

CITY OF TONKA BAY ITEM NO. 7A

Tonka Bay City Council Agenda Item Executive Summary

Title of Item: **VARIANCE AND CONDITIONAL USE PERMIT REQUESTS:**
Application from James and Elizabeth Konerza requesting a 6,808 square foot variance from the minimum required lot area of 15,000 square feet, a 17 foot variance from the minimum required lot width of 65 feet, 19.1 foot variance from the minimum required rear yard setback of 20 feet, a 25.8 foot variance from the minimum required front yard setback of 40 feet (from Florence Drive), and a conditional use permit (CUP) for a 17.4 foot allowance from the minimum required front yard setback of 40 feet (from Brentwood Avenue), to allow for the construction of a second story addition on the property located at 140 Brentwood Avenue – R-1B zoning – PID: 33.117.23.11.006

Meeting Date: **03-25-2014**

*60 Day Review
deadline:* **60 day period ends 04-24-2014**

Staff/Guest Reporting: Kelsey Johnson, AICP – City Planner
Justin Messner, PE – City Engineer

Summary: The applicant is seeking approval to add a small addition that will add a second bathroom and bedroom to their existing home. No modifications to the existing footprint, roof elevation (height), or overall architectural appearance of the residence will occur. Construction of the proposed addition, based on the plans submitted by the property owner, will require four variances and one conditional use permit (CUP). In summary, the requested variances and conditional use permit requests are as follows:

1. A **6,808 square foot variance to the minimum required lot area** of 15,000 square feet resulting in a lot area of 8,192 square feet.
2. A **17 foot variance to the minimum required lot width** of 65 feet resulting in a lot width of 48 feet.
3. A **19.1 foot variance from the minimum required rear yard setback** of 20 feet resulting in a 0.9 roof overhang setback (2.6 feet from the building wall).
4. A **25.8 foot variance from the minimum required front yard setback (from Florence Drive)** of 40 feet resulting in a 14.2 foot roof overhang setback (16.2 feet from the building wall).
5. A **conditional use permit (CUP) for a 17.4 foot allowance from the minimum required front yard setback (from Brentwood Avenue)** of 40 feet resulting in a 22.6 roof overhang setback (24.3 feet from the building wall).

Staff believes that the applicant has met the Statutory and City Criteria for approving the variances and a conditional use permit. Staff has provided findings of fact for approval for all variances and the conditional use permit on page 10.

City of Tonka Bay
Variance and Conditional Use Permit (CUP) Report

To: City Council

From: Kelsey Johnson, AICP –City Planner
Justin Messner, PE – City Engineer

Meeting Date: March 25, 2014

Applicant/Owner James and Elizabeth Konerza

Location: 140 Brentwood Avenue

Zoning: R-1B

Introductory Information

Proposed Project: The applicant is seeking to add a small second story addition to their existing home located at 140 Brentwood Avenue.

Variance Request(s): The proposed action will require the following variances:

1. A **6,808 square foot variance to the minimum required lot area** of 15,000 square feet resulting in a lot area of 8,192 square feet.
2. A **17 foot variance to the minimum required lot width** of 65 feet resulting in a lot width of 48 feet.
3. A **19.1 foot variance from the minimum required rear yard setback** of 20 feet resulting in a 0.9 roof overhang setback (2.6 feet from the building wall).
4. A **25.8 foot variance from the minimum required front yard setback (from Florence Drive)** of 40 feet resulting in a 14.2 foot roof overhang setback (16.2 feet from the building wall).

Conditional Use Permit (CUP) Request: The proposed action will require the following conditional use permit (CUP):

1. A **conditional use permit (CUP) for a 17.4 foot allowance from the minimum required front yard setback (from Brentwood Avenue)** of 40 feet resulting in a 22.6 roof overhang setback (24.3 feet from the building wall).

Findings

Site Data: Lot Size – 8,192 square feet
Existing Use – Single Family Home
Existing Zoning – R-1B
Property Identification Number (PID): 33.117.23.11.006

Comp Plan Guidance: ▪ The comprehensive plan guides this lot for single family use. The corresponding zoning assigned to this property (R-1B) allows for single family homes.

Lot Area and Lot Width:

- The lot area requirement in the R-1B District is 15,000 square feet. The lot of record is 8,192 square feet.
- The lot width requirement in the R-1B District is 65 feet. The lot of record is 48 feet.
- The lot is a nonconforming lot of record and is allowed to be used for its intended zoning so long as the expansion or enlargement meets all other provisions of the city ordinances.
- Because the proposed expansion of the second story on the home does not meet the setback requirements as outlined below in this report, the provisions of the city ordinances cannot be met, and therefore variances from the lot area and lot width are required.

Rear-Yard Setback:

- The rear-yard setback in the R-1B District is 20 feet.
- The applicant's property is unique in that it has frontage on three sides of the lot, thus the rear yard is considered that side opposite Brentwood Avenue (along the north property line of the lot of record).
- The applicant is proposing to keep the existing rear yard setbacks with the proposed addition, which results in a 0.9 foot roof overhang setback (2.6 foot home setback) from the rear-yard.

Front –Yard Setback:

- The front-yard setback (all three remaining sides) in the R-1B District is 40 feet.
- The applicant is proposing to keep the existing front yard setbacks with the proposed addition, which results in a 14.2 foot roof overhang setback (16.2 foot home setback) along Florence Drive to the east, and a 22.6 foot roof overhang setback (24.3 foot home setback) along Brentwood Avenue to the south.
- Section. 1011.03, Subd. 5.e. states that "front yard requirements shall be observed on each street frontage of a corner lot....in the case of a narrow corner lot where compliance with this requirement should be given an impractical depth to a structure or building, the City Council may allow the construction of such structure as near to the street side lot line as will give a practicable depth by approval of a conditional use permit."
- In this instance, compliance with the requirement of a 40 foot setback from Brentwood Avenue would create an impractical depth to the building (less than 8 feet to work with on a 48 foot wide lot). As such, a conditional use permit is required.

Height:

- The maximum height limit within the R-1B District is 2 ½ stories or 30 feet.
- The proposed second story addition will not increase the overall height of the existing building and meets the city ordinance requirements.

Floor Area Ratio (FAR):

- The maximum floor area ratio (FAR) permitted by code in the R-1B District is 0.30 unless otherwise allowed by approval of a conditional use permit (CUP).
- The proposed second story addition will bring the FAR to 0.27.

Hardcover:

- The maximum hardcover permitted on this lot without any review is 25 percent; hardcover between 25 percent and 35 percent can be administratively approved by the City Engineer and City Administrator.

- The applicants are not proposing to change the existing footprint of the home and no additional hardcover will be added to the property, therefore no further action is needed.

Application Review:

**Applicable Code
Definitions:**

Addition. Any physical enlargement of an existing structure.

Building Setback. The minimum horizontal distance between the building and the lot line.

Conditional Use. Those occupations, vocations, skills, arts, businesses, professions, or uses and/or related building/structures, or improvements specifically designated in each zoning use district or by this Ordinance, which for the respective conduct or performance may require reasonable, but special, peculiar, unusual or extraordinary limitations, facilities, plans, structures, conditions, modification, or regulations for the promotion or preservation of the general public welfare, health, convenience and the integrity of the City Comprehensive Municipal Plan and this Ordinance.

Floor Area, Gross. The sum of the gross horizontal areas of all floors of the building or portion thereof devoted to a particular use, including accessory storage areas located within selling or working space such as activities, to the production or processing of goods, or to business or professional offices. However, the floor area shall not include basement or cellar floor area other than area devoted to retailing activities, the production or processing of goods, or to business or professional offices. The floor area of a residence shall not include the cellar area.

Floor Area Ratio (FAR). The floor area of a building or buildings on any lot divided by the area of such lot, or in the case of planned developments by the net site area. The floor area ratio requirements, as set forth under each zoning district, shall determine the maximum floor area allowable for a building or buildings (total floor area of both principal and accessory buildings) in direct ratio to the gross area of the zoning lot.

Lot (of Record). A parcel of land, whether subdivided or otherwise legally described, as of the effective date of this Ordinance, or approved by the City as a lot subsequent to such date and which is occupied by or intended for occupancy by one (1) principal building, or principal use together with any accessory buildings and such open spaces as required by this Ordinance and having its principal frontage on a street, or a proposed street approved by the Council.

Lot Area. The total land area of a horizontal plane within the lot lines.

Lot, Corner. A lot situated at the junction of an abutting on two (2) or more intersecting streets; or a lot at the point of deflection in alignment of a single street, the interior angle of which is one hundred thirty-five (135) degrees or less.

Lot, Width. The shortest horizontal distance between the side lot lines

measured at right angles to the lot depth at the minimum required building setback line. If not setback line is established, the distance between the side lot lines measured along the public right-of-way.

Non-Conforming Structure, Use or Lot – Legal. A lot, building, structure, premise, or use lawfully established prior to the adoption of this Ordinance or any amendment thereto which does not now conform with the applicable conditions or provisions of this Ordinance for the district in which the structure or use is located.

Setback. The minimum horizontal distance between a building and street or lot line. Distances are to be measured from the most outwardly extended portion of the structure at ground level.

Variance. A variance is a relaxation of the terms of the Zoning Ordinance where such deviation will not be contrary to the public interest and where, owing to conditions unique to the individual property under consideration and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship.

Applicable Codes: **1011.01, Subdivision 2.n.2. Developed Lots (Legal Non-Conforming Lots).** An existing conforming use on a lot of substandard size may be expanded or enlarged if such expansion or enlargement meets all other provisions of this Ordinance.

1011.02, Subdivision 3.d. Platted and Unplatted Property. On a through lot (a lot fronting on two [2] parallel streets), both street lines shall be front lot lines for applying the yard and parking setback regulations of this Ordinance. In addition, no home on a through lot or corner lot in any residential zone shall maintain direct access to any arterial street designated as such by the Comprehensive Plan.

1011.03, Subdivision 5.e. Yards. Front yard requirements shall be observed on each street frontage of a corner lot. Where the rear boundary line of a corner lot is part of the side boundary of a residential lot no part of any principal structure or building on the corner lot shall be nearer its street side lot line than the minimum depth of any front yard required along such side street. In the case of a narrow corner lot where compliance with this requirement should give an impractical depth to a structure or building, the City Council may allow the construction of such structure as near to the street side lot line as will give a practicable depth by approval of a conditional use permit.

1018.06 Lot Area and Setback Requirements; subdivision (1) and (2). Lots in the R-1B Zoning District shall have a lot area of not less than fifteen thousand (15,000) square feet and lot width of not less than sixty-five (65) feet.

1018.06 Lot Area and Setback Requirements; subdivision (3) a and c. Principal structures in the R-1B Zoning District shall be setback not less than forty (40) feet from the front yard lot line, and not less than twenty (20) feet from the rear yard lot line.

**Variance Criteria
Review:**

By state statute, there are three definitive criteria that all variances must address: consistency with the ordinance, consistency with the comprehensive plan, and the establishment of “practical difficulties.” Presuming a request meets the statutory criteria, city code also requires that the proposal will NOT impair an adequate supply of light and air to adjacent property, unreasonably increase the congestion in the public street, increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property values within the neighborhood.

The requested variances include:

1. A **6,808 square foot variance to the minimum required lot area** of 15,000 square feet resulting in a lot area of 8,192 square feet.
2. A **17 foot variance to the minimum required lot width** of 65 feet resulting in a lot width of 48 feet.
3. A **19.1 foot variance from the minimum required rear yard setback** of 20 feet resulting in a 0.9 roof overhang setback (2.6 feet from the building wall).
4. A **25.8 foot variance from the minimum required front yard setback (from Florence Drive)** of 40 feet resulting in a 14.2 foot roof overhang setback (16.2 feet from the building wall).

Staff’s analysis of these requests under the review criteria is as follows:

A. Statutory Criteria

1. *The request is in harmony with the general purposes and intent of this ordinance.*

Lot area and width request: Under City Code, a lot would be treated as a non-conforming lot and would be allowed for single family use as long as the lot’s area and frontage were within 60 percent of the respective district’s requirements. The Applicant’s lot does not meet this requirement of having at least 60 percent of the district’s (R-1B) requirements, and as such a variance is needed.

The City’s intent of establishing minimum lot sizes is to ensure that land does not become overcrowded with structures and that the lake does not get polluted.

There is currently an existing two-story single-family home on the property. The Applicant proposes to use the property in the same manner as it was previously. Staff finds that the small second story addition to this single-family home in this location would not contribute to overcrowding and therefore is in harmony with the general purposes and intent of the ordinance. **Criteria met.**

Setback requests – principal structure: The intent of the setbacks are to provide an adequate buffer between homes and to provide for areas of recreation and open space on properties. The proposed home is located on a non-riparian lot that is surrounded on three sides by streets. Additionally, the lot is only 48-feet wide, which proves problematic to

meet all setback requirements given the unique circumstances imposed having “frontage” on three sides. Additionally, the proposed second story addition will not further encroach the existing setbacks and will have minimal impact on adjoining properties. The property has adequate space for recreational activities and open space and there is not crowding of homes by the proposed addition. **Criteria met.**

2. *The variance is consistent with the comprehensive plan.*

All variance requests: The Comprehensive Plan calls for this area of the City to be used for single family dwellings, and for the development to occur in an orderly fashion in a manner best for the community. **Provided all other variance criteria are met, staff finds the variance requests will meet this criteria.**

3. *The property in question meets the “practical difficulties” test:*

a.) *The property owner proposes to use the property in a reasonable manner.*

All variance requests: The property owner is seeking to construct a small second story addition to the existing single family detached home which is a permitted use in the R-1B district. As the proposed use conforms to the allowed uses in the R-1B district, and a home is currently located on the site, staff finds the use and request reasonable. **Criteria met.**

b.) *There are unique circumstances to the property not created by the landowner.*

Lot area and width requests: The subject property is 8,192 square feet. City code allows for the use of the property as a single-family lot as long as 60 percent of the R-1B district’s lot area is met. While the property exceeds the 60 percent requirement for lot width (73%) it does not exceed this requirement for lot area (54.6%). The home currently exists on this lot of record and the Applicants are proposing an addition that will have minimal impact given the fact that the home already has a second story. It should be noted that the property was a platted lot of record when the City increased lot requirements to 15,000 square feet. This was not a situation created by the current land owner. **Criteria met.**

Setback requests: The Applicant is not proposing to change the setbacks over existing conditions with the small second story addition. The lot in which the property owner is building on is narrow and long and is surrounded on three sides by public right-of-way. These factors together reduce the building area where a home can be located. The applicants did not create/plat the lot as it is today. Staff finds the circumstances unique to the property and not created by the landowner. **Criteria met.**

c.) *The variance will maintain the essential character of the locality.*

All variance requests: The proposed new second story addition will be consistent with other homes in the neighborhood and will maintain the character of the locality. **Criteria met.**

B. City Tests:

- 1.) *Will the variance impair an adequate supply of light and air to adjacent property?*

All variance requests: No. The proposed second story addition will meet the height requirements of the City Code and will maintain the same setbacks as the existing home has. Additionally, the nearest home located to the north of the property is setback a distance that allows for adequate light and air on their property. Granting all variances would not impair an adequate supply of light and air from reaching adjacent properties.

Criteria met.

- 2.) *Will the variance unreasonably increase the congestion in the public street?*

All variance requests: No. The use of the property for a single family dwelling is not anticipated to unreasonably increase congestion in the public street as it is currently being used as a single family home.

Criteria met.

- 3.) *Will the variance increase the danger of fire or endanger the public safety?*

All variance requests: No. The use of the property for a single family dwelling is not anticipated to increase the risk of fire or endanger the public safety. **Criteria met.**

- 4.) *Will the variance unreasonably diminish or impair established property values within the neighborhood?*

The proposed construction of the second story addition to the existing home will increase the property value, which in turn will support or boost the value of nearby properties.

Second, the intent of the zoning ordinance is:

To protect the public, such provisions are intended to provide for adequate light and air, safety from fire and other danger; prevent undue concentration of population; provide ample parking facilities; regulate the location and operation of businesses, industries, dwelling and buildings for other specified purposes; preserve property values by providing for orderly and compatible development of the various land uses; encourage energy conservation and the use of renewable energy resources; provide for administration of this Ordinance and all amendments hereto.

Staff does not foresee any way in which the above requested variances will be in direct conflict with the above intent. **Criteria met.**

**Conditional Use
Permit (CUP)
Requests:**

The requested conditional use permit with this application is:

1. A **conditional use permit (CUP) for a 17.4 foot allowance from the minimum required front yard setback (from Brentwood Avenue) of 40 feet resulting in a 22.6 roof overhang setback (24.3 feet from the building wall).**

According to code, the City Council shall consider possible adverse effects of the proposed conditional use based upon (but not limited to) the following factors:

1. *The proposed action has been considered in relation to the specific policies and provisions of and has been found to be consistent with the Comprehensive Plan.*

The Comprehensive Plan guides this area for low density single family residential development. Approving the request will not change the current use of the property as a single family home. The lot width is 48 feet, which provides results in an impractical depth to construct the proposed addition (or any modifications/expansions of the existing home for that matter).

One of the housing policies stated in the plan is to “support housing rehabilitation, remodeling, and some new construction through redevelopment.” Staff believes the proposed project will be an improvement to the property. **Provided Council finds the other CUP criteria are met, staff finds the request is consistent with the goals and policies of the Comprehensive Plan.**

2. *The proposed site is or will be compatible with present and future land uses of the area.*

The existing and future land use for the property is for single family residential. The proposed second story addition is consistent with the land use and is common among other homes in the neighborhood.

Criteria met.

3. *The proposed use conforms to all performance standards contained herein.*

Staff has reviewed the proposed plans and finds that all performance standards are met. **Criteria met.**

4. *The impact on character of the surrounding area.*

The proposed conditional uses will not have any negative impact on the character of the surrounding area. The home currently exists with a second story, and adding the small second story addition will not greatly impact the overall character or visual impression of the home and the surrounding area. **Criteria met.**

5. *The demonstrated need for such use*

The property owners wish to construct a small second story addition to gain a second bedroom and bathroom in the existing home, which is not uncommon or unreasonable. Given that the improvements part of an existing permitted use, and the home cannot reasonably be modified in a manner that would meet the code requirements, thus eliminating the need for a CUP, staff finds the request reasonable. **Criteria met**

6. *The proposed use will not tend to or actually depreciate the area in which it is proposed.*

The proposed improvements will not have any negative impact to adjacent property values and will enhance the appearance of the subject

property. **Criteria met.**

7. *The proposed use can be accommodated with existing public services and will not overburden the City's service capacity.*

The proposed project will not have any impact on public utilities.

Criteria met.

Resident Concerns: ▪ Staff is not aware of any concerns raised to date.

Engineering Reports: As noted previously, the proposed second story addition to the existing home will not increase the amount of impervious surface on site, and therefore hardcover was not reviewed as part of this Application. The City Engineer does recommend the use of a gutter system along the northern portion of the home to ensure stormwater is directed away from the adjoining property. This system must be reviewed as part of a Building Permit.

Conclusion

Council Options: The City Council has the following options:

- A) DIRECT STAFF TO PREPARE A RESOLUTION APPROVING THE REQUESTS (based on the applicant's submittals and findings of fact).
- B) DIRECT STAFF TO PREPARE A RESOLUTION DENYING THE REQUESTS (based on the applicant's submittals and findings of fact).
- C) TABLE THE ITEMS and request additional information.

The 60-day review period for this application expires on 04-24-14. An extension letter may be sent to the applicant and the home owners. A final decision MUST be made prior to 06-23-14.

Template Denial Motion: I move that we direct staff to prepare a resolution of denial for the requested variance(s) based on the following findings of fact:"
(Not Recommended) • (Provide findings to support conclusion)

Template Approval Motion: "I move that we direct staff to prepare a resolution of approval for the requested lot area, lot width, rear yard and front yard setback variances, and a conditional use permit for a decreased front yard setback based on the findings of fact listed in the report. Furthermore, the approval shall include the conditions listed within the staff report as may have been amended here tonight".
(Recommended)

- a. The continued use as a single-family home is consistent with the comprehensive plan.
- b. Granting the variances and conditional use permit will not impair an adequate supply of light and air to adjacent parcels. The height of the home does not exceed Code requirements.
- c. Granting the variances and conditional use permit will not unreasonably increase congestion in the public street. The proposed use is a single family home which will not generate traffic volumes that would increase congestion.

- d. Granting the variances and conditional use permit will not increase the danger of fire or endanger the public safety.
- e. Granting the variances and conditional use permit will not diminish or impair established property values in the neighborhood. Constructing the small second story addition should increase property values in the neighborhood.
- f. Granting the variances and conditional use permit will not alter the essential character of the locality. The proposed addition to the home will fit in with other homes in the neighborhood.
- g. The continued 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 has been used in the past.
- h. The existing lot of record is narrow and therefore compliance with the requirements of the City Code gives an impractical depth to a structure or building resulting in the need for a conditional use permit.
- i. The variance and conditional use permit requests are in harmony with the general intent of the ordinance. The ordinance permits single-family homes. Overcrowding of homes will not occur.
- j. The practical difficulties associated with the site area caused by the Ordinance and have not been created by any persons presently having an interest in the parcel of land.

***Recommended
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.
2. Construction shall follow the survey and plans as submitted or as required to be updated by the City.
3. Building of structures shall not occur within any existing or proposed easements on the property.
4. The variances shall expire one year from the date of the resolution. City Council approval will be required for any subsequent extension.