

# DNR Code Compliance Process

## Planning Commission Chair Update

Planning Commission Meeting

January 23, 2023

# Task force work plan: 3 areas of flexibility granted by DNR

Section/issue	1996 code	2017 code	DNR model ordinance	TF review plan
Water-Oriented Accessory Structure (WOAS)	Flexibility granted for placement of a Lock Box conditioned on limited size (20 sq ft, 4 ft H)	No specific limitations for type, size, number and placement of the one allowed WOAS (where?)	Only one allowed, max size 250 sq ft, placed 10' from lake,	Jan
Building height	40' measurement	40' measurement	25' measurement	Feb
30% hardcover	30% and no credits	30% + 5% credit = 35%	25% maximum and no credits	Mar/Apr

# Task force work plan: 7 restrictions promised by MB (1)

Section/issue	1996 code	2017 code	DNR model ordinance	TF review plan
Guest houses/ Detached ADUs	Not allowed; City is entirely zoned R-1 (single family) housing only	Detached ADU allowed until 2021 when DNR requested code correction; Code revised with DNR agreement to allow ADU if within same structure & used by family/caregiver	Detached allowed based on lot size and if City is zoned for multi family housing	Done
Lot size	<p>1 acre minimum</p> <p>Nonconforming or substandard lots (less than the greater City promised minimum standard of 1 acre) required to meet all setback requirements</p> <p>All lots require 20' side setback</p>	<p>1 acre minimum</p> <p><b>No mitigation required if nonconforming or substandard (smaller than the City promised greater minimum standard of one acre)</b></p> <p><b>Side setbacks relaxed-- 15% of lot width, as low as 6' on 40' lot</b></p>	<p>Riparian .34 acre, non-riparian .23 acre</p> <p>All nonconforming or substandard lots (less than greater City standard or DNR minimum standard) require appropriate mitigation (including storm water runoff control, hardcover reduction, increased setback from lake, no vegetation removal)</p> <p>Improvements on nonconforming or substandard lots (less than 1 acre) must meet all setback requirements</p>	May/June

Highlights made by PC chair

# Task force work plan: 7 restrictions promised by MB (2)

Section/issue	1996 code	2017 code	DNR model ordinance	TF review plan
Lot width	150' minimum	100' minimum	75'	May/June
Boathouses	Not allowed (except legal nonconformities)	Not allowed (except legal nonconformities)	Not allowed	July
Septic systems	Not allowed	Not allowed	Allowed with conditions	July
PUD Density	TBD	TBD	TBD	July
Lake setback	Greater of 75' or AMBS To establish AMBS points on the common property line, draw a perpendicular line from closest corner of immediately adjacent dwellings. Setback line is the average distance between the two points. Intent is to move structures back from the lake not towards it. Key point is this averages 120-150' which is farther than DNR model ordinance.	Greater of 75' or AMLS-- average of distance from adjoining homes to lake. Still averages 120-150' which is farther than DNR model ordinance.  Note: we find our code requiring measurements from the lake to be confusing to calculate and probably prefer AMBS or similar system.	75' from lake	Aug/Sept

# Task force: other potential issues identified to date

Section/issue	1996 code	2017 code	DNR model ordinance
Non-shoreland	Everything shoreland and finishing standards included	Overlay District section suggests City has non-shoreland, Overlay District does not include finishing standards	
Flood plain	Everything flood plain but managed through wetland section, needs updating	Overlay District suggests City has non-floodplain areas	
Certificate of shoreland compliance	TBD	Not required	Required after every project
Minor buildings	Permit required	Does not require permit	Any improvement in shoreland requires permit
Information required for permits and variance requests	Robust info required (hardcover, survey, other as deemed necessary)	Unclear, appears information requirement in wrong place in P-1, not required in R-1 P. 75	
Specific Code sections which need to be corrected	Updates needed to modernize language and add clarity.	Relaxed from 1996, corrections necessary to Purpose and Intent, Definitions, Zoning Districts, Minimum Standards, Nonconforming Uses, Grading and Filling and Stormwater Management, Finishing Standards, among others.	Use Model ordinance language where necessary/appropriate for corrections, updates and clarifications

# Key dates on DNR compliance

Jan 2022 Planning commission voted on priorities for 2022/23, “city code in compliance with DNR” was #2

PLANNING COMMISSION RECOMMENDED PRIORITIES JAN 2022									
Summary by Chair Jeff Breazeale									
Score	Issue	Description	Voted priority assigned by each commissioner (top in green, 3 in yellow)						Total
			Anderson	Blodgett	Breazeale	Halverson	Steinfeld	Swanson	
14	Enforcement	How does/can the city enforce code and approval conditions? Biggest topics that have come up repeatedly in meetings are 1. monitoring compliance with requirements like permeable pavers over time and 2. monitoring code violations such as unauthorized hardcover additions, which seem to be common.	1	4	2	5	1	1	14
15	City code in compliance with DNR	A recent request on accessory buildings brought up discrepancies in our code vs. DNR. Our city planner thought DNR was only recommending, but a call to DNR by a resident seemed to indicate that city code should be reviewed by them for approval. We need to confirm, and likely review discrepancies, recommend edits, make edits, and submit to DNR.	2	5	1	1	3	3	15

March 14, 2022 City Council confirmed finish tree ordinance #1, no enforcement, “city code in compliance with DNR” #2

May 23, 2022 Carved out ADU issue as first “city code in compliance with DNR” issue due to moratorium

August 15, 2022 Tree ordinance passed

Sept 12, 2022 ADU amendment passed by city council (and approved by DNR)

Sept 26, 2022 Task force update to planning commission included the following

- 4. Based on input from the City Planner and City Administrator, the Task Force intends to base its recommendations on the approved 1996 Code, integrating updated language from the DNR Model Ordinance and our current Code as appropriate.

# Task force detail recommended process (highlights by chair)

ADU process (fast track because of moratorium)	Task force recommended process
<ol style="list-style-type: none"> <li>1. Task force researched original process that resulted in “3/7 Agreement” (limited City records)</li> <li>2. Task Force determined the entire 2017 Code could not be evaluated for errors within the moratorium time period</li> <li>3. After reporting to PC and CC, TF obtained an agreement from the DNR to carve out the ADU /Guest Cottage Code correction issue</li> <li>4. Task force used optional informal DNR process to fast track ADU amendment and determine what the DNR would allow in light of prior promise of City</li> <li>5. Task Force sought Planning commission direction at June 2022 PC meeting, City Council updated on PC direction and required DNR process at July Council meeting.</li> <li>6. Task force <b>drafted proposed ADU amendment</b> based on PC direction, submitted to City Attorney and City Planner, then submitted to DNR for conditional approval***</li> <li>7. DNR gave conditional approval of proposed ADU amendment***</li> <li>8. Planning commission held public hearing and recommended adoption of ADU draft code amendment ***</li> <li>9. City council adopted ADU Code amendment***</li> <li>10. DNR gave final approval to amendment***</li> </ol>	<ol style="list-style-type: none"> <li>1. Task Force researches and evaluates individual grants and promises contained in the “3/7 Agreement” in detail and identifies areas where PC direction is needed</li> <li>2. During the analysis process Task Force may approach DNR with clarification requests</li> <li>3. Planning commission reviews analysis and provides any direction needed</li> <li>4. Task Force will work with DNR to identify which, if any, issues identified by TF and PC might require a flexibility grant.</li> </ol> <p>Iterate 8 months to allow for meaningful direction from PC then</p> <ol style="list-style-type: none"> <li>1. Task Force <b>drafts code amendments to 1996</b> as they go if no flexibility negotiations are necessary</li> <li>2. TF and PC summarize and prioritize any flexibility grant areas</li> <li>3. Task Force engages in flexibility negotiations with DNR and reports back to PC with the parameters that will be required by the DNR</li> <li>4. Depending on issue Task Force may recommend to Planning that optional informal review process with DNR be used</li> <li>5. Task Force will finalize proposed code amendment draft language and submit for review to City Attorney and City Planner</li> <li>6. Proposed code amendments submitted to DNR for conditional review***</li> <li>7. <b>DNR gives preliminary approval of amendments to 1996 code***</b></li> <li>8. Planning commission holds public hearings, commission recommends code draft to City Council***</li> <li>9. City council adopts code amendments***</li> <li>10. DNR gives final approval***</li> </ol>
<p>***=Mandated DNR process for shoreland ordinance amendment and adoption</p>	

# DNR letter to Minnetonka Beach on expectations



Ecological and Water Resources  
1200 Warner Road  
St. Paul, MN 55106

October 17, 2022

Heidi Honey  
City Administrator  
City of the Village of Minnetonka Beach  
2945 Westwood Road  
Minnetonka Beach, MN 55361

Dear Ms. Honey,

Recently the DNR provided final approval to Minnetonka Beach for a zoning code amendment regarding guest cottages, also known as Accessory Dwelling Units (ADU). The amendment was necessary to comply with DNR shoreland rules. The purpose of this letter is to summarize a timeline for the city to finish reestablishing Minnetonka Beach's zoning code compliance with the DNR's shoreland program requirements.

We appreciate the cooperation of the city and its Code Compliance Task Force in protecting its shoreland resources and in taking steps to bring the ordinance into compliance with state shoreland rules. The DNR recognizes the City's limited resources and the need for the City to use a volunteer task force to conduct the DNR shoreland rules compliance review, prepare code changes and to conduct any flexibility negotiations.

The DNR shoreland rules were adopted in 1989 and Minnetonka Beach's ordinance updates were approved by the DNR in 1996. However, a variance request to the city's ADU ordinance in 2021 brought to our attention that over time there had been myriad of modifications to the city's zoning code, including the 2017 rewrite, that pertained to the DNR shoreland rules but were not reviewed or approved by DNR.

The DNR expects the City will amend its current Land Use Regulation ordinance to be consistent with ordinance language approved by the DNR in 1996 as required under Minnesota Statute 103F.221. Minnetonka Beach is utilizing the Task Force for research and identification of current code areas out of compliance with the DNR shoreland rules and inconsistent with approved 1996 Code. Minnetonka Beach is distinct in that entirely all of the city is within designated shoreland area. Therefore, it is crucial that the city maintain progress towards reestablishing compliance with the ordinance language approved by the DNR in 1996.

DNR was advised by the Code Compliance Task Force during the ADU ordinance amendment process that their goal is to complete its overall shoreland update work by December 2023. This is acceptable; however, we also strongly suggest the Task Force provide an update on overall progress by March 31, 2023.

**While the city is ultimately responsible to identify and properly amend its unapproved shoreland ordinance language, we are available at any time to answer questions and provide support to the Task Force regarding the DNR's shoreland program. We applaud the city's Task Force for efficiently and successfully amending the ADU language and urge the city to avoid delay in moving forward with related amendments.**

Sincerely,

A handwritten signature in black ink that reads 'Wes Saunders-Pearce'.

Wes Saunders-Pearce  
North Metro Area Hydrologist

CC: Dan Petrik, Shoreland Program Manager

*Equal Opportunity Employer*



# Chair’s thoughts and questions on finishing in 2023

Amend current 2017 code (redline current code)	Amend 1996 code (redline 1996 code)
<p>DNR expects us to amend our current code by end of 2023.</p> <p>ADU took 4 months and closed Sept 2022.</p> <p>Review and WOAS has taken 4 months from then until today.</p> <p>We have about 11 months and 5 more main points to discuss and amend to cover the 1992/1996 deal.</p> <p>If we draft as we go, can we break it up into 2-3 amendment packages and DNR approvals to cover the points? How quickly can we do that?</p> <p>After amending our code on these “3/7 agreement” points, can we submit the entire 2017 code for approval in 2023?</p> <p>Can we then circle back in 2024-2026 on restructuring the amended code into the model ordinance format, and clean up the other issues and opportunities on our own timetable?</p>	<p>Doesn’t this option mean we basically must first “adopt” in our minds the 1996 code and leave our 2017 code aside?</p> <p>If we use a redline of a 1996 code, how will we explain and compare it to current code for ourselves, city council, and residents?</p> <p>How long will it take to get PC, CC and residents up to speed on learning the 1996 code? What issues will this switch cause?</p> <p>Won’t a complete rewrite force us to review everything in the code, rather than just the DNR compliance points?</p> <p>Don’t complete code rewrites, reviews and public hearings take years?</p> <p>How can we get that done by the end of 2023?</p>