

**ORDINANCE 2023-05-01**  
**CITY OF BIRCHWOOD VILLAGE**  
**WASHINGTON COUNTY, MINNESOTA**  
**AN ORDINANCE REPEALING AND REPLACING 302.050 IMPERVIOUS SURFACES**  
**IN THE CITY CODE**

The City Council of the City of Birchwood Village hereby ordains that section 302.050 IMPERVIOUS SURFACE of the Municipal Code of the City of Birchwood Village is hereby repealed and replaced with the following:

**302.050 Impervious Surfaces and Lot Coverage**

1. **Intent.** High levels of impervious surface coverage on lots create excessive stormwater runoff, destroys animal habitat and reduces the natural character of the land. For these reasons, the Minnesota Department of Natural Resources (DNR) requires Cities with shoreland to regulate impervious surface. Stormwater runoff from properties pollutes public waters, erodes land, destroys natural vegetation and can create nuisances to other properties. In addition, the City of Birchwood Village has limited stormwater management facilities throughout the City. As a result, to reduce the unwanted harmful effects of stormwater, it is the policy of the City of Birchwood Village that each property within the City manage its own stormwater to limit runoff into streets, waterways, and neighboring properties. As one way of limiting the stormwater runoff from each property, the City seeks to reduce the impervious surface of properties in the City. Minimizing impervious surface causes more stormwater to be absorbed into the soil and less to flow off the property. This reduces erosion, pollution of public waters and damage to other properties within the City from stormwater.
2. **Definitions.** The following definitions are used in this section:
  - a. **Impervious Surface** is defined as a ground surface covered or compacted with material so as to substantially retard the entry of water into the soil, and to cause water to remain on the surface or to run off the surface in greater quantities or at an increased rate of flow than would occur if there was a natural soil surface. Impervious surfaces shall include improvements utilizing concrete, asphalt, gravel, or other non-porous materials. Examples of impervious surfaces include, but are not limited to, roads, driveways, parking areas, swimming pools, sidewalks, patios, rooftops, and covered decks. Impervious surfaces may also result from compacting unpaved or ungraveled driveways and parking areas. For purposes of this section, pervious pavement systems are not considered impervious surfaces. Open decks and walkways with open joints at least ¼ inch wide per 8 inch wide board, and areas beneath overhangs less than 2 feet wide, if

bare or vegetated soil is beneath the decks or walkways or overhangs is not considered impervious surfaces. Further, any surface approved by the City Engineer using applicable industry standards to be given credit as a “pervious surface” shall be calculated as the area of the surface, times the pervious fraction of the surface.

- b. **Impervious Surface Coverage** is defined as the percentage of a lot covered by impervious surfaces.
  - c. **Retention Volume** is defined as the volume of 1.1 inches of stormwater from the post-construction impervious surfaces. For example, if the lot is 15,000 square feet and the post construction impervious surface coverage is 30%, the Retention Volume would be 30% of 15,000 or 4,500 sq feet \* 1.1 inches or 412.5 cubic feet of water that would need to be infiltrated within 48 hours or less.
  - d. **Shore Impact Zone** is the land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50 percent of the required structure setback. The required structure setback from the OHWL in the City of Birchwood Village is 50 feet, and the Shore Impact Zone is 25 feet.
  - e. **Stormwater management structures and best management practices** include any surface water management system or practice that is designed, constructed, or implemented to control stormwater by collecting, conveying, storing, absorbing, inhibiting, treating, using, infiltrating, or reusing water. Example stormwater management structures include rain gardens, infiltration basins, and bioswales.
3. **Impervious Surface Limitation.** Impervious Surface Coverage shall not exceed twenty-five (25) percent of the lot area unless the provisions of either 302.050(4) or 302.050(5) are met.
4. **Impervious Surface Coverage Permit.** Projects that result in impervious surface coverage that exceeds twenty-five (25) percent but does not exceed thirty (30) percent shall be permitted if the property owner complies with, and demonstrates compliance with, the requirements of Section 302.050(6) to the satisfaction of the City Planner. Property Owners who are dissatisfied with the decision of the City Planner may seek a review of the decision in accordance with the requirements and procedures of section 310.
- a. Property owners unable or unwilling to comply with 302.050(6) to the satisfaction of the City Planner are not entitled to a permit under this section, but instead may seek a variance according to subsection 302.050(5).
5. **Variance.** Projects that result in impervious surface coverage that exceeds thirty (30) percent, or those projects that result in impervious surface coverage that exceeds twenty-five (25) percent but does not meet the requirements of 302.050(6) may be permitted if the property owner obtains a variance. To apply for a variance, the property owner shall comply with, and demonstrate compliance with, the requirements of subsection 302.050(6), or shall explain how and why the property owner is unable or unwilling to comply with subsection 302.050(6). In addition to the requirements of subsection 302.050(6), the property owner must follow the procedures and meet the standards

defined in Section 304 for obtaining a variance, including demonstrating to the satisfaction of the City Council that a practical difficulty exists.

- a. **Property owner unable to meet the requirements of 302.050(6).** Any property owner unable or unwilling to meet the requirements of 302.050(6) may still apply for a variance and have the variance application heard according to section 304. In this case, property owner shall enumerate which requirements of section 302.050(6) the property owner does not comply with and explain why the property owner does not comply with each requirement. Additionally, the City Planner shall note in the City Planner's report that the property owner is unable or unwilling to comply with 302.050(6) and shall enumerate the reasons (if known) that the property owner is unable or unwilling to comply with 302.050(6). Property owners are strongly encouraged to comply with 302.050(6).

6. **Requirements.** The following are requirements for applying for a variance from the impervious surface coverage requirements, or for obtaining a permit under 302.050(4).

- a. **Stormwater Management Plan.** The property owner shall provide a stormwater management plan that:
  - i. Documents the proposed development including all impervious surfaces and direction of runoff.
  - ii. Includes calculations showing the Retention Volume.
  - iii. Documents proposed structures and/or best management practices that infiltrate the Retention Volume within a forty-eight (48) hour period or less and meet the requirements of 302.050(7).
  - iv. For variances, provides results from application of the most recent version of the Minnesota MIDS (Minimum Impact Design Standards) Calculator (available on the Minnesota Pollution Control Agency's website), the U.S. Environmental Protection Agency's National Stormwater Calculator, HydroCAD, or another similar stormwater design calculator approved by the City Planner that show that the proposed stormwater management practices meet the required infiltration standard.
  - v. For variances, documents that the rate and volume of stormwater runoff from the property from a hundred year storm is not increased after the proposed project has been completed.
- b. **Implementation and Maintenance Agreement.** The property owner shall include an implementation and maintenance agreement signed by the property owner or owners for the approved stormwater management practices and structures and for any riparian buffer required under section 6(c). The agreement must include the requirements of 302.050(8).
- c. **Riparian Lots.**
  - i. **Riparian Buffer Required.** Lots abutting a shoreline of White Bear Lake must install and maintain a riparian buffer zone within the Shore Impact Zone if one does not already exist.
    - a. The buffer shall consist of trees, shrubs, or low ground cover of native plants and understory consistent with natural cover shorelines in accordance with the Minnesota DNR's "Restore Your Shore" guidance.

- b. The buffer shall cover eight (8) percent of the shore impact zone for every one (1) percent of impervious surface exceeding 25%.
- c. property owners must provide a plan showing the proposed or existing location and size of the Riparian Buffer and the plantings required under (i)(a).
- d. **Requirement to Record.** The variance or permit shall not be valid unless and until the property owner properly records the variance, permit, and the maintenance agreement with the property records at the Washington County Recorder's Office and submits a copy of the recording to the City for verification.

7. **Requirements of Structures and/or Best Management Practices.** Structures and best management practices used to obtain a permit or variance shall be designed to infiltrate the Retention Volume within forty-eight hours or less. Said structures and best management practices must meet the following requirements:

- a. Comply, where applicable, with the Minnesota Pollution Control Agency's Minnesota Stormwater Manual, National Pollutant Discharge Elimination System (NPDES) stormwater standards, Interlocking Concrete Pavement Institute Manual, or with standards otherwise required by the City Planner.
- b. Provide a means to visually verify that all structures and best management practices are in working order as approved by the City Planner.
- c. The base of installed infiltration structures or practices must be a minimum of three feet above the established ground water table or the OHWL of White Bear Lake, whichever is higher.
- d. The site design must comply with section 302.055 and must minimize changes in ground cover, loss of natural vegetation, and grade change as much as possible.

8. **Maintenance Agreements**

- a. **Requirements of Maintenance and Implementation Agreement for Stormwater Management Structures.** Maintenance agreements required by section 302.050 must contain the following provisions, be signed by the property owner, be recorded as provided for in 302.050(6)(c) and be approved by the City.
  - i. An agreement to implement all stormwater management best practices and construct the stormwater management structures as identified in the stormwater management plan.
  - ii. An identification of the performance standards of the stormwater management structures or best management practices. The property owner will identify the proposed testing protocol and standards to determine how the performance of the structures or best management practices are to be judged.
  - iii. An identification of the type of maintenance and the maintenance intervals.
  - iv. An agreement to perform the identified maintenance and any other repairs, replacement, or other necessary work to maintain the stormwater management structures or stormwater best management practices in a condition consistent with the performance standards for which they were originally designed.
  - v. An identification of the Responsible Party who is responsible for maintenance of the stormwater management best practices and structures. The property

owner shall notify the City within 30 days of any changes to the responsible party.

- vi. An indication that this agreement runs with the land and shall bind future successors in title.
- vii. An agreement to allow the City and its representatives the right-of-entry on the property for the purposes of inspecting the stormwater management structures and best management practices.
- viii. An agreement that should any stormwater management structures or best management practices not be implemented, or fail to operate in a condition consistent with the performance standards for which they were originally designed or pose a threat to public safety, public health, or property as determined by the City Planner, the City may, after reasonable notice to the responsible party, perform any work necessary in order to implement, or bring the structures into a condition consistent with the performance standards for which they were originally designed or to eliminate any threat to public safety, public health, or property. The property owner agrees to pay the costs of any such work performed by the City.
- ix. An agreement to provide to the City, every five years, documentation that the maintenance required by this agreement was completed and to pay the required fee to the City.

**b. Requirements for Maintenance and Implementation Agreement for Riparian Buffer**

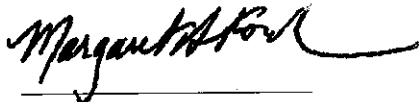
- i. An agreement to implement and preserve the riparian buffer in perpetuity or until the impervious surface coverage of the lot is reduced to 25% or less.
- ii. An identification of the type of maintenance and the maintenance intervals to preserve the riparian buffer.
- iii. An agreement to perform the identified maintenance and any other repairs, replacement, or other necessary work to maintain the riparian buffer in a condition consistent with the original design.
- iv. An identification of the Responsible Party who is responsible for maintenance of the riparian buffer. The property owner shall notify the City within 30 days of any changes to the responsible party.
- v. An agreement that this agreement runs with the land and shall bind future successors in title.
- vi. An agreement to allow the City and its representatives the right-of-entry on the property for the purposes of inspecting the riparian buffer.
- vii. An agreement that should the riparian buffer not be implemented, change character in a way that deviates substantially from the purpose of the original design, or pose a threat to public safety, public health, or property as determined by the City, the City may, after reasonable notice to the responsible party, perform any work necessary in order to implement, or bring the structures into a condition consistent with the original design or to eliminate any threat to public safety, public health, or property. The property owner agrees to pay the costs of any such work performed by the City.

9. **Requirement to implement.** Upon receiving the variance and/or permit under this section, the property owner must construct all proposed structures; all proposed best management practices in accordance with the stormwater management plan; and create all proposed riparian buffers. The proposed structures, implemented best management practices, and riparian buffers shall be constructed as approved by the City Council or City Planner and with any modifications directed by the City Council in granting any necessary variance. Failure to construct all proposed structures, riparian buffers, or to implement all best management practices will render the variance or permit invalid and any improvements constructed pursuant to said variance or permit will be illegal. The City may demolish and remove such improvements at the expense of the property owner. In the alternative, the City may construct the proposed improvements, implement the best management practices, or implement the riparian buffer, and charge the property owner costs for doing so. Such costs may be assessed to the property taxes of the property. This requirement shall run with the property and shall be binding upon all future property owners.
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10. **Requirement to perform maintenance.** The property owner is required to perform, or cause to be performed all maintenance identified in the maintenance agreement, as well as any other additional work necessary to keep the stormwater management structures, best management practices, or riparian buffer in a condition consistent with the performance standards for which they were originally designed, including replacement of the structures, best management practices, or riparian buffer if necessary. The City may inspect the stormwater management structures, and/or records of best practices to ensure that the required maintenance is performed, and the City may inspect the riparian buffer to ensure that its condition is consistent with the original design. These requirements shall run with the property and shall be binding upon all future property owners.
11. **City May Perform Maintenance or Replacement.** Should any stormwater management structure or best management practice fail to operate in a condition consistent with the performance standards for which it was originally designed or pose a threat to public safety, public health, or property as determined by the City, or should the riparian buffer deteriorate into a condition inconsistent with the original design, the City may, after reasonable notice to the responsible party, perform any work necessary in order to bring the riparian buffer, stormwater management structure, or best management practice into a condition consistent with the performance standards for which they were originally designed or to eliminate any threat to public safety, public health, or property. The costs of any such work may be assessed to the property owner and may be certified to Washington County for assessment against the property taxes of the property.
12. **Reasonable Notice.** For purposes of this section, reasonable notice normally means 45 days. If, however, the City Planner provides a written opinion that the condition of the Storm Water Management Structure or Riparian Buffer is a danger to public safety, public health, or public or private property, and that 45 days' notice would not be in the best interests of public safety; public health; or the protection of public or private property; the City Administrator shall reduce or eliminate this notice to the extent necessary to protect the public safety; public health; or public or private property.

13. **Certification Required, Maintenance Fee.** Every five years, any property owner obtaining either a permit or a variance shall document that the conditions in the maintenance agreement have been met and shall pay a maintenance fee of an amount set by the Council in order to cover the administrative burden on the City in ensuring compliance with this section. This section applies to any maintenance agreement described in section 302.050.
14. **Remedy for Violations.** In addition to the remedies described above, such as in sections 302.050(9) and 302.050(11), violation of any portion this section, including the maintenance agreement provisions for both riparian buffers or stormwater management practices or structures, are also governed by Section 619.
15. **Severability.** If any section, subsection, sentence, clause, or phrase of this article is for any reason held to be invalid, such invalidity shall not affect the validity or enforceability of the remaining portions of this article. The City Council hereby declares that it would have adopted this article in each section, subsection, sentence, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

EFFECTIVE DATE: This Ordinance shall be in full force and effect from and after its passage and approval and publication as required by law.

Adopted by the City of Birchwood Village City Council this 12 day of September 2022.



Mayor

Attested:



City Clerk

