issued for the use. An Interim Use Permit is required for a home occupation allowed under section 305.130.

**“AMENDED BY ORDINANCE 2012-04; APRIL 10, 2012”**

**“AMENDED BY ORDINANCE 2000-1; FEBRUARY 8, 2000.”**

**“AMENDED BY ORDINANCE 2012-04; APRIL 10, 2012”**

**“AMENDED BY ORDINANCE 2018-01-02; MAY 8, 2018.”**

**“AMENDED BY ORDINANCE 2018-05-02; OCTOBER 9, 2018.”**

**“AMENDED BY ORDINANCE 2019-03-01; NOVEMBER 12, 2019.”**