



## MAYOR AND COUNCIL COMMUNICATION

DATE: 6/21/2016

**CONSENT**

ITEM #: 15

**AGENDA ITEM:** Requested Amendments to Accessory Structure Ordinance

**SUBMITTED BY:** Emily Becker, City Planner

**THROUGH:** Kristina Handt, City Administrator

**REVIEWED BY:** Stephen Wensman, Planning Director

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### **BACKGROUND:**

The Planning Commission has made recommendations to the City Council on three changes pertaining to accessory structures.

The first amendment pertains to fish houses. At its May 3, 2016 meeting, City Council directed Staff to amend the City's Accessory Structure ordinance to exempt "fish houses" that are 120 square feet or less in size from the requirement that principal structures be constructed or accessory use be located on lots prior to accessory structures in the Rural Single Family Zoning District.

The request was made due to a significant number of non-conforming lot sizes in the Rural Single Family Zoning District upon which a house would likely not meet setback requirements. Because a significant number of these lots could not be built upon without first obtaining a variance, the request was made so that these lots could be utilized for the recreational purpose a fish house would allow. Accessory structures are not allowed to be erected prior to the existence of or issuance of a building permit for a principal structure, and a variance would not allow the situation, so the only remedy is by text amendment.

The second amendment pertains to Section 154.406, Subd. D, an exception provision that allows accessory structures to be located nearer to the front lot line than the principal structure. The Planning Commission recommends the Council strike the language that allows the exception to be made by Resolution of the City Council. Staff believes the exception is a defacto variance without findings. The City Attorney has also given support for this amendment. The variance process is the appropriate mechanism to grant such exceptions.

Finally, the third proposed amendment is to the definition of "Storage or Tool Shed" in Section 154.213. Staff recommends amending the defined size of such a shed from 160 square feet to 200 square feet in order to align it with MN State Building Code.

### **ISSUE BEFORE COUNCIL:**

The City Council should consider the following:

- 1) If fish houses, with certain provisions, should be exempt from the requirement that principal structures be constructed on lots prior to accessory structures. The Council should also consider what those provisions should be.
- 2) If the language in Section 154.406, Subd. D of the Zoning Code that allows accessory structures to be located nearer to the front lot line than the principal structure by Resolution of the City Council should be stricken. Striking this language will require applicants to go through the variance process.
- 3) If the definition of “Tool Shed” in Section 154.213, Subd B, should be amended by changing the defined size from 160 square feet to 200 square feet to align with MN State Building Code and specifying in the definition that it must comply with the maximum area requirements of the zoning district, providing a principal structure exists on the lot.

### **PROPOSAL DETAILS/ANALYSIS:**

#### **Fish House Exemption:**

**Definition.** The definition of water-oriented accessory structure or facility in Lake Elmo’s City Code lists fish houses as an example of such a structure. Water-oriented accessory structures are exempt from setback regulations of the Shoreland Overlay District if certain provisions are met including: not exceeding a height of ten feet; not being over 250 square feet in size; being set back at least ten feet from the Ordinary High Water Level (OHWL) on a recreational development lake and 50 feet from the OHWL on a natural environment lake; being treated to reduce visibility as viewed from public waters; and cannot be used for human habitation or contain water supply or sewage treatment facilities. The Code does not currently clearly define fish houses.

**Restriction.** Because fish houses are classified as accessory structures, regulations of accessory structures must be met. The Shoreland Ordinance allows only one water oriented structure per lot. By City Code, no accessory structure can be constructed or accessory use be located until a building permit has been issued for a primary structure on a lot. This Code provision is typical in cities in order to maintain control over use of properties for storage and to protect the City against a proliferation of unwanted storage structures.

**Logic Behind Zoning District Restriction.** It is recommended that if an exemption for fish houses from the requirement of a principal structure is considered, the exemption should be restricted only to the RS - Rural Single Family Zoning District for a number of reasons. First, there are a number of lots in this zoning district that are non-conforming, and on which a house could not be built without a variance. Additionally, many of the lots in the RS District are located adjacent to a lake, and allowing fish houses to exist on lots without primary structures would allow owners who do not wish to construct a primary structure to enjoy recreation on the lake without having to haul their fish house to the lake each winter season.

**Potentially-Affected Parcels.** There are currently 221 parcels located in the Rural Single Family District on which a principal structure does not exist. 123 of these parcels are located on a lot adjacent to a lake. 39 of these parcels are a half acre in size or more. A map is included as an addendum to this report to illustrate the locations of these parcels.

**Regulation.** Fish houses are considered accessory structures and therefore will require a Certificate of Zoning Compliance, as any accessory structure located on a property that does not require a building permit requires this Certificate. It is at this time that Staff will be able to determine if most of the requirements of a fish house outlined in its definition are met. Of course, some requirements will not easily be determined, and there may be need for code compliance investigations if complaints are received or it is observed by the City that a property is in violation.

**Potential Impacts.** There are a number of potential impacts that may result from allowing fish houses to exist on parcels without primary structures. First, fish houses may be used solely as storage. Even though the definition outlines that they may not be used for storage, it is hard to know and regulate what occurs inside a structure that is not viewable from the street without going through the proper processes. Also, the design of fish houses is not regulated nor do they require a building permit, so the appearance, safety and durability of the structure are at risk. Section 154.406 of the Zoning Code requires that accessory structures are required to be similar or compatible with the design and construction of the principal building, but without a principal building, there is nothing by which its exterior appearance can be regulated. Additionally, it is hard to regulate fish houses from being used as dwellings, even though the definition does not allow this. On the other hand, allowing fish houses to be constructed/located on a lot without a primary structure would increase the utility of the lot for the owner without them having to go through a variance process and constructing a primary structure and could potentially benefit neighboring properties as adjacent lots can remain mostly vacant, increasing their peace and privacy.

The extra requirements; that a fish house is located on a lot with direct access to a water body; maintains a current fish house license with the Minnesota Department of Natural Resources regardless if it is left on a water body overnight; is 120 square feet or less; and complies with Shoreland regulations and RS Rural Single Family setback requirements, are intended to limit some of the potential impacts. An additional requirement has been added at the request of a Councilmember that was discussed previously, but not addressed is that the parcel on which the fish house is located be a half acre or more. This standard has been added to the Draft Ordinance.

**Planning Commission Concern.** During its discussion of this agenda item, the Planning Commission expressed concern that if every one of these lots had a fish house, it may lead to complaints by the neighbors.

**Requiring the Variance Process for an Accessory Structure to be Located Nearer to the Front Lot Line than the Principal Structure:**

**Variance Process.** The Board of Adjustment has the power to grant variances to the provisions of this chapter under certain procedures and standards. All requests for variances shall be reviewed in accordance with the required findings. A public hearing is to be held by the Planning Commission, after which findings are considered and a recommendation is made to the Board of Adjustment. The current process of allowing accessory structures to be located nearer the front lot line than the principal structure by Resolution of the City Council does not follow this process outlined in Section 154.109: Variances of the Zoning Code.

**History.** Since 1993, Staff has found that approximately 29 approvals for accessory structures to be located nearer to the front line than the principal structures have been made by Resolution of City Council.

**Tool Shed Definition:**

The proposed definition of “Storage or Tool Shed” would align the City’s definition with the Building Code. Currently, the Building Code does not require permits for structures under 200 square feet. Changing the definition of a Storage or Tool Shed in the City Code would make it consistent with this requirement.

The Planning Commission also recommends that that the definition include clarification that one storage or tool shed may be placed on any lot in addition to the number of accessory buildings, provided it complies with the maximum area requirements of the zoning district, providing a principal structure exists on the lot. The current definition had been confusing to Staff and led to misinterpretations.

**FISCAL IMPACT:**

Allowing fish houses to be located on lots in the absence of principal structures may increase the amount of time Staff spends in response to code compliance complaints as fish houses may be used for storage or habitation as is not allowed per the proposed ordinance.

Requiring the variance process for accessory structures to be located nearer to the front line than the principal structure may increase the amount of time Staff spends on such requests, though the cost of a variance is much higher than the cost of the request of Resolution by City Council (\$750.00 vs. \$200.00, respectively). The change may also reduce the number of such requests.

No fiscal impact is foreseen by amending the definition of a Storage or Tool Shed in this ordinance.

**OPTIONS:**

The Council may approve or deny the recommended amendments to the Accessory Structure ordinance as proposed or may edit amendments as deemed appropriate.

**RECOMMENDATION:**

Staff respectfully requests, as part of tonight’s consent agenda, the Council approve the three proposed changes to the Accessory Structure ordinance:

- 1) An exemption for fish houses, with certain standards, to the accessory structure requirement that a building permit be issued for a primary structure before an accessory structure or use can exist on a lot.
- 2) Striking the language that allows an accessory structure to be located nearer the front lot line than the primary structure “by Resolution of the City Council.”



- 3) Amending the definition of “Storage or Tool Shed” in Section 154.213, Subd B, to change defined size from 160 square feet to 200 square feet to align with MN State Building Code and specify in

the definition that it must comply with the maximum area requirements of the zoning district, providing a principal structure exists on the lot.

If removed from the Consent Agenda, the recommended action can be completed through the following motion:

***“Move to approve three amendments to the Accessory Structure Ordinance: allowing an exception for fish houses that meet certain standards from the requirement that a building permit for a principal structure be issued before an accessory structure can exist on a lot; striking language in Section 154.406, Subd. D of the Zoning Code that allows an accessory structure to be located nearer a front lot line than the principal structure by Resolution of the City Council; amending the definition of Storage or Tool Shed in Section 154.213, Subd. B by increasing square footage requirement for a building permit and adding clarifying language.”***

**ATTACHMENTS:**

- Draft Ordinance Accessory Structure Ordinance Amendment.
- Map depicting parcels potentially affected by the proposed fish house exemption.

CITY OF LAKE ELMO  
COUNTY OF WASHINGTON  
STATE OF MINNESOTA

ORDINANCE NO. 08-

AN ORDINANCE AMENDING THE LAKE ELMO CITY CODE OF ORDINANCES BY EXEMPTING FISH HOUSES FROM REQUIREMENT THAT NO ACCESSORY STRUCTURE BE CONSTRUCTED PRIOR TO PRINCIPAL STRUCTURE ON LOT AND STRIKING LANGUAGE THAT ALLOWS ACCESSORY STRUCTURES TO BE LOCATED NEARER TO THE FRONT LINE THAN PRINCIPAL STRUCTURES BY RESOLUTION OF THE CITY COUNCIL

SECTION 1. The City Council of the City of Lake Elmo hereby amends Title I: General Provisions; Chapter 11: General Code Provisions by adding the following definition:

**FISH HOUSE.** A water-oriented structure meant to provide periodic shelter during the winter months while atop a frozen lake for use in fishing. A structure will be considered a fish house only if it is constructed with sleds, wheels or similar means to allow transport on to a frozen lake; is not used on land for human habitation; and is not used for boat storage.

SECTION 2. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 154: Zoning Code; Article 5. General Regulations; Section 213: Accessory Buildings and Structures, Generally; Subd. B: Definitions and Subd. D: Principle Structure Necessary to read the following:

- B. *Definitions.* The following words, terms and phrases, when used in this section, and all sections pertaining to accessory buildings or structures, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Agricultural Farm Building.* An accessory building used or intended for use on an active commercial food-producing farm operation of more than 20 acres. A Minnesota Pollution Control Agency permit may be required.

*Detached Domesticated Farm Animal Building.* A 1-story accessory building used or intended for the shelter of domestic farm animals and/or related feed or other farm animal supportive materials. The building may require a Minnesota Pollution Control Agency feedlot permit in addition to site and building plan approval.

**Fish House.** A water-oriented structure meant to provide periodic shelter during the winter months while atop a frozen lake for use in fishing. A structure will be considered a fish house only if it is constructed with sleds, wheels or similar means to allow transport on to a frozen lake; is not used on land for human habitation; and is not used for boat storage.

*Detached Residential Accessory Building.* A 1-story accessory building primarily used or intended for the storage of automobiles and other miscellaneous equipment. No door or other access opening shall exceed 14 feet in height.

*Storage or Tool Shed.* A 1-story accessory building of less than ~~460~~200 square feet gross area with a maximum roof height of 12 feet.

- C. *Principal Structure Necessary.* No accessory building of structures shall be constructed nor accessory use located on a lot until a building permit has been issued for the principal structure to which it is accessory. Exemption. Fish houses as defined in this Code and located in the RS Rural Single Family District are exempt from this requirement provided the following criteria are met: must be located on a lot half acre in size or more with direct access to a water body; is 120 square feet or less; and complies with Shoreland regulations and RS Rural Single Family setback requirements. One fish house per lot may exist without a principal structure. The structure must maintain a current Fishhouse license with the Minnesota Department of Natural Resources regardless if it is left on a water body overnight. If a current Minnesota Department of Natural Resources Fishhouse License is not obtained for the structure, the structure must be removed from the property within 60 days.
- D. *Proximity to Principal Structure.* Accessory buildings shall maintain a six (6) foot setback from the principal structure. An accessory building or structure will be considered as an integral part of the principal building if it is located six (6) feet or less from the principal structure.
- E. *Storage or Tool Sheds.* A One storage or tool shed as defined in this section may be placed on any lot in addition to the permitted number of accessory buildings-, provided it complies with the maximum area requirements of the zoning district, and a principal structure exists on the lot.
- F. *Exempt Structures.* The following residential improvements shall be exempt from the maximum allowed structure size and number requirements in residential districts:
  - 1. Unenclosed playhouses
  - 2. Gazebos up to a total of 120 square feet in size and a maximum of twelve (12) feet in overall height
  - 3. Detached decks over thirty (30) inches in height up to a total of 120 square feet in size
  - 4. Outdoor swimming pools
  - 5. Patios
  - 6. Tennis and sport courts
  - 7. Structures, sheds or coops up to a total of two hundred (200) square feet in size used to house permitted animals, such as chickens, horses, or other livestock. These structures must not exceed twelve (12) feet in height and must meet all required setbacks per MPCA guidelines and the City's animal ordinances.
  - 8. Water oriented accessory structures as permitted in accordance with the City's Shoreland Ordinance.

**SECTION 3. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 154: Zoning Code; Section 405: Accessory Uses and Structures to read the following:**

- A. *Phasing. No accessory use or structure shall be constructed or established on any lot prior to the time of construction of the principal use to which it is accessory.*
- B. *Incidental to Principal Use. The accessory use or structure shall be incidental to and customarily associated with the principal use or structure served.*
- C. *Subordinate to Principal Use. The accessory use or structure shall be subordinate in area, extent, and purpose to the principal use or structure served.*
- D. *Function. The accessory use or structure shall contribute to the comfort, convenience, or necessity of the occupants of the principal use or structure served.*
- E. *Location. The accessory use or structure shall be located on the same zoning lot as the principal use or structure.*
- F. *Exemption. Fish houses as defined in this Code and located in the RS Rural Single Family District are exempt from this requirement provided the following criteria are met: must be located on a lot half acre in size or more with direct access to a water body; is 120 square feet or less; and complies with Shoreland regulations and RS Rural Single Family setback requirements. One fish house per lot may exist without a principal structure. The structure must maintain a current Fishhouse license with the Minnesota Department of Natural Resources regardless if it is left on a water body overnight. If a current Minnesota Department of Natural Resources Fishhouse License is not obtained for the structure, the structure must be removed from the property within 60 days.*

**SECTION 4. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 154: Zoning Code; Section 404: Accessory Structures, Rural Districts., Subd. D to read the following:**

- D. *Structure Location, Rural Districts. No detached garages or other accessory buildings shall be located nearer to the front lot line than the principal building on that lot. ~~unless, by Resolution of the City Council, an exception is made to permit a detached garage or accessory structure nearer the front lot line than the principal building.~~*

**SECTION 5. Effective Date.** This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

**SECTION 6. Adoption Date.** This Ordinance 08-\_\_\_\_ was adopted on this \_\_\_\_ day of \_\_\_\_\_, 2016, by a vote of \_\_\_\_ Ayes and \_\_\_\_ Nays.

**LAKE ELMO CITY COUNCIL**

\_\_\_\_\_  
Mike Pearson, Mayor

ATTEST:

\_\_\_\_\_  
Julie Johnson, City Clerk

This Ordinance 08-\_\_\_\_ was published on the \_\_\_\_ day of \_\_\_\_\_,  
2016.

CITY OF LAKE ELMO  
COUNTY OF WASHINGTON  
STATE OF MINNESOTA

ORDINANCE NO. 08-

AN ORDINANCE AMENDING THE LAKE ELMO CITY CODE OF ORDINANCES BY  
EXEMPTING FISH HOUSES FROM REQUIREMENT THAT NO ACCESSORY STRUCTURE BE  
CONSTRUCTED PRIOR TO PRINCIPAL STRUCTURE ON LOT AND STRIKING LANGUAGE  
THAT ALLOWS ACCESSORY STRUCTURES TO BE LOCATED NEARER TO THE FRONT  
LINE THAN PRINCIPAL STRUCTURES BY RESOLUTION OF THE CITY COUNCIL

**SECTION 1.** The City Council of the City of Lake Elmo hereby amends Title I:  
General Provisions; Chapter 11: General Code Provisions by adding the following  
definition:

***FISH HOUSE.*** A water-oriented structure meant to provide periodic shelter during the winter months while atop a frozen lake for use in fishing. A structure will be considered a fish house only if it is constructed with sleds, wheels or similar means to allow transport on to a frozen lake; is not used on land for human habitation; and is not used for boat storage.

**SECTION 2.** The City Council of the City of Lake Elmo hereby amends Title XV:  
Land Usage; Chapter 154: Zoning Code; Article 5. General Regulations; Section  
213: Accessory Buildings and Structures, Generally; Subd. B: Definitions and Subd.  
D: Principle Structure Necessary to read the following:

- B. *Definitions.* The following words, terms and phrases, when used in this section, and all sections pertaining to accessory buildings or structures, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

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***Fish House.*** A water-oriented structure meant to provide periodic shelter during the winter months while atop a frozen lake for use in fishing. A structure will be considered a fish house only if it is constructed with sleds, wheels or similar means to allow transport on to a frozen lake; is not used on land for human habitation; and is not used for boat storage.

*Detached Residential Accessory Building.* A 1-story accessory building primarily used or intended for the storage of automobiles and other miscellaneous equipment. No door or other access opening shall exceed 14 feet in height.

*Storage or Tool Shed.* A 1-story accessory building of less than 200 square feet gross area with a maximum roof height of 12 feet.

- C. *Principal Structure Necessary.* No accessory building of structures shall be constructed nor accessory use located on a lot until a building permit has been issued for the principal structure to which it is accessory. *Exemption.* Fish houses as defined in this Code and located in the RS Rural Single Family District are exempt from this requirement provided the following criteria are met: must be located on a lot half acre in size or more with direct access to a water body; is 120 square feet or less; and complies with Shoreland regulations and RS Rural Single Family setback requirements. One fish house per lot may exist without a principal structure. The structure must maintain a current Fishhouse license with the Minnesota Department of Natural Resources regardless if it is left on a water body overnight. If a current Minnesota Department of Natural Resources Fishhouse License is not obtained for the structure, the structure must be removed from the property within 60 days.
- D. *Proximity to Principal Structure.* Accessory buildings shall maintain a six (6) foot setback from the principal structure. An accessory building or structure will be considered as an integral part of the principal building if it is located six (6) feet or less from the principal structure.
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- F. *Exempt Structures.* The following residential improvements shall be exempt from the maximum allowed structure size and number requirements in residential districts:
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  - 7. Structures, sheds or coops up to a total of two hundred (200) square feet in size used to house permitted animals, such as chickens, horses, or other livestock. These structures must not exceed twelve (12) feet in height and must meet all required setbacks per MPCA guidelines and the City's animal ordinances.
  - 8. Water oriented accessory structures as permitted in accordance with the City's Shoreland Ordinance.

**SECTION 3. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 154: Zoning Code; Section 405: Accessory Uses and Structures to read the following:**

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- B. *Incidental to Principal Use. The accessory use or structure shall be incidental to and customarily associated with the principal use or structure served.*
- C. *Subordinate to Principal Use. The accessory use or structure shall be subordinate in area, extent, and purpose to the principal use or structure served.*
- D. *Function. The accessory use or structure shall contribute to the comfort, convenience, or necessity of the occupants of the principal use or structure served.*
- E. *Location. The accessory use or structure shall be located on the same zoning lot as the principal use or structure.*
- F. *Exemption. Fish houses as defined in this Code and located in the RS Rural Single Family District are exempt from this requirement provided the following criteria are met: must be located on a lot half acre in size or more with direct access to a water body; is 120 square feet or less; and complies with Shoreland regulations and RS Rural Single Family setback requirements. One fish house per lot may exist without a principal structure. The structure must maintain a current Fishhouse license with the Minnesota Department of Natural Resources regardless if it is left on a water body overnight. If a current Minnesota Department of Natural Resources Fishhouse License is not obtained for the structure, the structure must be removed from the property within 60 days.*

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**SECTION 5. Effective Date.** This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

**SECTION 6. Adoption Date.** This Ordinance 08-\_\_\_\_ was adopted on this \_\_\_\_ day of \_\_\_\_\_, 2016, by a vote of \_\_\_\_ Ayes and \_\_\_\_ Nays.

**LAKE ELMO CITY COUNCIL**

\_\_\_\_\_  
Mike Pearson, Mayor



ATTEST:

\_\_\_\_\_  
Julie Johnson, City Clerk

This Ordinance 08-\_\_\_\_ was published on the \_\_\_\_ day of \_\_\_\_\_,  
2016.

**CITY OF LAKE ELMO  
COUNTY OF WASHINGTON  
STATE OF MINNESOTA**

**RESOLUTION NO. 2016-\_\_**

**RESOLUTION AUTHORIZING PUBLICATION OF ORDINANCE 08-\_\_ BY TITLE  
AND SUMMARY**

**WHEREAS**, the City Council of the City of Lake Elmo has adopted Ordinance No. 08-\_\_, an ordinance to amend the City's Accessory Structure Ordinance; and

**WHEREAS**, the ordinance is lengthy; and

**WHEREAS**, Minnesota Statutes, section 412.191, subd. 4, allows publication by title and summary in the case of lengthy ordinances or those containing charts or maps; and

**WHEREAS**, the City Council believes that the following summary would clearly inform the public of the intent and effect of the ordinance.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Lake Elmo, that the City Clerk shall cause the following summary of Ordinance No. 08-\_\_ to be published in the official newspaper in lieu of the entire ordinance:

**Public Notice**

The City Council of the City of Lake Elmo has adopted Ordinance No. 08-\_\_, which amends the Lake Elmo City Code of Ordinances by amending the following:

- Title I: General Provisions; Chapter 11: General Code Provisions by adding a definition of fish house.
- Title XV: Land Usage; Chapter 154: Zoning Code; Article 5. General Regulations; Section 213: Accessory Buildings and Structures, Generally; Subd. B: Definitions and Subd. D: Principle Structure Necessary by:
  - Adding a definition of fish house.
  - Adding an exemption for fish houses, with certain standards, to the accessory structure requirement that a building permit be issued for a primary structure before an accessory structure or use can exist on a lot.
  - Amending the definition of "Storage or Tool Shed" by changing the defined size

from 160 square feet to 200 square feet to align with MN State Building Code and specifying in the definition that it must comply with the maximum area requirements of the zoning district, providing a principal structure exists on the lot.

- Title XV: Land Usage; Chapter 154: Zoning Code; Section 405: Accessory Uses and Structures by striking the language that allows an accessory structure to be located nearer the front lot line than the primary structure “by Resolution of the City Council.”

The full text of Ordinance No. 08-\_\_\_\_ is available for inspection at Lake Elmo City Hall during regular business hours.

**BE IT FURTHER RESOLVED** by the City Council of the City of Lake Elmo that the City Administrator keep a copy of the ordinance at City Hall for public inspection and that a full copy of the ordinance be placed in a public location within the City.

Dated: June 21, 2016

\_\_\_\_\_  
Mayor Mike Pearson

ATTEST:

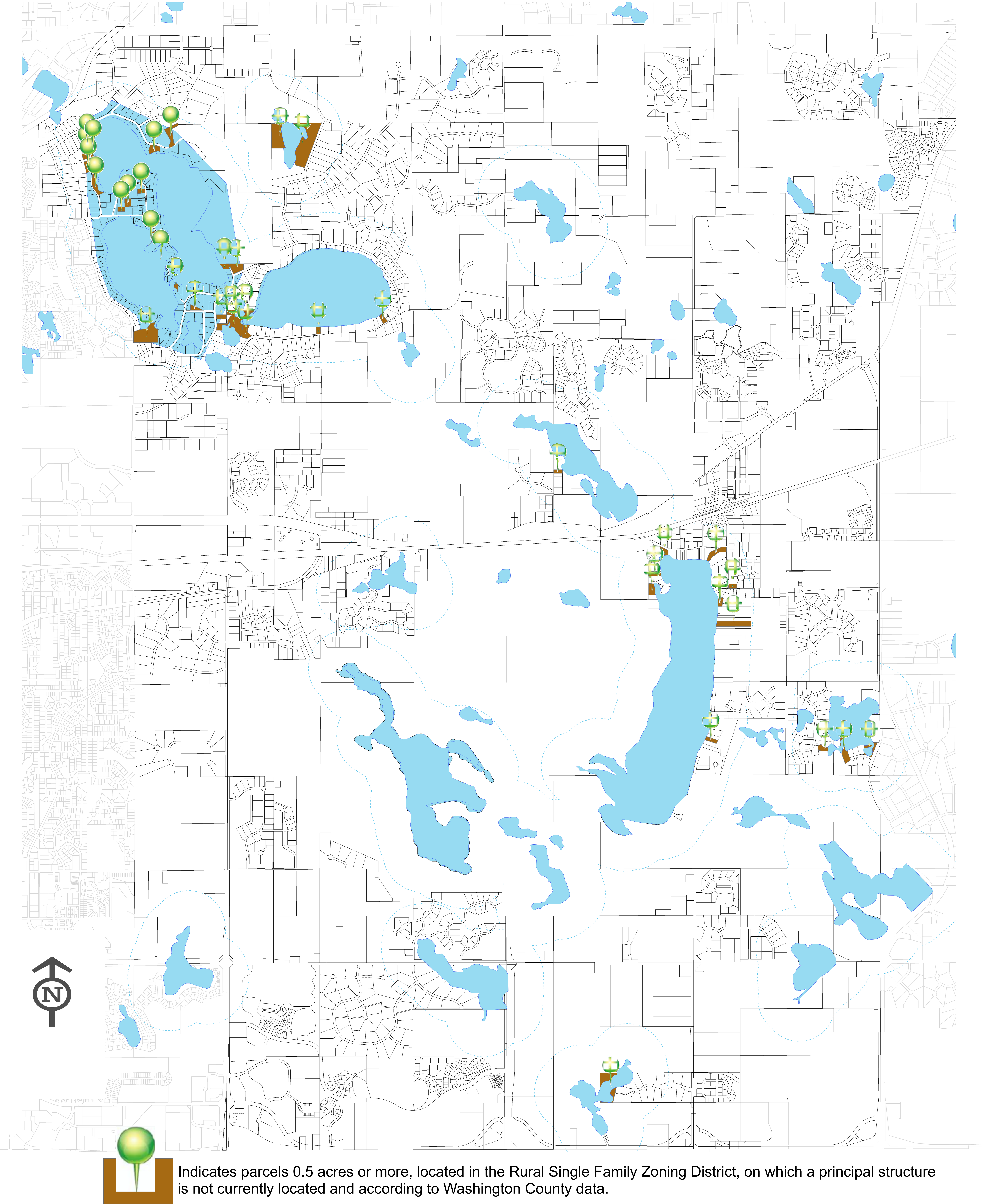
\_\_\_\_\_  
Julie Johnson, City Clerk

(SEAL)

The motion for the adoption of the foregoing resolution was duly seconded by member \_\_\_\_\_ and upon vote being taken thereon, the following voted in favor thereof: \_\_\_\_\_ and the following voted against same: \_\_\_\_\_ Whereupon said resolution was declared duly passed and adopted.



# Rural Single Family Lots - No Principal Structure - Adjacent to Lake







## PLANNING COMMISSION

DATE: 6/13/2016

ITEM #: 4c-PUBLIC HEARING

CASE # 2016-17

**AGENDA ITEM:** Exempting Fish Houses from requirement that no accessory structure be constructed prior to principal structure on a lot and other amendments to accessory structure ordinance.

**SUBMITTED BY:** Emily Becker, Planner

**REVIEWED BY:** Stephen Wensman, Planning Director

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### **SUMMARY AND BACKGROUND:**

Staff is recommending the Planning Commission hold a public hearing and make a recommendation to the City Council on three changes pertaining to accessory structures.

The first amendment pertains to fishhouses. At its May 3, 2016 meeting, City Council directed Staff to amend the City's Accessory Structure ordinance to exempt "fish houses" that are 120 square feet or less in size from the requirement that principal structures be constructed or accessory use be located on lots prior to accessory structures in the Rural Single Family Zoning District.

The request was made due to a significant number of non-conforming lot sizes in the Rural Single Family Zoning District upon which a house would likely not meet setback requirements. Because a significant number of these lots could not be built upon without first obtaining a variance, the request was made so that these lots could be utilized for the recreational purpose a fish house would allow. Accessory structures are not allowed to be erected prior to the existence of or issuance of a building permit for a principal structure and variances cannot remedy the situation, so the only remedy is by a text amendment.

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### **ISSUE BEFORE PLANNING COMMISSION:**

The Planning Commission should consider the following:

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### **PROPOSAL DETAILS/ANALYSIS:**

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**Definition.** The definition of water-oriented accessory structure or facility in Lake Elmo’s City Code lists fish houses as an example of such a structure. Water-oriented accessory structures are exempt from setback regulations of the Shoreland Overlay District if certain provisions are met including not exceeding a height of ten feet, not being over 250 square feet in size, being set back at least ten feet from the Ordinary High Water Level (OHWL) on a recreational development lake and 50 feet from the OHWL on a natural environment lake, being treated to reduce visibility as viewed from public waters, must not be used for human habitation or contain water supply or sewage treatment facilities. The Code does not currently clearly define fish houses.

**Restriction.** Because fish houses are classified as accessory structures, regulations of accessory structures must be met. The Shoreland Ordinance allows only one water oriented structure per lot. By City Code, no accessory structure can be constructed or accessory use be located until a building permit has been issued for a primary structure on a lot. The Code provision is typical in cities in order to maintain control over use of properties for storage and to protect the City against a proliferation of unwanted storage structures.

**Logic Behind Zoning District Restriction.** Staff recommends that if an exemption for fish houses from the requirement of a principal structure is considered, the exemption should be restricted only to the RS - Rural Single Family Zoning District for a number of reasons. First, there are a number of lots in this zoning district that are non-conforming, and on which a house could not be built without a variance. Additionally, many of the lots in the RS District are located adjacent to a lake, and allowing fish houses to exist on lots without primary structures would allow owners who do not wish to construct a primary structure to enjoy recreation on the lake without having to haul their fish house to the lake each winter season.

**Potentially-Affected Parcels.** There are currently 221 parcels located in the Rural Single Family District on which a principal structure does not exist. 191 of these parcels are non-conforming lots in that they do not comply with the 1.5 acre minimum lot size the Rural Single Family Zoning District requires. A map is included as an addendum to this report to illustrate the locations of these parcels.

**Regulation.** Fish houses are considered accessory structures and therefore will require a Certificate of Zoning Compliance, as any accessory structure located on a property that does not require a building permit

requires this Certificate. It is at this time that Staff will be able to determine if most of the requirements of a fish house outlined in its definition are met. Of course, some requirements will not easily be determined, and there may be need for code compliance investigations if complaints are received or it is observed by the City that a property is in violation.

**Potential Impacts.** There are a number of potential impacts that may result from allowing fish houses to exist on parcels without primary structures. First, fish houses may be used solely as storage. Even though the definition outlines that they may not be used for storage, it is hard to know and regulate what occurs inside a structure that is not viewable from the street without going through the proper processes. Also, the design of fish houses is not regulated nor do they require a building permit, so the appearance, safety and durability of the structure are at risk. Section 154.406 of the Zoning Code requires that accessory structures are required to be similar or compatible with the design and construction of the principal building, but without a principal building, there is nothing by which its exterior appearance can be regulated. Additionally, it is hard to regulate fish houses from being used as dwellings, even though the definition does not allow this. On the other hand, allowing fish houses to be constructed/located on a lot without a primary structure would increase the utility of the lot for the owner without them having to go through a variance process and constructing a primary structure and could potentially benefit neighboring properties as adjacent lots can remain mostly vacant, increasing their peace and privacy. The extra requirements; that a fish house is located on a lot with direct access to a water body; maintains a current license with the Minnesota Department of Natural Resources regardless if it is left on a water body overnight; is 120 square feet or less; and complies with Shoreland regulations and RS Rural Single Family setback requirements, are intended to limit some of the potential impacts.

**Requiring the Variance Process for an Accessory Structure to be Located Nearer to the Front Lot Line than the Principal Structure:**

**Variance Process.** The Board of Adjustment has the power to grant variances to the provisions of this chapter under certain procedures and standards. All requests for variances shall be reviewed in accordance with the required findings. A public hearing is to be held by the Planning Commission, after which findings are considered and a recommendation is made to the Board of Adjustment. The current process of allowing accessory structures to be located nearer the front lot line than the principal structure does not follow this process outlined in Section 154.109: Variances of the Zoning Code.

**History.** Since 1993, Staff has found that approximately 29 approvals for accessory structures to be located nearer to the front line than the principal structures have been made by Resolution of City Council.

**Storage or Tool Shed Definition:**

This ordinance amendment was an opportunity to fix the definition of “Storage or Tool Shed” to align the square footage in the definition to the square footage threshold in the Building Code where building permits are required. Below 200 square feet, no building permits are required. In addition, the current text allows one Storage or Tool Shed per property in addition to the number of allowed accessory structures, but does not exempt them from the square footage requirements. The text and application of this is confusing and has not been correctly administered by Staff as a result. To remove the confusing language, Storage or Tool Sheds will be added to the structures exempt from the maximum allowed structure size and number requirements in residential districts.

**FISCAL IMPACT:**

Allowing fish houses to be located on lots in the absence of principal structures may increase the amount of time Staff spends in response to code compliance complaints as fish houses may be used for storage or habitation as is not allowed per the proposed ordinance.

Requiring the variance process for accessory structures to be located nearer to the front line than the principal structure may increase the amount of time Staff spends on such requests, though the cost of a variance is much higher than the cost of the request of Resolution by City Council (\$750.00 vs. \$200.00, respectively). The change may also reduce the number of requests.

**RECOMMENDATION:**

Staff recommends that the Planning Commission hold a public hearing and recommend approval to Ordinance \_\_\_\_ with the following motion:

***“Move to recommend the City Council approve Ordinance \_\_ pertaining to fishhouses, the exception to 154.406, Subd. D, and the definition of “Storage or Tool Shed.”***

**ATTACHMENTS:**

- Draft Ordinance Amendment.
- Quick notes on other cities’ fish house requirements.
- Map depicting potentially affected parcels (fish house).



CITY OF LAKE ELMO  
COUNTY OF WASHINGTON  
STATE OF MINNESOTA

ORDINANCE NO. 08-

AN ORDINANCE AMENDING THE LAKE ELMO CITY CODE OF ORDINANCES BY EXEMPTING FISH HOUSES FROM REQUIREMENT THAT NO ACCESSORY STRUCTURE BE CONSTRUCTED PRIOR TO PRINCIPAL STRUCTURE ON LOT AND STRIKING LANGUAGE THAT ALLOWS ACCESSORY STRUCTURES TO BE LOCATED NEARER TO THE FRONT LINE THAN PRINCIPAL STRUCTURES BY RESOLUTION OF THE CITY COUNCIL

SECTION 1. The City Council of the City of Lake Elmo hereby amends Title I: General Provisions; Chapter 11: General Code Provisions by adding the following definition:

*FISH HOUSE.* A water-oriented structure meant to provide periodic shelter during the winter months while atop a frozen lake for use in fishing. A structure will be considered a fish house only if it is constructed with sleds, wheels or similar means to allow transport on to a frozen lake; is not used on land for human habitation; and is not used for boat storage.

SECTION 2. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 154: Zoning Code; Article 5. General Regulations; Section 213: Accessory Buildings and Structures, Generally; Subd. B: Definitions and Subd. D: Principle Structure Necessary to read the following:

- B. *Definitions.* The following words, terms and phrases, when used in this section, and all sections pertaining to accessory buildings or structures, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Agricultural Farm Building.* An accessory building used or intended for use on an active commercial food-producing farm operation of more than 20 acres. A Minnesota Pollution Control Agency permit may be required.

*Detached Domesticated Farm Animal Building.* A 1-story accessory building used or intended for the shelter of domestic farm animals and/or related feed or other farm animal supportive materials. The building may require a Minnesota Pollution Control Agency feedlot permit in addition to site and building plan approval.

*Fish House.* A water-oriented structure meant to provide periodic shelter during the winter months while atop a frozen lake for use in fishing. A structure will be considered a fish house only if it is constructed with sleds, wheels or similar means to allow transport on to a frozen lake; is not used on land for human habitation; and is not used for boat storage.

*Detached Residential Accessory Building.* A 1-story accessory building primarily used or intended for the storage of automobiles and other miscellaneous equipment. No door or other access opening shall exceed 14 feet in height.

*Storage or Tool Shed.* A 1-story accessory building of less than ~~460~~200 square feet gross area with a maximum roof height of 12 feet.

- C. *Permit Required.* All accessory building and structures require either a certificate of zoning compliance or a building permit as determined by the Minnesota State Building Code.
- D. *Principal Structure Necessary.* No accessory building or structures shall be constructed nor accessory use located on a lot until a building permit has been issued for the principal structure to which it is accessory. Fish houses as defined in this Code and located in the RS Rural Single Family District are exempt from this requirement provided the following criteria are met: must be located on a lot with direct access to a water body; must maintain a current Fishhouse license with the Minnesota Department of Natural Resources regardless if it is left on a water body overnight; is 120 square feet or less; and complies with Shoreland regulations and RS Rural Single Family setback requirements. One fish house per lot may exist without a principal structure.
- E. *Proximity to Principal Structure.* Accessory buildings shall maintain a six (6) foot setback from the principal structure. An accessory building or structure will be considered as an integral part of the principal building if it is located six (6) feet or less from the principal structure.
- ~~F. *Storage or Tool Sheds.* A storage or tool shed as defined in this section may be placed on any lot in addition to the permitted number of accessory buildings.~~
- F. *Exempt Structures.* The following residential improvements shall be exempt from the maximum allowed structure size and number requirements in residential districts:
  1. Unenclosed playhouses
  2. Gazebos up to a total of 120 square feet in size and a maximum of twelve (12) feet in overall height
  3. Detached decks over thirty (30) inches in height up to a total of 120 square feet in size
  4. Outdoor swimming pools
  5. Patios
  6. Tennis and sport courts
  7. Structures, sheds or coops up to a total of two hundred (200) square feet in size used to house permitted animals, such as chickens, horses, or other livestock. These structures must not exceed twelve (12) feet in height and must meet all required setbacks per MPCA guidelines and the City's animal ordinances.
  8. Water oriented accessory structures as permitted in accordance with the City's Shoreland Ordinance.
  9. One Storage or Tool Shed per residential lot.

**SECTION 3. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 154: Zoning Code; Section 405: Accessory Uses and Structures to read the following:**

- A. *Phasing.* No accessory use or structure shall be constructed or established on any lot prior to the time of construction of the principal use to which it is accessory.
- B. *Incidental to Principal Use.* The accessory use or structure shall be incidental to and customarily associated with the principal use or structure served.
- C. *Subordinate to Principal Use.* The accessory use or structure shall be subordinate in area, extent, and purpose to the principal use or structure served.

- D. *Function.* The accessory use or structure shall contribute to the comfort, convenience, or necessity of the occupants of the principal use or structure served.
- E. *Location.* The accessory use or structure shall be located on the same zoning lot as the principal use or structure.
- F. *Exemption.* Fish houses as defined in this Code and located in the RS Rural Single Family District are exempt from this requirement provided the following criteria are met: must be located on a lot with direct access to a water body; must maintain a current Fishhouse license with the Minnesota Department of Natural Resources regardless if it is left on a water body overnight; is 120 square feet or less; and complies with Shoreland regulations and RS Rural Single Family setback requirements. One fish house per lot may exist without a principal structure.
- G. *If a current Minnesota Department of Natural Resources Fishhouse License is not obtained for the structure, the structure must be removed from the property within 60 days.*

**SECTION 4. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 154: Zoning Code; Section 404: Accessory Structures, Rural Districts., Subd. D to read the following:**

- D. *Structure Location, Rural Districts.* No detached garages or other accessory buildings shall be located nearer to the front lot line than the principal building on that lot. ~~*unless, by Resolution of the City Council, an exception is made to permit a detached garage or accessory structure nearer the front lot line than the principal building.*~~

**SECTION 5. Effective Date.** This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

**SECTION 6. Adoption Date.** This Ordinance 08-\_\_\_\_ was adopted on this \_\_\_\_ day of \_\_\_\_\_, 2016, by a vote of \_\_\_\_ Ayes and \_\_\_\_ Nays.

**LAKE ELMO CITY COUNCIL**

\_\_\_\_\_  
Mike Pearson, Mayor

ATTEST:

\_\_\_\_\_

Julie Johnson, City Clerk

This Ordinance 08-\_\_\_\_ was published on the \_\_\_\_ day of \_\_\_\_\_,  
2016.

Pequot City:

102. **Fish House.** A structure placed on a lake during the winter for use in fishing. A structure will only be considered a fish house if it is 160 square feet or less, is moveable and has a current license.

Oronoco:

Defines gazebos, screen houses, **fish houses**, pump houses, and detached decks as accessory structures

Brianer:

Water-oriented accessory structure or facility" means a small, above ground building or other improvement, except stairways, fences, docks, and retaining walls, which, because of the relationship of its use to a surface water feature, reasonably needs to be located closer to public waters than the normal structure setback. Examples of such structures and facilities include boathouses, gazebos, screen houses, fish houses, pump houses, and detached decks.

**515-17-2: Dwelling Unit Restriction.** No cellar, garage, tent, travel trailer, motor home, fish house, basement with unfinished structure above, or accessory building shall at any time be used as a dwelling unit.

Mounds View:

Ordinance allows the storage of fish houses in residential front yard areas.

East Bethel:

Fish houses shall be included in the calculation of the gross maximum square footage for detached accessory structures. No more than one fish house shall be permitted on a lot. Fish houses must meet all required accessory structure setbacks.

Chanhassen:

Water-oriented structures (e.g. boathouses, gazebos, screen houses, fish houses, etc.) must maintain the minimum 10-foot setback from the ordinary high water mark. Water-oriented structures are permitted to be a maximum of 250 sq. ft., 10 ft. in height, and must not occupy more than 30% of the rear yard.



This map outlines parcels located in the Rural Single Family Zoning District on which a principal structure is not currently located. It also depicts the size of such parcels through color grading.

