

RESOLUTION NO. 12-17

**A RESOLUTION APPROVING VARIANCES FROM
THE REQUIRED 15-FOOT FLOODPLAIN BUFFER, FRONT YARD SETBACK,
BUILDING HEIGHT, MAXIMUM NUMBER OF DOCKS, SIDEYARD DOCK SETBACK,
AND SIDEYARD DOCK SETBACK
FOR HOWARD ROOT AND BETH HEINEMANN
AT 25 FAIRHOPE 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, Howard Root and Beth Heinemann ("Applicants") own 25 Fairhope Avenue which is legally described as follows:

The Southeasterly 89 feet of Lot 3, except that part of the Southeasterly 25 feet of said Lot 3 lying Northeasterly of a line drawn at right angles to the Southeasterly line of said Lot 3 and from a point therein distant 200 feet Northeasterly of the most Southerly corner of said Lot 3. That part of Lot 7 lying Southeasterly of a line and its extensions described as follows: Commencing at the Southeasterly terminus of that certain straight portion of the Northeasterly line of said Lot 7 having a length of 52.4 feet; thence Northwesterly along said Northeasterly line of Lot 7 a distance of 5 feet to the point of beginning of the line being described; thence deflecting left 91 degrees to the Southwesterly line of said Lot 7, and there ending, all in "Tonka Fairhope", according to the plat thereof on file or of record in the office of the Registrar of Titles in and for said County; PID #21-11723-41-0035, commonly known as 25 Fairhope Avenue (the "Property"); and

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

WHEREAS, the Applicants are requesting the following variances:

1. A variance from the required 15-foot floodplain buffer around all new structures;
2. A 2.75-foot variance from the required front yard setback for the house;
3. A 5.0-foot variance to exceed the maximum building height requirements of the R-1A zoning district;
4. A one dock variance from Section 510.03, Subd. 2 to exceed the maximum number of docks;

5. A 10-foot variance from Section 510.02, Subd. 4 to allow a dock within 10 feet of the side lot line;
6. A 10-foot variance from Section 510.02, Subd. 4 to allow a dock within 10 feet of the side lot line.

and,

WHEREAS, Jack Corkle, Interim City Planner, issued a report dated June 12, 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 June 12, 2012, and held a public hearing, following the required notices and publication; and

WHEREAS, neighbors spoke and submitted written comments 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 15 foot floodplain buffer, front yard setback, height, maximum number of docks, side yard setback for dock, and side yard setback for dock; 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 home will always be accessible in the event of a flood and the applicants do not control all land within 15 feet of the proposed home;
2. The proposed use as a single family home will not increase crowding on the lake, and it will not increase congestion on public streets;
3. The proposed use as a single family home is consistent with the City's Comprehensive Plan;
4. The second dock will not increase crowding on the lake, because there are two docks serving three properties; thus, there is no net increase in the number of docks for the neighborhood;
5. All parties are involved in the process and the most convenient place to serve the users is to have the docks in a location that serves both properties equally well. Placing the docks on the property line serves everyone;
6. The proposed home will not be increasing pollution into the lake. The property owner has been required to have an on-site system to treat water runoff;
7. The proposed home will not be altering the natural characteristics of the shoreline;

8. The shape and size of the neighboring property has an effect on the setback requirement for the proposed home. Because the neighboring property has a much greater setback, it impacts the setback at 25 Fairhope Avenue. Provided the terrace remains unenclosed, the proposed home will not diminish lake views for neighboring property owners;
9. The danger of fire or negative impacts to public safety will not be increased with the construction of a single family home;
10. Provided the terrace remains unenclosed, the proposed home should not diminish property values in the neighborhood;
11. The grade on the driveway will be changed;
12. Plates on the second floor are at 7';
13. There are several trees contributing to the shading issue, and one of the trees will be removed;
14. The grade on the driveway will be changed;
15. Two docks will serve three properties.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Tonka Bay hereby approves a variance from the 15 foot floodplain buffer, front yard setback, height, maximum number of docks, side yard setback for dock, and side yard setback for dock; as shown on the Plans attached hereto, as Exhibit A (the Plans); and

BE IT FURTHER RESOLVED, that the approval of the requested variance 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 Certificate of Occupancy being issued.
5. A water meter inspection must be completed by the City of Tonka Bay prior to Certificate of Occupancy being issued.
6. Dock permits shall be applied for and approved by the City of Tonka Bay and Lake Minnetonka Conservation District prior to Certificate of Occupancy being issued.
7. A shared dock agreement shall be entered into by the property owners at 15 Fairhope Avenue and 25 Fairhope Avenue.

8. Construction shall follow the survey and plans as submitted or as required to be updated by the City Engineer.
9. Building of structures shall not occur within any existing or proposed easements on the property.
10. Per the Storm Water Facilities Maintenance Agreement and Restrictive Covenant, the applicants shall:
 - a. Agree to construct and maintain a drainage system on his/her property as shown on the Drainage System Drawing.
 - b. Maintain and preserve the drainage 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 drainage system for inspection and to reasonably monitor the system for performance, operational flows or deficits.
 - e. Be responsible for inspecting and maintaining the storm water treatment and conveyance system, on an annual basis. The property owner will provide a letter to the City Engineer by September 1 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 drainage 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 filling, piping, cutting or removing vegetation (except in routine landscape maintenance) in open vegetated drainage facilities (such as swales, channels, ditches, ponds, etc.), or performing any alterations or modifications to the drainage system.
11. The City Engineer will verify and approve ingress and egress areas for City access to the storm water treatment system prior to issuing a building permit.
12. The City Engineer shall inspect the property at the property owner's expense during the construction process to ensure ongoing compliance with all engineering requirements.
13. The proposed terrace, which extends beyond the average setback of the two adjacent homes, is not to be enclosed as to preserve sight lines to the lake from neighboring properties.
14. The variances shall expire one year from the date of the resolution, and City Council approval will be required for any subsequent extension.

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

Motion introduced by _____ and seconded by _____.

Roll call vote:

Ayes –

Nays –

Absent –

William LaBelle, Mayor

ATTEST:

Joseph Kohlmann, Clerk/Administrator