

**CITY OF TONKA BAY
ITEM NO. 4C**

RESOLUTION NO. 12-33

**A RESOLUTION APPROVING VARIANCES FROM BOTH SIDE YARD
SETBACKS, THE AIR CONDITIONING UNIT SETBACK, THE REAR YARD
SETBACK, FRONT YARD SETBACK, THE REQUIRED 15-FOOT
FLOODPLAIN BUFFER, AND MINIMUM LOT SIZE AND CONDITIONAL USE
PERMITS TO ALLOW AN INCREASE TO THE ALLOWED IMPERVIOUS
SURFACE AND FLOOR AREA RATIO
FOR CHRIS SCHMIDT AND ALISON SCHMIDT
AT 45 WEST POINT AVENUE**

WHEREAS, the City of Tonka Bay is a municipal corporation, organized and existing under the laws of the State of Minnesota; and

WHEREAS, the City Council of the City of Tonka Bay has adopted zoning regulations in the Municipal Code to promote orderly development and utilization of land within the city; and

WHEREAS, Chris Schmidt and Alison Schmidt ("Applicants") own 45 West Point Avenue which is legally described as follows:

The southwesterly 75 feet of Lot 9, WEST POINT, Hennepin County, Minnesota. PID #22-117-23-32-0016

WHEREAS, the Applicants' Property is located within the R-1A zoning district; and

WHEREAS, the Applicants are requesting the following variances:

1. A 5-foot variance from the required side yard setback along the north property line;
2. A 0.83-foot variance from the required side yard setback along the south property line;
3. A 3.5-foot variance to allow an air conditioning unit within the required side yard setback along the north property line;
4. A 14.5-foot variance from the required rear yard setback;
5. A 12-foot variance from the required front yard setback;
6. A variance from the required 15 foot floodplain buffer;

7. A 7,237-square foot variance to the required minimum lot size in the R-1A zoning district.

and,

WHEREAS, the Applicants are requesting the following conditional use permits:

1. An 18.4% increase to the allowed impervious surface;
2. A 13.2% increase to the allowed floor area ratio (FAR).

WHEREAS, Kelsey Johnson, City Planner, issued a report dated November 27, 2012 on the application made by the Applicants (Planning Report), analyzing the request made in relation to City Ordinance criteria and made recommendations if the requests were approved by the City Council; and

WHEREAS, the City Council reviewed the variance requests on November 27, 2012, and held a public hearing, following the required notices and publication; and

WHEREAS, neighbors spoke on the Applicant's proposal; and

WHEREAS, the Applicants presented to the Council reasons for their proposal; and

WHEREAS, the City Council, following the public hearing and deliberation on the variances to the side yard setbacks, air conditioning unit setback, rear yard setback, front yard setback, 15 foot floodplain buffer, and minimum lot size, as well as conditional use permits for impervious surface and floor area ratio; directed staff to prepare a resolution for its consideration, and having considered the application, the Planning Report, the resolution prepared by staff, makes the following findings of fact and conclusions:

1. The proposed use as a single-family home is consistent with the comprehensive plan.
2. Granting the variances and conditional use permits will not impair an adequate supply of light and air to adjacent parcels.
3. Granting the variances will not increase congestion in the public street. The use of the property as a single family home will stay the same and not increase congestion.
4. Granting the variances will not increase the danger of fire or endanger the public safety.
5. Granting the variances will not diminish or impair established property values in the neighborhood. Constructing a new home on the lot should increase property values in the neighborhood.

6. Granting the variances will not alter the essential character of the locality. A number of the homes on West Point Avenue in the neighborhood have front, rear and side yard setbacks that are less than what is currently required by City Code. The proposed home will fit in with other homes in the neighborhood.
7. The proposed use as a single-family home is a reasonable use for the property. It is how the property is zoned and it is how the property is currently used.
8. The topography of the site and the size of the parcel were not created by the current owners. These are circumstances unique to the property.
9. The variance requests are in harmony with the general intent of the ordinance. The ordinance permits single-family homes that meet 60 percent of the district's requirements. Overcrowding of homes will not occur. The ordinance requires the property owner to treat water runoff due to the fact that there is more than 25 percent impervious surface on the lot.
10. Grading on the site of more than two feet is not anticipated to result in drainage impacting adjacent parcel

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Tonka Bay hereby approves variances from the side yard setbacks, air conditioning unit setback, rear yard setback, front yard setback, 15 foot floodplain buffer, and minimum lot size, as well as conditional use permits for impervious surface and floor area ratio; as shown on the Plans attached hereto, as Exhibit A (the Plans); and

BE IT FURTHER RESOLVED, that the approval of the requested variances and conditional use permits shall include the following conditions:

1. The applicant shall obtain all necessary permits and approvals from the City of Tonka Bay and other applicable entities with jurisdiction prior to any construction. This includes, but shall not be limited to permits from the Minnehaha Creek Watershed District (MCWD) and the Lake Minnetonka Conservation District (LMCD).
2. The MCWD shall review and approve the final grading plans approved by the City Engineer prior to any work being authorized. Proof of MCWD approval shall be provided to the city prior to a building permit being authorized.
3. Silt fencing shall be shown on the building permit plans and shall be subject to review and approval by the City Engineer.
4. A sump pump inspection must be completed by the City of Tonka Bay prior to C.O. being issued.

5. A water meter inspection must be completed by the City of Tonka Bay prior to C.O. being issued.
6. Overhangs or eaves shall not project more than two (2) feet into a required yards. The Plans must be modified accordingly prior to issuance of a building permit. Construction shall follow the survey and plans as modified or as otherwise required to be updated by the City Engineer.
7. Building of structures shall not occur within any existing or proposed easements on the property.
8. Per the Stormwater Facilities Maintenance Agreement and Restrictive Covenant, the applicant shall:
 - a. Agree to construct and maintain a stormwater collection and detention system on his/her property as shown on the Detention System Drawing.
 - b. Maintain and preserve the detention system until such time as the City, its successors or assigns, agree that the system should be altered in some manner or eliminated.
 - c. Not to dismantle, revise, alter or remove part of the system except as necessary for maintenance, repair or replacement.
 - d. Provide the City the right to ingress and egress over portions of the property in order to access the detention system for inspection and to reasonably monitor the system for performance, operational flows or defects.
 - e. Be responsible for inspecting and maintaining the detention system, on an annual basis. The property owner will provide a letter to the City Engineer by September 1st of each year, stating that inspection and maintenance have been completed.
 - f. Assume all responsibility for the cost of any maintenance and for repairs to the detention system. Such responsibility shall include reimbursement to the City within 30 days after the City mails an invoice to the Owner for any work performed by the City. Overdue payments will require payment of interest by the Owner at the current legal rate as liquidated damages.
 - g. Obtain written approval from the City Engineer prior to performing any alterations or modifications to the detention system.

9. The City Engineer will verify and approve ingress and egress areas for City access to the stormwater treatment system prior to issuing a building permit.
10. The City Engineer shall inspect the property at the property owner's expense during the construction process to ensure on-going compliance with all engineering requirements.
11. The variances shall expire one year from the date of the resolution. City Council approval will be required for any subsequent extension

PASSED AT A REGULAR MEETING of the Tonka Bay City Council this day of December 11, 2012.

Motion introduced by Marceau and seconded by De La Vega.

Roll call vote:

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| Ayes – | LaBelle, Marceau, Anderson, De La Vega and Holscher |
| Nays – | None |
| Absent – | None |

William LaBelle, Mayor

ATTEST:

Joseph Kohlmann, Clerk/Administrator

