

306. ZONING CODE: CONDITIONAL USE PERMITS

306.010. PROCEDURE FOR OBTAINING CONDITIONAL USE PERMIT. Any person applying for a Conditional Use Permit (see Section 301.070 for uses requiring a permit) shall fill out and submit to the City Clerk at least fourteen (14) days prior to the Planning Commission meeting a "Conditional Use Permit form" (copies available at City Hall). A fee, to be set by the City Council, shall be paid.

306.020. CONDITIONAL USE REQUIREMENTS AND STANDARDS. Applications for Conditional Uses must include Required Information and demonstrate that the Requirements and Standards for each Conditional Use will be met. See Section 301.070 for uses requiring Conditional Use Permits.

306.030. CONDITIONAL USE PERMIT FOR LAND DISTURBANCE ACTIVITY.

1. Purpose. The purpose of Section 306.030 is to control or eliminate storm water runoff, soil erosion, and sedimentation in the City and adjacent jurisdictions.
2. No permit for any land disturbance activity shall be granted until the applicant obtains all necessary approvals from the Department of Natural Resources, the Rice Creek Watershed District, the White Bear Lake Conservation District, and any Agency, Department or Government entity which has jurisdiction over the project.
3. Required Information in Application for Land Disturbance Activity
 - a. Plans: Existing, Construction, and Final Site Plans must include detail on how the applicant intends to control and minimize erosion and storm water runoff and to follow Section 302.050 IMPERVIOUS SURFACES and Section 302.055 LAND DISTURBANCE ACTIVITY STANDARDS. A combination of successive Best Management Practices may be used to achieve the standards and requirements.

Existing Site Plan: A map of existing site conditions showing the site and immediately adjacent areas, including:

1. The name and address of the applicant, date and scale of drawings, and number of sheets.
2. Location of the tract on map of the City of Birchwood Village.
3. Existing topography with a contour interval appropriate to the topography of the land, but in no case having a contour interval greater than two (2) feet. Include designation of areas that have the potential for serious erosion problems, e.g. slope of greater than twelve (12) percent.

4. A delineation of all streams, public waters, and wetlands located on and immediately adjacent to the site and any classification given to the water bodies by the Minnesota Department of Natural Resources, The Minnesota Pollution Control Agency, and/or the U.S. Army Corps of Engineers.
5. Location and dimensions of existing storm water drainage systems and natural drainage patterns on and immediately adjacent to the site with delineation of the direction rate at which storm water is conveyed from the site and identification of the receiving streams, public waters, wetland, and/or on-site locations.
6. A description of the soils of the site, including a map indicating soil types of the areas to be disturbed.
7. Location of existing vegetative cover.
8. Locations of highest known water levels of adjoining lakes, ponds, and wetlands.
9. Location and size of existing structures.

Site Construction Plan. A site construction plan including:

1. Locations, dimensions, and volumes of all proposed land disturbance activities including any vegetation proposed for removal.
2. Locations and dimensions of all temporary soil and construction material stockpiles.
3. Locations and dimensions of all construction site erosion control and permanent stabilization measures to meet City and State Codes both during and after the construction process.
4. Schedule of anticipated starting and ending dates of each land disturbance activity and construction site erosion control, storm water runoff control, and inspection and maintenance activity.

Plan of Final Site Conditions. A plan of final site conditions at the same scale as the existing site map showing the site changes including:

1. Finished grading shown at same contour interval as provided above to clearly indicate proposed changes, pre-existing topography, and final conditions.

2. A landscape plan including dimensions, locations, type, and description of all proposed landscape materials which will be on the site.
 3. A drainage plan of the developed site including final storm water drainage systems and natural drainage patterns on and immediately adjacent to the site with delineation of the direction in which storm water is conveyed from the site.
 4. The proposed size, alignment, and intended uses of all structures to be on the site.
 5. Location and sizes of all areas which will be paved or covered with other impervious material including a description of the materials used.
 6. Location of any fill or excavation on slopes greater than twelve (12) percent for review for permanent slope stability.
 7. Any other information which would help the City in reviewing the plan.
- b. Demonstration that the work will not adversely affect the water or wildlife of lakes, ponds, or wetlands into which water from the altered land will drain, or adversely affect adjacent parcels of land.
 - c. Exception: The Building Official may waive the submission of construction documents and other data if the nature of the work applied for is such that reviewing of this information is not necessary to obtain compliance with the code.

306.040. POOLS.

1. Definition.

In this article, "private swimming pool", means any pool, tank, depression, excavation in or above ground, or other structure which shall cause retaining of water over a greater depth than eighteen (18) inches and/or having a larger plane surface of water greater than one hundred fifty (150) square feet and which shall be designed or used for swimming, wading, or immersion purposes by individuals, used or intended to be used solely by the owner, lessee, or tenant thereof and his family and by friends invited to use it without payment of any fees.

"Private swimming pool" shall not include those structures or devices generally known as "hot tubs" or "jacuzzis". This exemption exists only if the hot tub or jacuzzi is located

entirely within the owner's residence or if the hot tub or jacuzzi is located outside of the residence and is equipped with a lockable cover capable of preventing access to the hot tub or jacuzzi when it is not in use.

2. Permit.

a. It shall be unlawful for any person to construct, alter, or repair a private swimming pool within the City without first having secured the permit required pursuant to 306.010 and 306.020 therefore from the building official. An application for this permit shall be made on such form as may be furnished by the City and shall be accompanied by complete plans and specifications of the pool, including the type and location thereof with respect to the boundary lines of the land of the applicant. The applicant shall pay the fees established by resolution for such permit.

b. The building official may revoke any permit for failure to comply with this article. Before a permit is revoked, the pool owner shall have notice in writing listing and describing the instances of failure to comply with this article. The permit shall be reissued upon proper application and upon presentation of evidence that the deficiencies causing revocation have been corrected.

3. Compliance with Article. It is unlawful for any person to own or maintain a private swimming pool that does not comply with this article.

4. Modifications.

a. The Council may make modifications in this article in individual cases, upon showing of good cause, with respect to the height, nature or location of the fence or wall, gates or latches, or the necessity therefore, provided the degree of protection is not reduced thereby.

b. The Council may permit other protective devices or structures to be used so long as the degree of protection afforded by the substitute devices or structures is not less than the protection afforded by the fence, gate, and latch described in this article.

5. Required information.

a. The type and size of pool, along with evidence of compliance with generally accepted design and safety criteria for pools.

b. A site plan indicating the following: location of pool, location of house, garage, fencing, and other improvements on the lot, location of structures on all adjacent lots, location of filter unit, pump, wiring indicating the type of such units, location of back-flush and drainage outlets, grading plan, finished elevations and final treatment (decking, landscaping, etc.) around the pool,

location of existing overhead or underground wiring, utility easements, trees, and similar features and location of any water heating unit.

6. Requirements and standards for swimming pools.

a. Setback requirements: location generally, drainage generally. Pools for which a permit is required under this article shall not be located within ten (10) feet of any side or rear lot line nor within six (6) feet of any principal structure or frost footing. Pools shall not be located within any required front yard. Pools shall not be drained to the street storm sewer system unless otherwise authorized by the City.

b. Fences.

(i) All private swimming pools shall be completely surrounded by a fence or wall not less than four (4) feet in height, which shall be so constructed as not to have openings, holes or gaps larger than four (4) inches in either vertical or horizontal direction, except for doors and gates. The fence shall be of a type not readily climbed by children. A dwelling or accessory building may be used as part of such enclosure. An above-ground pool with a wall greater than four (4) feet in height does not require a fence if the wall cannot be readily climbed by children.

(ii) All gates or doors opening through such enclosure shall be equipped with self-closing and self-latching device (placed at the top of the gate or otherwise inaccessible to small children) for keeping the gate or door securely closed at all times when not in actual use and be provided with hardware for permanent locking devices, except that the door of any dwelling which forms a part of the enclosure need not be so equipped. Pool gates shall be locked when the pool is not in use.

(iii) When it is necessary to fill the pool prior to the installation of the required fencing, a temporary fence (such as snow fence) may be installed in a substantial manner; with the approval of the building official. The maximum time allowed for a temporary fence shall be thirty (30) days.

(iv) Fences must comply with all other applicable fence ordinances.

c. Outdoor pool enclosures. Outdoor pool enclosures, permanent or inflated, shall be constructed in accordance with the Minnesota State Building Code, including appendix chapter 55 (membrane structures). Enclosures shall be of a neutral color and designed to blend with the existing surroundings. The enclosure shall not exceed in height, the principal structure on the property nor shall the enclosure be more than eighteen (18) feet high. The enclosure requires a special use permit.

d. Above-ground pools. Above-ground private swimming pools shall be protected in such a way that access ways, other than those afforded by the dwelling house or accessory buildings, shall be equipped with self-closing and self-latching gates or doors so these gates or doors are kept securely closed at all times when not in actual use.

e. Pool covers. Pool covers, whether they can be locked or not, do not alone meet the public safety requirements of this ordinance.

f. Lighting, ventilation, and electrical requirements.

(i) Where underwater lighting is used, such lights shall be spaced to provide illumination so that all portions of the pool and pool bottom may be readily seen without glare.

(ii) All electrical wiring shall conform with the National Electrical Code approved by the National Fire Protection Association and shall be approved by the National Underwriters Laboratory and the state electrical inspector, with particular reference to Article 680-20 (of the National Electrical Code).

(iii) Each underwater light shall be individually grounded by means of a screwed or bolted connection to the metal junction boxes which the branch circuit to the individual light precedes. Such junction boxes shall not be located in the pool deck.

(iv) Service drop conductors and any other open overhead wiring shall not be installed above the swimming pool or surrounding area extending ten (10) feet horizontally from the pool edge, or dividing structure, observation stands, towers, or platforms.

g. Shielding lights. Lights used to illuminate any private pool shall be so arranged and shaded as to reflect light away from adjoining premises.

h. Life-saving and emergency equipment.

All private swimming pools shall have:

(i) Life-saving equipment consisting of a least:

(a) One (1) ring buoy not more than fifteen (15) inches in diameter to which is attached a rope three-sixteenths-inch in diameter and of a length at least equal to the greatest dimension of the swimming pool.

(b) One (1) life pole, or shepherd's crook type of pole, at least ten (10) feet long and having blunted ends, shall be provided.

(ii) Emergency flood lighting that is electrically connected to a different circuit than used by the pool.

i. Polluted water.

(i) No body of water, whether it be a natural or artificial body of water in the City, which contains sewage, waste, or other contaminating or polluting ingredients rendering the water hazardous to health shall be used for swimming or bathing by any person or persons.

(ii) Water shall not be allowed to remain in any unused or abandoned pool.

j. City water supply. There will be no cross-connection of the City water supply with any other source of water supply for the pool. The line from the City water supply to the pool shall be protected against back flow of polluted water by means of either an air gap, vacuum breaker, or other adequate device to prevent back siphonage.

k. Bacteriological quality of water. A sample of private swimming pool water shall be considered satisfactory when the total bacterial count at thirty-five (35) degrees centigrade does not exceed two hundred (200) colonies per milliliter and no organisms of the E. Coli group are present in a ten (10) milliliter portion or one hundred (100) milliliter portion as determined by the membrane filter method. If more than one (1) sample out of seven (7) collected on different dates is unsatisfactory, procedures and interpretations relating to bacteriological quality shall be done in accordance with the Standard Methods for the Examination of Water, Sewage, and Industrial Wastes, 11th edition (1960).

l. Pool Filters.

(i) Every private swimming pool shall be equipped with a recirculating system capable of filtering the entire contents of the pool in twelve (12) hours or less.

(ii) Filters shall be capable of maintaining the clarity of the water to permit the ready identification, through an eight-foot depth of water, of a disc two (2) inches in diameter which is divided into four (4) quadrants in alternate colors of red and white.

(iii) Filter capacity shall be such that it need not be cleaned more frequently than once every four (4) days under proper conditions of water and operation.

(iv) All pressure filters shall be equipped with influent and effluent pressure gauges to determine the pressure differential and frequency of cleaning. All other filters shall be equipped with at least one (1) pressure vacuum or compound gauge, as applicable, which shall be positioned in such a way as to determine the differential across the filter and the need to cleaning.

(v) All pressure filter systems shall be posted on every filter system. All valves shall be properly designated, indicating their purpose.

(vi) Operating instructions shall be posted on every filter system. All valves shall be properly designated, indicating their purpose.

(vii) When dissimilar metals are used in the construction of the filter, which may set up galvanic currents, then suitable provision shall be made to resist electrolytic corrosion.

(viii) Filters shall be so designed and installed that they can be readily disassembled and the filter elements removed.

m. Disinfection and chemical conditioning.

(i) Provision shall be made for the introduction into each private swimming pool water of accurate and controlled applications of a disinfectant in sufficient quantities to attain and maintain efficient bactericidal action while the pool is in use.

(ii) Suitable methods shall be available to maintain a pH of the pool water between 7.2 and 8.2 and to maintain an alkalinity of not less than 50 ppm.

(iii) The devices used to apply chlorine or its equivalent as a disinfectant shall be of such capacity as to maintain in all areas to the swimming pool at all times at least 0.5 ppm of free available residual chlorine or a residual level of another approved disinfectant which shall be of at least a proven equivalent disinfecting strength as 0.5 ppm of free available residual chlorine.

n. Unnecessary noise. It shall be unlawful for any person to make, continue or cause to be made or continue at any private swimming pool or family pool any loud, unnecessary, or unusual noise or any noise which annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others. In the operation of a swimming pool, the use or permitting the use or operation of any radio, receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants or any time with louder

volume than is necessary for convenient hearing of the person or persons who are in the swimming pool premises shall be unlawful.

o. In the case of inground pools, the necessary precautions shall be taken during construction:

(i) Avoid damage, hazard, or inconvenience to adjacent or nearby property.

(ii) Assure that proper care shall be taken in stockpiling excavated material to avoid erosion, dust or other infringements upon adjoining property.

(iii) Complete grading, filling and excavating in accordance with the provisions of section 301.070.

306.050. TENNIS COURTS.

1. Required Information.

a. Size and type (material used for Court, fencing, etc.).

b. Site plan showing location of court (s), location of house, garage, location of structures on all adjacent lots, grading plan, drainage provisions, finished elevations and final treatment (landscaping, retaining walls, etc.).

2. Requirements and Standards.

a. Location and setback requirements per 302.020 shall be the same as for other structures including fences.

b. Provisions for grading, filling, and excavating must be adhered to (306.030).

306.060. SOLAR ENERGY SYSTEMS. **“Repealed by Ordinance 2023-06-01, November 22, 2023”**

306.070 HOME OCCUPATIONS. **“Repealed by Ordinance 2012-04, April 10, 2012”**

306.080. NOTIFICATION AND PROCEDURES FOR CONDITIONAL USE PERMITS

1. Notice of Conditional Use Permit application shall be mailed at least 10 days prior to the Planning Commission meeting to each owner of property within 200 feet of the

property to which the Conditional Use Permit relates, and when applicable to the Department of Natural Resources. The City Clerk shall mail such notices. The City shall also give such notice as may be required by state statute.

2. The City Clerk shall refer the permit application to the Planning Commission. The Planning Commission shall consider the petition at its next regular meeting.
3. The petitioner or his/her representative shall appear before the Planning Commission at the next regularly scheduled meeting in order to answer questions concerning the proposed conditional use.
4. The Planning Commission will consider possible adverse effects of the proposed conditional use and what additional requirements may be necessary to prevent such adverse effects.
5. The Planning Commission is authorized to recommend Conditional Use Permits.
6. The recommendation by the Planning Commission is to be forwarded to the Council for action.
7. The report of the Planning Commission shall be placed on the agenda of the Council at its next regular meeting following referral from the Planning Commission. The council must take action on the application within sixty (60) days after receiving the report of the Planning Commission. If it grants the Conditional Use Permit, the Council may impose conditions it considers necessary to protect the public health, safety and welfare. Notice of final action shall be sent when applicable to the Minnesota Department of Natural Resources within ten (10) days.
8. The Council may require posting of a bond or other guarantee to insure compliance with its conditions.
9. Each Conditional Use Permit issued by the City shall be recorded with the County Recorder.
10. The City shall make a decision on a Conditional Use Permit within the time limitation of Minnesota Statutes Section 15.99.

“Amended by Ordinance 2012-04, April 10, 2012”

306.090 REVOCATION.

1. A violation of any condition set forth or required by the City Council in granting a Conditional Use Permit shall be a violation of this Code, and the City Council after Notification and Procedures per Section 306.090, may terminate the Conditional Use Permit.

2. A Conditional Use Permit shall become null and void one year after it was granted, unless made use of within the year, or a longer period of time if prescribed by the Council at the time the permit is issued.

"AMENDED BY ORDINANCES 2005-1, APRIL 12, 2005, AND ORDINANCE 2012-04, APRIL 10, 2012."