

**LAKE MINNETONKA CONSERVATION DISTRICT
STATE OF MINNESOTA**

ORDINANCE NO. 232

**AN ORDINANCE AMENDING THE LAKE MINNETONKA
CONSERVATION DISTRICT CODE OF ORDINANCES REGARDING
THE RECONFIGURATION OF NONCONFORMING STRUCTURES**

THE BOARD OF DIRECTORS OF THE LAKE MINNETONKA CONSERVATION DISTRICT
ORDAINS:

Article I. Reconfiguration. Chapter II, Section 2.015 of the Lake Minnetonka Code of Ordinances is hereby deleted in its entirety and replaced with the following:

Section 2.015. Reconfiguration of Nonconforming Structures.

Subd. 1. Purpose. The protection and preservation of the Lake has required increasingly strict regulatory measures. While the Board has determined that these measures are generally appropriate on a lake-wide basis, it has recognized that requiring existing nonconforming structures to come into compliance with new requirements of the Code can impose substantial hardships. Therefore, as regulation of docks and boat storage on the Lake has changed, the Board, in some cases, has allowed docks lawfully in existence at the time of adoption of new ordinances to continue. In conferring such nonconforming status, the Board has imposed limitations on alterations or expansions of such facilities to protect the Lake and to otherwise further the purposes of this Code. However, the Board has determined that these limitations may be unduly restrictive without significantly advancing the public interest. The purpose of this section is to alleviate the hardship created by prohibiting changes or alterations to nonconforming structures by allowing reconfigurations and minor changes within certain limitations imposed to protect the spirit and intent of this Code. The Board also recognizes a need to allow some reasonable flexibility in the reconfiguration of nonconforming structures to enable owners to enhance the safety of their structures and respond to changing market demands and watercraft designs. The Board further recognizes that there may be alterations proposed to a nonconforming structure that comply with the requirements of the Code. The intent of the Board is to allow for such changes as part of an approved reconfiguration or minor change, provided the Board or the Executive Director finds the proposed changes do not increase the nonconforming nature of the structure and is otherwise consistent with the purpose of this section. It remains a priority of the Board to encourage owners to bring their nonconforming structures into compliance with Code to the extent reasonably possible, but the Board determines it is not necessary, and can result in unreasonably hardships, for an owner to be required to bring their nonconforming structure into conformance with the Code simply for seeking a reconfiguration of, or minor change to, the structure.

Subd. 2. Applicability. This section applies to all permanent docks, seasonal docks, and district mooring areas that are not in compliance with the requirements of the Code applicable to new facilities, but that are lawfully in existence by reason of Code provisions explicitly allowing such nonconformities to continue.

Subd. 3. Reconfigurations and Minor Changes Generally. This section sets out the procedure to seek approval for the reconfiguration of a nonconforming structure and also provides a process to obtain administrative approval for a minor change to a nonconforming structure. Without limiting the specific requirements of this section, the primary distinction between a reconfiguration and a minor change with respect to a nonconforming dock is that a reconfiguration proposes to substantially alter the principal structure of a dock, while a minor change only alters a minimal portion of the principal structure or the secondary structure of a dock. For the purposes of this section, the “principal structure” of a dock is the main walkway, and the “secondary structure” of the dock includes the slip structures, dolphin poles, and other ancillary components affixed to or adjacent to the principal structure.

The reconfiguration of a nonconforming structure, to the extent allowed by this section, requires the submission of an application to the LMCD in accordance with subdivision 8 of this section requesting a new dock license or new district mooring area license for the proposed reconfigured nonconforming structure. If a proposed reconfiguration qualifies as a minor change, a minor change application may be submitted to the LMCD in accordance with subdivision 9 of this section and the Executive Director may approve the application without a public hearing, Board review, and without requiring a new license. The minor change process is only available if, in the determination of the Executive Director, the proposed reconfiguration complies with the limitations and criteria in subdivisions 6 and 9 of this section.

In considering a proposed reconfiguration or minor change to a nonconforming structure, the LMCD shall determine the number of boat storage units, total linear footage of the boat storage units, and the perimeter of the existing nonconforming structure. Each of these determinations, which must be made in accordance with subdivision 7 of this section, serve as limitations on the proposed and all future reconfigurations and minor changes to the structure. To the extent a proposed reconfiguration or minor change results in less than the full amount of the boat storage units, total linear footage, or perimeter area of the existing nonconforming structure being utilized, they are preserved as provided in subdivision 10 of this section for future use.

Subd. 4. Maintenance and Replacement. An owner may maintain, repair, restore, and improve a nonconforming structure without having to obtain a new dock or district mooring area license or administrative approval of the minor change under this section, provided that such work does not result in the alteration or relocation of any portion of the structure. The replacement of a majority of a dock shall require a minor change permit under subdivision 9 of this section.

Subd. 5. Code Requirements. The reconfiguration of nonconforming structures must comply, in all respects, with the requirements of this Code except as otherwise provided in this section and as follows:

- (a) The provisions of section 2.01, subd. 2(a) which prohibit alteration of docks extending more than 100 feet from the shoreline;
- (b) The provisions of section 2.05, subd. 9, which prohibit changes involving an increase in slip size without first securing a special density license pursuant to section 2.05; and

- (c) The provisions of 2.10, subd. 3, which prohibit the expansion of non-conforming uses.

Subd. 6. Limitations. Except to the extent expressly allowed by this section, the reconfiguration of, or a minor change to, a nonconforming structure is not allowed, and the LMCD shall not issue a new dock license, a new district mooring area license, or grant administrative approval, if the proposed reconfiguration would result in any of the following:

- (a) An increase in boat storage units;
- (b) An increase in the linear footage of the boat storage units as determined in subdivision 7 of this section;
- (c) An increase in slip length of any slip structures opening toward a nonconforming side setback area;
- (d) An adverse effect on nearby properties, navigation, safety, wetlands with emergent vegetation, or the environment;
- (e) An increase in the nonconforming nature of the structure;
- (f) The creation of any new nonconformities; or
- (g) The structure extending further into any nonconforming side setback area than the existing structure, except that extension into a double setback area, if applicable, may be allowed upon the issuance of a variance.

Subd. 7. Determination of Existing Boat Storage Units, Linear Footage and Perimeter. The Board desires to allow the reconfiguration of, and minor changes to, nonconforming structures to accommodate the changing widths of watercraft and the needs of owners, but to do so in a way that ensures the reconfigured structure does not extend beyond the perimeter of the existing structure and that preserves for the owner, as a maximum, the original number and linear footage of the boat storage units of the existing structure. This subdivision sets out the process for confirming the number of existing boat storage units, the calculation of the total linear footage of the boat storage units, and for determining the perimeter of the existing nonconforming structure as part of a proposed reconfiguration. The determinations made under this subdivision are based on the existing licensed structure, not on any past or proposed future configuration of the structure. The LMCD may prepare and make available to the public diagrams to demonstrate how one or more of these determinations are made. Any such diagrams are for illustration only and are not controlling on the determinations made by the Executive Director or the Board under this subdivision regarding any particular application.

- (a) Boat Storage Units. The number of boat storage units for the nonconforming structure is established as part of the license issued by the LMCD for the dock or the district mooring area. If a proposed reconfiguration will result in a reduction of the number of boat storage units, the new dock license, district mooring area license, or minor change

permit issued for the reconfigured structure shall identify the number of boat storage units before and after the reconfiguration.

- (b) Linear Footage. Part of the flexibility the Board desires to provide in the reconfiguration of nonconforming structures is to allow the transfer of linear footage of the boat storage units among slips and to otherwise reconfigure the boat storage units as the owner determines is appropriate, provided the total linear footage of the boat storage units of the existing structure is not exceeded. Where the license is based on multiple sites with non-continuous shoreline, the linear footage may be transferred among sites. The linear footage shall be determined as follows:
- (1) General Linear Footage Calculation. The linear footage of a boat storage unit contained by a slip structure shall be determined by a straight line measurement from the center of dock-side end of the slip to a point even with the outside edge of the slip structure, whether that is the end of the slip fingers, or other similar portion of the dock structure reasonably constituting the end of the slip.
 - (2) Dolphin Poles or Similar. The linear footage of a boat storage unit with dolphin poles or that is not contained by a slip structure shall be determined based on the linear footage of the nearest slip finger or other similar portion of the dock structure reasonably constituting the end of the slip.
 - (3) Mooring Areas. The linear footage of a district mooring area shall be determined based upon the combined length of the watercraft, as identified in the most current license issued for the structure, allowed to be moored at the mooring area.
 - (4) Total Linear Footage. The total linear footage of the nonconforming structure shall be the combined linear footage of all the boat storage units.
- (c) Reduction in Linear Footage. If a proposed reconfiguration of, or minor change to, a nonconforming structure will result in reducing the amount of linear footage used for boat storage units, the new dock license, district mooring area license, or minor change permit issued for the reconfigured structure shall identify the total linear footage before and after the reconfiguration.
- (d) Linear Footage Appeal. The Executive Director is authorized to resolve any questions and to decide the total linear footage of a nonconforming structure. The Executive Director may bring a question regarding the determination of the linear footage to the Board for a final decision. If an applicant disagrees with the Executive Director's determination of the total linear footage, that person may appeal the determination to the Board for consideration at a regular meeting. The Board will consider the Executive Director's decision, give the applicant an opportunity to be heard, and make a final decision regarding the total linear footage.

(e) Perimeter. Another part of the flexibility the Board desires to provide in the reconfiguration of nonconforming structures is to allow reconfigurations without being limited to a particular structural design or configuration, provided the reconfigured structure does not extend beyond the perimeter of the existing structure. Confining the reconfigured structure to the perimeter of the existing structure will help avoid the negative impacts that can result to the Lake and neighboring owners if the structure was allowed to expand or extend further into the Lake.

(1) Perimeter Structure and Storage. All docks, moorings, watercraft storage, swimming floats, ski jump storage, diving towers, and similar items must be located within the perimeter as approved in accordance with this Code.

(2) Perimeter Determination. The perimeter of the existing nonconforming structure shall be a closed line that extends from shoreline to shoreline around the outside portions of the structure (boxing in the structure). The perimeter shall be drawn by extending straight lines from the shoreline on either side of the structure to the furthest point of the structure into the Lake, and then drawing a straight line between the two side lines that parallels the shoreline. The Executive Director is authorized to resolve any questions and to decide the perimeter of a nonconforming structure. The Executive Director may bring a question regarding the determination of the perimeter to the Board for a final decision. The established perimeter shall be included in and made part of the new dock license, district mooring area license, or minor change permit issued for the reconfigured nonconforming structure. The established perimeter shall also be shown on any survey submitted with a proposed reconfiguration of the nonconforming structure.

(3) Perimeter Appeal. If an applicant disagrees with the Executive Director's determination of the perimeter, that person may appeal the determination to the Board for consideration at a regular meeting. The Board will consider the Executive Director's decision, give the applicant an opportunity to be heard, and make a final decision regarding the perimeter.

Subd. 8. License for Reconfigured Nonconforming Structure. The reconfiguration of a nonconforming structure may only occur to the extent allowed by this section, and in accordance the procedures established in this subdivision. The reconfiguration of a nonconforming structure under this subdivision requires the issuance of a new dock license or a new district mooring area license.

(a) Eligibility. The Board may only issue a new dock license or a new district mooring area license if the proposed reconfiguration of the nonconforming structure does not result in any of the conditions identified in subdivision 6 of this section and complies with the requirements of section 2.03, this section, and the other requirements of the Code, to the extent applicable or not otherwise exempted by the express provisions of this section.

(b) Application and Process. A person proposing to reconfigure a nonconforming structure shall file a new dock license or new district mooring area license application with the LMCD, together with the applicable application fee and escrow deposit to be used by the LMCD to

reimburse itself for legal, surveying, engineering, inspection, maintenance and other expenses it incurs to process and act on the application. Except as provided in this section, the application for the new license shall be processed in accordance with section 2.03. The application for the new license shall include, in addition to the information required by section 2.03, subdivision 2, the following information:

- (1) A survey map of the nonconforming structure in its current configuration identifying the existing number of boat storage units, the linear footage of each boat storage unit, and the perimeter of the structure in accordance with subdivision 7 of this section; and
- (2) A survey map of the proposed reconfigured nonconforming structure showing the boat storage units used, the total linear footage of the boat storage units used, and the perimeter area of the reconfigured structure in accordance with subdivision 7 of this section.

Upon the receipt of a complete application, the Executive Director shall decide whether the boat storage units, linear footage, and perimeter determinations shown on the map were made in accordance with subdivision 7 of this section and require adjustments as needed.

(c) Variances. If a proposed reconfiguration of a nonconforming structure requires the issuance of a new variance, or an amendment to an existing variance, the applicant shall submit a variance application together with the application for a new dock or district mooring license application. Proceedings for consideration of such variance application and new dock or district mooring area license application shall be conducted concurrently.

(d) Public Hearing. Once an application is deemed complete, a public hearing shall be scheduled before the Board to consider the application.

(e) Board Determination. After conducting the public hearing, the Board shall make the final decision on whether to approve the requested new dock license or new district mooring area license for the reconfigured nonconforming structure. The Board, as part of an approval, may allow minor modifications to the perimeter in order to accommodate changes to the structure that otherwise comply with the Code. The Board may impose conditions on a license it issues as it determines is reasonably needed to address navigation, safety, and environmental concerns including, but not limited to, imposing restrictions on the length of watercraft. If the application is approved, the applicant may seek annual renewal of the license following the same annual licensing procedures required of conforming structures.

Subd. 9. Minor Changes to Nonconforming Structures. The Executive Director may administratively approve a minor change to a nonconforming structure and issue a minor change permit without requiring a new dock license or a new district mooring area license, and without a public hearing, to the extent allowed by, and in accordance with the procedures established in, this subdivision.

(a) Eligibility. The Executive Director may administratively approve, as a minor change, a proposed reconfiguration of a nonconforming structure that meets all of the following criteria:

- (1) The minor change will not result in any of the conditions identified in subdivision 6 of this section;
- (2) There is no conversion of slides to slips;
- (3) There is no substantial increase in the amount of the Lake obstructed or occupied;
- (4) There is no substantial change in the use or the type of watercraft stored;
- (5) The minor change does not require an amendment to an existing variance or the issuance of a new variance;
- (6) No more than a combined total of 50 feet or 25%, whichever is greater, of the principal structure of a nonconforming dock is being moved, shortened, or lengthened; and
- (7) No new docks are being added.

(b) Application and Process. A person proposing a minor change to a nonconforming structure shall file a minor change application with the LMCD, together with the required application fee. The application materials shall include a map that shows the proposed minor change as well as the number of boat storage units, the linear footage of each boat storage unit, and the perimeter of the structure in accordance with subdivision 7 of this section both before and after the proposed minor change. Upon the receipt of a complete application, the Executive Director shall decide whether the boat storage units, linear footage, and perimeter determinations shown on the map were made in accordance with subdivision 7 of this section and require adjustments as needed. If the Executive Director determines the proposed minor change is consistent with the eligibility criteria in this subdivision, the Executive Director may administratively approve the application and issue a minor change permit. The Executive Director may refer any minor change application to the Board for a final decision and shall refer to the Board any minor change application the Executive Director proposes to deny. If the Board approves the license, the Executive Director shall issue a minor change permit in accordance with the decision. The Executive Director or the Board may, as part of an approval, allow minor modifications to the perimeter in order to accommodate changes to the structure that otherwise comply with the Code. The Executive Director or the Board may impose conditions on a minor change permit as it determines is reasonably needed to address navigation, safety, and environmental concerns including, but not limited to, restrictions on the length of watercraft.

Subd. 10. Preservation of Unused Boat Storage Units, Linear Footage, and Perimeter Area. If the reconfigured or changed nonconforming structure does not utilize the full number of boat storage units, the total linear footage, or the full perimeter area of the existing nonconforming structure, as determined in accordance with subdivision 7 of this section, the unused boat storage units, unused linear footage, and unused perimeter area shall be preserved and may be used for a

future reconfiguration of the nonconforming structure, provided that any such future reconfiguration is in compliance with this section. The utilization of any preserved boat storage units, linear footage, or perimeter area for a proposed future reconfiguration done in accordance with this section does not constitute an unlawful expansion of the nonconforming structure. No expansion beyond the preserved number of boat storage units, linear footage, or perimeter shall be allowed unless such expansion is otherwise allowed by this Code or a variance is applied for and obtained prior to, or as part of, the issuance of the new dock license, district mooring area license, or minor change permit for the newly reconfigured nonconforming structure.

Subd. 11. No Vested Rights. It is anticipated that in the future it may become necessary for the LMCD to attempt to make an allocation or apportionment of multiple dock, mooring area, commercial dock, and launching facility privileges on and within the Lake, on an equitable basis, in order to avoid overcrowding of the Lake, or portions thereof, and in order to balance the many conflicting demands upon the Lake. In order to give notice to licensees that the license does not create any vested rights and that future regulatory actions by the LMCD may necessitate modifying or discontinuing the facility for which the license is granted, each license shall state upon its face that the licensed facility is subject to existing and future density policies and regulations adopted by the Board.

Subd. 12. Conversion of Slides to Slips. An applicant proposing to reconfigure a nonconforming structure may request to convert one or more licensed slides to slip storage spaces. A request for such a conversion may only be considered as part of a reconfiguration request under this section and may not be administratively approved by the Executive Director as part of a minor change under subdivision 6 of this section.

(a) Criteria. The Board may only approve a conversion request if it meets all of the following criteria:

- (1) The slides proposed for conversion to slips must be licensed for the same site; and
- (2) The conversion does not increase the number of boat storage units at the site.

(b) Removal and Credit. All slides converted to slips must be removed. In converting slides to slips, the applicant shall be given credit for linear length of slip space based on the linear length of each slide converted.

Article II. Length Limitation. Chapter II, Section 2.01, Subd. 4 of the Lake Minnetonka Code of Ordinances is hereby deleted as follows:

~~Subd. 4. Watercraft Length Limitations. Watercraft stored at dock structures reconfigured in accordance with section 2.015, must be in compliance with watercraft length limitations established under Section 2.015, Subd. 9.~~

Article III. Cross Reference. Chapter II, Section 2.14 Subd 4 c) of the Lake Minnetonka Code of Ordinances is hereby amended as follows:

c) If the applicant's Site is nonconforming as to density under Section 2.02, the Planned Unit Development Site must include all contiguous municipal shoreline and the application may not result in an increase in the number of Boat Storage Units or increase the total square footage of slips at that Site. The application must meet all requirements for reconfiguration of nonconforming structures under Section 2.015 ~~except 2.015, Subd. 2 b) i); 2.015, Subd. 3 c); and 2.015, Subd. 9.~~

Article IV. Effective Date. This ordinance shall be effective the day following its publication or a summary thereof.

Adopted this 8th day of February, 2017.

BY THE BOARD OF DIRECTORS

/s/ James Jay Green
James Jay Green, Chair

ATTEST:

/s/ Gregory J. Thomas
Gregory J. Thomas, Secretary

Date of Publication: 2/16/17

Effective Date: 2/17/17