

CITY OF TONKA BAY ITEM NO. 4A

MINUTES TONKA BAY CITY COUNCIL REGULAR MEETING February 9, 2010

1. CALL TO ORDER

The regular semi-monthly meeting of the Tonka Bay City Council was called to order at 7:00 p.m.

2. ROLL CALL

Members present: Mayor LaBelle, Councilmembers Marceau, Tessness, Folley, and De La Vega. Also present were City Administrator Kohlmann, City Attorney Penberthy, and City Planner Gozola.

3. APPROVAL OF AGENDA

Marceau moved to approve the agenda as submitted. Tessness seconded the motion. Ayes 5. Motion carried.

4. CONSENT AGENDA

Folley moved to approve the consent agenda as presented approving the regular meeting minutes of January 26, 2010. Tessness seconded the motion. Ayes 4-0-1. De La Vega abstained from voting. Motion carried.

5. MATTERS FROM THE FLOOR

None

6. PUBLIC HEARING

A. Schmitt, 165 Lakeview Avenue – CUP and Variances – Ben Gozola, City Planner reviewed the CUP and variance requests for 165 Lakeview Avenue by showing the aerial shots of the lot showing the previous home and the empty lot. He noted an existing shed would need to be removed. The application is unique in that the CUP and variances are separate matters. He stated the Council will need to make a determination on the CUP request which is seeking authorization to construct a single family home on a sub-standard lot of the lot width and lot area requirements. If the CUP criteria are met, then the Council will need to review the variance requests for side yard setbacks on both sides. He reported this application does conform to height, floodplain buffer, floor area ratio, and hardcover requirements. Even though the applicant is under 35% on hardcover, they are proposing to use pervious pavers on the site to address storm water concerns on this site. Gozola reviewed the criteria for approval of the conditional use permit. The request is consistent with the Comprehensive Plan as it is

zoned for single family use. The proposed construction will fit in with the neighborhood. There will not be an impact on the character of the area. There is a need to approve the CUP in order to replace the former dwelling. The proposed use will not depreciate the area as it will restore a home that previously existed on the lot. The proposed use can be accommodated with existing public services. Staff is recommending approval of the CUP request based on the following: 1) construction of a single family dwelling is consistent with the Comprehensive Plan guidance and zoning for the property; 2) a single-family dwelling will be consistent with present and future land uses in the area, and proper enforcement of zoning regulations will ensure no impacts to adjacent parcels; and 3) the new home and lot improvements will not place a burden on public infrastructure, and will not have a negative impact on area property values. Folley asked if a buildable lot is 15,000 square feet. Gozola replied he believed it was, and this is well below that. He explained that a rule was put in place suggesting that sixty percent of the lot requirement should be met when the Code was written. De La Vega asked what the logic is behind the one-year requirement that a structure can be replaced if it burned down. Gozola explained the requirement and noted a CUP would not have been required if it were built during the one-year period. LaBelle opened the public hearing for public comments and asked the applicant to speak. **Scott Schmitt, applicant** stated he didn't have any comments about the CUP. He noted Wells Fargo currently owns the lot, and their purchase is pending approval of this request. He noted the shed will be removed. There were no public comments, and LaBelle closed the hearing. Tessness stated the CUP request looks straight forward to him. De La Vega stated he would hate to see the lot remain vacant. He would rather have a house there than not, and it is in the best interests of the city to have the house. He supported the request. Folley stated it doesn't meet the sixty percent requirement, so he sees it as an unbuildable lot. Marceau asked the city attorney for input on when a lot is deemed unbuildable. Penberthy stated the Council needs to deal with the CUP and variances. If it is unbuildable, then the next question is what to do with the lot. Folley stated he would like to see the lot developed, but he was concerned about the sixty percent requirement not being met. Marceau stated he sees it as a buildable lot. Tessness stated the best use of the lot is to build a house. Schmitt stated the CUP exists because the lot was not constructed on within a year. The existing Code has made allowances for the property owner and gives the Council control over what is happening on the lot. **De La Vega moved to adopt Resolution 10-04 approving the CUP request for Scott and Michelle Schmitt, 165 Lakeview Avenue for construction of a single family dwelling based on the following findings of fact:**

- 1. Construction of a single family dwelling is consistent with the Comprehensive Plan guidance and zoning for the property;**
- 2. a single-family dwelling will be consistent with present and future land uses in the area, and proper enforcement of zoning regulations will ensure no**

- impacts to adjacent parcels; and**
- 3. the new home and lot improvements will not place a burden on public infrastructure, and will not have a negative impact on area property values.**

Marceau seconded the motion. Ayes – Tessness, Marceau, De La Vega and LaBelle. Nays – Folley. Motion carried.

Gozola reviewed the variances requested. On the north side, a two-foot variance is required. On the south side, there is a 3-1/2-foot variance requested. He noted the measurement on the south side is from the cantilevered chimney. He reviewed the criteria that all variances must address before they can be approved. The request must be reasonable and present unique circumstances. He noted narrowness is often a circumstance when a variance can be approved. We must also address whether the applicants are proposing a reasonable request. The request would not be altering the character of the area nor would it impair an adequate supply of light and air to adjacent properties. Forcing the applicant to meet the side yard setbacks would result in a taller structure. The criteria for congestion and public safety have also been met. Surrounding property values have also been met. The intent and purpose of the Comprehensive Plan will not be violated. He noted the lot is unique for many reasons: size, narrowness, abutting setback to the north is a rear yard rather than a side yard setback, and the home does not require any additional variances or CUPs for floor area ratio, hardcover, or height. He recommended approval based on the findings as listed in the staff report. Councilmembers reviewed the building elevations as lot configuration. Marceau asked what the setback on the south side would be without the cantilever. Gozola noted it would be 5-1/2 feet. De La Vega asked if there are any concerns for the mature trees in the side yards. Schmitt noted the tree in question encroaches on this property. He didn't think there would be any issues during construction. Tessness stated this is a great design. Folley asked if pavers are part of the hardcover. Gozola stated it is, but it will push them down on the percentage even more. LaBelle opened the hearing for comments from the applicants and then those present. Schmitt discussed the house design. LaBelle closed the hearing as there were no further comments. De La Vega applauded the applicants' proposal and supported the request. Tessness stated the design will look great on the property and also supported the request. Marceau stated his concern is the side yard setback to the south and the fact their house will be two feet higher than the neighbor. Gozola stated the drainage issues will be addressed with the recommended condition to provide additional drainage details during the building permit process. Gozola stated the rain garden on this property does not front on a city street, and a drainage and utility easement is required. LaBelle stated the rain garden is optional on this lot. Folley stated he was concerned about the property to the south and would feel better if the drainage issues were resolved tonight. Schmitt discussed the drainage plan and elevations, explaining drainage flows and elevation changes on the lot. He

stated he was open to any recommended changes. LaBelle complimented Schmitt on the design and code accommodations taken during the process. He noted this is a very narrow lot. He supported the request. **Tessness moved to adopt Resolution 10-05 approving the variance request for Scott and Michelle Schmitt, 165 Lakeview Avenue to approve a two-foot variance from the required eight-foot side yard setback from the northern property line, and a three and one-half foot variance from the required eight foot side yard setback from the southern property based on the following findings of fact:**

1. **The lot is extremely narrow;**
2. **The proposed home will meet size, height, and hardcover requirements despite the proposed minor intrusions into the side yard setbacks;**
3. **Light and air is protected as the subject property's side yard setback abuts the northern property's rear yard setback giving a greater separation between the structures than would otherwise exist in a normal side-yard to side-yard configuration;**
4. **Light and air is also protected as the only way to recover lost square footage if the variances are denied is to build up which will have a greater impact on light and air.**
5. **Traffic, fire danger, and public safety will not be threatened.**
6. **Construction of a home for the provision of housing is consistent with the comprehensive plan guidance for this lot.**
7. **The combination of lot width, adjacent setbacks, and housing design make this a unique application.**

And subject to the following conditions:

1. **The applicant shall obtain all necessary permits and approvals from the City and other applicable entities with jurisdiction prior to any construction.**
2. **The grading and building plan shall be updated to show very detailed drainage controls along both the north and south property lines. Such detailed controls should include downspouts with outlets directed towards the front or rear of the lot and drainage swales at the midpoints between the house/driveway edges and the property lines. All detailed plans shall be acceptable to the City Engineer prior to approval of a building permit.**

3. **The MCWD shall review and approve the final grading plans prior to any work being authorized. Proof of MCWD approval shall be provided to the city prior to a building permit being authorized.**
4. **Construction shall follow the survey and plans as submitted or as required to be updated by the City Engineer.**
5. **Building of structures shall not occur within any existing or proposed easements on the property.**
6. **To address all drainage concerns and to ensure adherence to the proposed plans, three surveys shall be submitted as part of the future building permit for this lot:**
 - a. **Proposed Grading Survey – an initial survey showing the proposed grading of the property in conformance to all requirements established by the City Engineer;**
 - b. **Foundation Survey – a survey verifying the location and low floor elevation prior to framing and construction of the house;**
 - c. **Final Grading Survey – a survey verifying that all grades conform to the designed plans and that all engineering recommendations were implemented shall be approved by the City prior to the issuance of a certificate of occupancy for the new home.**
7. **The applicant agrees that the City Engineer may inspect the property at the applicant' expense during the construction process to ensure on-going compliance with all engineering requirements.**
8. **The City Engineer shall review and approve the final rainwater garden design and other necessary BMPs prior to any work being authorized.**
9. **The variance shall expire one year from the date of resolution. City Council approval will be required for any subsequent extension.**
10. **Removal of the existing shed on the lot.**

De La Vega seconded the motion. Ayes – LaBelle, Tessness, De La Vega, Folley and Marceau. Nays – none. Motion carried.

7. OLD BUSINESS

None

8. **NEW BUSINESS**

A. **WeCAN's Annual Funding Application** – Kohlmann noted this is an annual request. Information has been provided on services provided to the area. **Folley moved to authorize the Mayor to send a letter of support to the CDBG Committee in support of WeCAN's application. De La Vega seconded the motion. Ayes 5. Motion carried.**

9. **MATTERS FROM THE FLOOR**

10. **REPORTS**

A. **Administrator** – Kohlmann noted city hall will be closed on Monday in honor of Presidents' Day.

B. **Marceau – Finance, Marinas** – no report

C. **Tessness – Buildings, Building Inspection, Fire Lanes and Municipal Docks** – no report

D. **Folley - Animal Control, LMCC, Technology, and Southshore Senior/Community Center** – no report

E. **De La Vega - EFD, Parks, Sanitation, and LMCD** – no report

F. **Attorney's Report** – no report

G. **LaBelle - Public Works and SLMPD** – LaBelle stated the SLMPD union contract has been ratified for an additional two years.

11. **ADJOURNMENT**

There being no further business, it was moved by Marceau to adjourn the meeting at 8:10 p.m. De La Vega seconded the motion. Ayes 5. Motion carried.

Attest:

Clerk