

Tonka Bay City Council Agenda Item  
Executive Summary

*Title of Item:* **VARIANCE REQUESTS:** Application from 4 Square Builders on behalf of Robert Steele requesting variances to allow for the construction of an addition to an existing single family home on the property located at 160 Sunrise Ave. – R-1B zoning, Shoreland Overlay – PID: 27-117-23-24-0058

**CONDITIONAL USE PERMIT REQUESTS:** Application from 4 Square Builders on behalf of Robert Steele requesting a conditional use permit for additional floor-area-ratio and a shoreland impact plan with impervious surface between 36 and 45 percent on the property located at 160 Sunrise Ave. – R-1B zoning - PID: 27-117-23-24-0058

*Report Date:* **11-03-15**

*Meeting Date:* **11-10-15**

*60 Day Review deadline:* **60 day period ends 12-6-15**

*60-Day Extension Letter Sent:* **N/A**

*120-Day Review Deadline:* **N/A**

*Staff/Guest Reporting:* Erin Perdu, AICP – City Planner  
Justin Messner, PE – City Engineer

*Summary:* The Applicant is seeking to construct an addition to the existing single family home on the property located at 160 Sunrise Ave. The project, as proposed, requires five variances and two conditional use permits.

In summary, the requested variances and conditional use permits are as follows:

1. **A 10,400 sf. variance from the minimum required lot area** within the R-1B District.
2. **A 35 foot variance from the minimum required lot width** within the R-1B District.
3. **An 11.1 foot variance from the required front setback** due to the 39.9-foot setback from the existing home.
4. **A 3.5 foot variance from the required side setback** for the location of the proposed deck.
5. **A variance from the minimum fill elevation (floodplain buffer) of 932.5 feet for 15 feet surrounding the home.**
6. **A conditional use permit for an increase in the maximum allowable FAR by 25.6%.**
7. **A conditional use permit and a shoreland impact plan** for impervious surface between 36 and 45 percent (proposed impervious surface is 41.2%)

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Staff believes that the applicant has met the Statutory and City Criteria for approving of the requested variances and conditional use permits. Staff has provided a template approval motion as shown on Page 11 as well as findings of fact for approvals.

City of Tonka Bay Planning Department  
**Variance & Conditional Use Permit Report**

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**To: City Council**

**From:** Erin Perdu, AICP – City Planner  
Justin Messner, PE – City Engineer

**Meeting Date: November 10, 2015**

**Applicants:** 4 Square Builders

**Owners:** Robert Steele

**Location:** 160 Sunrise Ave.

**Zoning:** R-1B

**Introductory Information**

**Proposed Project:** The Applicants are proposing to construct a 539 sf. addition and new deck onto the existing home on the property.

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

- **A 10,400 sf. variance from the minimum required lot area** within the R-1B District for construction on a lot that is 4,600 sf. in area where 15,000 sf. is required.
- **A 35 foot variance from the minimum required lot width** within the R-1B District for a lot that is 40 feet wide where 75 feet is required in the Shoreland Overlay.
- **An 11.1 foot variance from the required front setback** due to the 39.9-foot setback from the existing home (50 foot setback is required).
- **A 3.5 foot variance from the required side setback** for the location of the proposed deck (4.5 feet from the side lot line where 8 feet is required).
- **A variance from the minimum fill elevation (floodplain buffer)** of 932.5 feet for 15 feet surrounding the home.

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**CUP Request(s):** The proposed action will require the following conditional use permits:

- **A conditional use permit and a shoreland impact plan** for impervious surface between 36 and 45 percent (proposed impervious surface is 41.2%)
- **A conditional use permit for a FAR exceeding the ordinance maximum** to allow for an FAR of 55.6% where 30% is allowed.

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**Findings**

**Site Data:** Lot Size 4,600 square feet  
Existing Use – Single Family Home  
Existing Zoning – R-1B Shoreland  
Property Identification Number (PID): 27-117-23-24-0058

***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 Width:***

- The lot area requirement in the R1-B Shoreland District is 15,000 square feet. The lot of record is 4,600 square feet and is therefore a nonconforming lot.
- Minnesota Statute 462.357, Subd. 1e. Nonconformities (d)(e) states that a nonconforming single lot of record located within a shoreland area may be allowed as a building site without variances from the lot size requirement, provided that:
  1. All structure and septic system setback distance requirements can be met;
  2. A Type 1 sewage treatment system consistent with Minnesota Rules, Chapter 7080, can be installed or the lot is connected to a public sewer; and
  3. The impervious surface coverage does not exceed 25 percent of the lot.
- The lot width requirement in the R1-B Shoreland Overlay District is 75 feet. The lot of record is 40 feet. Because the lot does not meet threshold for amount of impervious surface (the lot is noncompliant with State Statute) a variance from the lot width is also required.

***Front-Yard Setback:***

- The front-yard (lakeside) setback in the R-1B District for principal structures is the greater of 50 feet or the average setback of the two adjacent riparian principal structures on either side of a proposed building site. In the case of this property, the required setback is 50 feet.
- The existing home on the property has a front-yard setback of 39.9 feet. Therefore a variance is required.

***Side Yard Setback:***

- The side yard setback in the R-1B District is 8 feet.
- The existing home and construction of the proposed deck would be located 4.5 feet from the southerly side lot line. Therefore a variance is required.
- The proposed driveway is located more than 8 feet from the northern property line and approximately 11 feet from the southern property line based on the scale of the survey submitted. Thus the proposed driveway meets the minimum side setback requirements.

***Rear Yard Setback:***

- The rear-yard setback (street side) in the R-1B District is 20 feet.
- On lakefront homes, the rear yard is considered the opposite side of the front which is the lake side.
- The Applicant is proposing a 20-foot rear yard setback which meets the ordinance requirement.
- The proposed addition would be located 20 feet from the rear property line, and therefore meets the ordinance requirement.

***Height:***

- The maximum height limit within the R-1B District for principal structures

is 30 feet or 2 and-a-half stories.

- The height of principal buildings is measured from the average ground level prior to construction to the top cornice line of a flat or mansard roof, to the uppermost point on a shed, round or other arch-type roof, or to the average height of the highest gable of a pitched or hipped roof.
- The proposed new home will measure 27' 2 and 9/16" from the average ground level and consists of two stories which meets the City ordinance requirements.

**Floor Area Ratio:**

- The maximum floor area ratio (FAR) permitted by code in the R-1B District is 0.30.
- The proposed home will include 2,258sf of space for a FAR of 55.6%. Therefore a conditional use permit is required.

**Hardcover:**

- The maximum hardcover permitted on this lot without any review is 25 percent; the proposed improvements indicate hardcover of 41.2%. Therefore a conditional use permit is required.

**Finished Floor Elevations:**

- The proposed floor elevations are all at or above the RFPE except for the proposed "Mechanical Area" shown on the Cross Section drawing 6 of 6 in the application package from 4 Square Builders. Section 4.25 of the City's Floodplain Ordinance states that the lowest floor must be at or above the RFPE (or 933.5 ft.). The proposed floor elevation of the mechanical area (930.4) is non-compliant.

Per the Minnesota DNR, lowest floors include basements and crawl spaces of any size. The floodplain regulations apply to all enclosed spaces, even those that are not habitable space. No variances are permitted for such elevations. However, the City recently adopted language allowing for the issuance of Conditional Use Permits for alternative floodproofing measures in certain circumstances.

The proposed slab elevation for the mechanical area is not permitted unless a Conditional Use Permit is approved for alternative floodproofing measures by the City Council. Alternatively, the slab elevation could be raised to meet the RFPE of 933.5.

**Application Review:**

**Applicable Code Definitions:**

**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 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

**Impervious Surface.** Any structure or surface which interferes to any degree with the direct absorption of water into the ground, including but not limited to, roofs, sidewalks, paved driveways and parking areas, patios, tennis courts, swimming pools, or any other similar surface.

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

**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 no setback line is established, the distance between the side lot lines measured along the public right-of-way.

**Regulatory Flood Protection Elevation (RFPE).** The regulatory flood protection elevation shall be an elevation no lower than two feet above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway. For purposes of this paragraph “regional flood” means the same as the 100 year floodplain elevation for Lake Minnetonka which is 931.5’ (NGVD 1929).

**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:*** **1011.03 General Yard, Lot Area, and Building Regulations; subdivision (5).**

d. For riparian lots, no principal structure or building addition shall be located closer to the ordinary high water mark than the greater of fifty (50) feet, or the average setback of the two adjacent riparian principal structures on either side of a proposed building site. In all circumstances, the setback shall be established by measuring the distance from the ordinary high water level to the part of the said principal structure that is closest to the lake.

**1018.06 R-1B, Single Family Residential District, Lot Area and Setback Requirements;**

**Subd. 1. Lot Area.** Not less than fifteen thousand (15,000) square feet.

**Subd. 3. Principal Structure Setbacks.**

a. Front Yard. Not less than forty (40) feet.

b. Side Yards.

1. Interior Lots. Not less than eight (8) feet.

**1070.08 SHORELAND OVERLAY DISTRICT, MINIMUM LOT SIZE AND WIDTH;**

The minimum lot width for a riparian lot in the Shoreland Overlay District is 75 feet.

**1018.07 R-1B, Single Family Residential District, Lot Coverage and Height; subdivision (1)**

Floor Area Ratio. The maximum floor area ratio (FAR) shall be 0.30 or as allowed by conditional use permit with the conditions specified in Section 1003.01, Subd. 8 of this Ordinance.

**1040 General Floodplain Ordinance, Section 4.25.**

All structures, including accessory structures, additions to existing structures and manufactured homes, shall be constructed on fill so that the lowest floor, including basement floor, is at or above the regulatory flood protection elevation. The finished fill elevation must be no lower than one foot below the regulatory flood projection elevation and shall extend at such an elevation at least 15' beyond the limits of the structure constructed thereon. All buildings within the floodplain shall have the lowest door or window opening at an elevation of at least 933.5' (NGVD 1929).

**1070.16, Shoreland Impact Plan/Conditional Use Permit; subdivision (1).**

Shoreland Impact Plan. Except for situations listed below, landowners developers desiring to develop land or construct any dwelling or any other artificial obstruction on land located within the Shoreland District within the City of Tonka Bay shall first submit a conditional use permit application as regulated by Section 1003 of the Zoning Ordinance and a plan of development, hereinafter referred to as "Shoreland Impact Plan", which shall set forth proposed provisions for sediment control, water management, maintenance of landscaped features, and any additional matters intended to set forth proposed changes requested by the applicant and affirmatively disclose what, if any, change will be made in the natural condition of the earth, including loss of change of earth ground cover, destruction of trees, grade courses and marshes. The plan shall minimize tree removal, ground cover change, loss of natural vegetation, and grade changes as much as possible, and shall affirmatively provide for the relocation or replanting of as many trees as possible which are proposed to be removed. The purpose of the Shoreland Impact Plan shall be to eliminate potential pollution, erosion and siltation.

*State Statute:*

**State Statute 462.357, Subdivision 1e. Nonconformities (e).** A non-conforming single lot of record located within a shoreland area may be allowed as a building site without variances from lot size requirements, provided that:

1. All structure and septic system setback distance requirements can be met;
2. A Type 1 sewage treatment system consistent with Minnesota Rules, Chapter 7080, can be installed or the lot is connected to a public sewer; and;
3. The impervious surface coverage does not exceed 25 percent of the lot

**Variance Criteria  
Review:**

The proposed action will require the following variances:

- **A 10,400 sf. variance from the minimum required lot area** within the R-1B District for construction on a lot that is 4,600 sf. in area where 15,000 sf. is required.
- **A 35 foot variance from the minimum required lot width** within the R-1B District for a lot that is 40 feet wide where 75 feet is required in the Shoreland Overlay.
- **An 11.1 foot variance from the required front setback** due to the 39.9-foot setback from the existing home (50 foot setback is required).
- **A 3.5 foot variance from the required side setback** for the location of the proposed deck (4.5 feet from the side lot line where 8 feet is required).
- **A variance from the minimum fill elevation (floodplain buffer)** of 932.5 feet for 15 feet surrounding the home.

Staff's analysis of the requested variances 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.* "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"

Lot Area and Width Requests:

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. In this instance the lot was originally platted narrower and smaller than the current ordinance requirements.

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

Setback Requests:

The intent of the setbacks is to provide an adequate buffer between homes and to provide for areas of recreation/open space and stormwater drainage areas on properties. The proposed addition is located on a riparian lot where the front yard is that side of the property on the lakeside. The Applicants existing home sits closer to the front lot line than the ordinance allows. The proposed addition does not contribute to or increase this

nonconformity. To correct existing nonconformities such as this, staff generally recommends that variances be obtained when redevelopment of a property is proposed. **Criteria met.**

Floodplain buffer request: The floodplain buffer requirement is intended to ensure a property owner can access the structure in the event of a flood. The proposed home's low floor will be at the RFPE. While the proposed buffer is smaller than is generally required by code, the home and attached garage should still be accessible in the event of a flood. **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. The construction of an addition to the existing single family home on this site will not change the use and is consistent with the City's Comprehensive Plan in this manner.

**Criteria met.**

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 owners are proposing to continue to use the property for a single family home. The footprint of the proposed addition increases the size of the existing home by approximately 500 sf., but the size of the resulting home is still within reasonable scale of other similarly situated single family homes. The Applicants are proposing to use the property in a reasonable manner. **Criteria met.**

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

All variance requests:

The unique circumstances on this property are largely related to the extremely small size and narrowness of this lot that pre-dated the adoption of lot area, width and setback standards. Expanding or improving the single family home on the property is extremely difficult without the need for variances. **Criteria met.**

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

All variance requests:

The essential character of the locality will not be negatively impacted as a result of approval of the requested variances. The proposed home addition fits into the character of the neighborhood. **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 home should not impair an adequate supply of light and air from

reaching adjacent property. **Criteria met.**

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

All variance requests:

No. The proposed home will have no effect on congestion in the public street. **Criteria met.**

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

All variance requests:

No. The continued 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?*

All variance requests:

The proposed addition is in keeping with the style of the existing home and is not anticipated to have a negative impact on neighboring property values. **Criteria met.**

**Engineering Reports:**

Per Section 1070.13 Subd. 2C of the City Ordinance states that a grading and filling permit shall be required for 1) The movement of more than ten (10) cubic yards of material on steep slopes or within shore or bluff impact zones; and 2) The movement of more than fifty (50) cubic yards of material outside of steep slopes and shore and bluff impact zones.

Prior to issuance of the building permit, a grading and fill permit shall be completed and \$1,000 escrow secured at City Hall. The escrow shall be returned to the applicant upon completion and acceptance of the proposed improvements. A similar permit is required from the Minnehaha Creek Watershed District and had been obtained by the applicant. A copies of the permit is included in the Shoreland Impact Plan located in the Stormwater Facility Maintenance Agreement.

**CUP Review:**

The proposed action will require the following conditional use permits:

1. **A conditional use permit for an FAR exceeding the ordinance maximum** to allow for an FAR of 55.6% where 30% is allowed.

According to code, City Council shall consider additional floor area ratios beyond this maximum using the conditions specified in Section 1003.01, Subd. 8 of this Ordinance:

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*a. 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 use of the property will not change and the*

request is therefore consistent with the comprehensive plan. **Criteria met.**

*b. The proposed site is or will be compatible with present and future land uses of the area.* The proposed increase in floor area does not change the pattern of use in the area and does not impede surrounding property owners from using their property for intended purposes. **Criteria met.**

*c. The proposed use conforms with all performance standards contained herein.* **Criteria met.**

*d. The impact on character of the surrounding area.* The FAR requirements are intended to ensure that the scale of buildings constructed is appropriate in relation to the size of the lot and the surrounding area. In this case, the lot on which the single family home is to be constructed is extremely small while the size of the home after the addition is relatively similar to neighboring structures. **Criteria met.**

*e. The demonstrated need for such use.* The proposed addition is relatively modest in size and increases the living space of the home to be more in character with similar properties. **Criteria met.**

*f. The proposed use will not tend to or actually depreciate the area in which it is proposed.* The proposed addition is in character with the existing home. Staff does not anticipate any negative impacts on surrounding property values. **Criteria met.**

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

2. A **conditional use permit for a Shoreland Impact Plan** to allow for impervious coverage of 42.4%. 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. **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 addition does not change the land use and is consistent with the use of the surrounding neighborhood. **Criteria met.**

3. *The proposed use conforms to all performance standards contained herein.*  
**Criteria met.**
4. *The impact on character of the surrounding area.*  
The proposed conditional use will not have any negative impact on the character of the surrounding area. **Criteria met.**
5. *The demonstrated need for such use.* The proposed addition is relatively modest in size and increases the living space of the home to be more in character with similar properties. **Criteria met.**
6. *The proposed use will not tend to or actually depreciate the area in which it is proposed.*  
Staff does not anticipate that the proposed addition will have any negative impact to adjacent property values. **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 should not have any impact on public utilities.  
**Criteria met.**

**Resident Concerns:**

None to date.

**Engineering Reports:**

In addition to the above criteria, per Section 1070.16 Shoreland Impact Plan/Conditional Use Permit, the following criteria are applicable to Conditional Use Permit Requests within the Shoreland Impact Zone:

1. *The projects shall be analyzed to determine the impact of impervious surfaces, storm water runoff, floodplain, and water quality implications. Only those projects shall be allowed where the adverse impacts have been mitigated through approved means to the extent possible.*

**Criteria met.**

2. *Storm water treatment measures including, but not limited to, sediment basis (debris basins), desilting basins or silt traps, installation of debris guards, and microsilt basins on storm water inlets, oil skimming devices, etc. shall be required subject to the review of the City Engineer and Minnehaha Creek Watershed District on projects where applicable.*

**Criteria met.**

3. *Projects shall be analyzed by the City in terms of provisions for maintenance and enhancement of landscape features, change in the natural condition of the soil, removal of trees, grade courses and marshes. The plan shall also minimize tree removal, ground cover change, loss of natural vegetation, and grade changes as much as possible. It shall further provide for the relocation or replanting as many trees as possible which are proposed to be removed.*

**Criteria met.**

4. *Projects shall be analyzed by the City in terms of the appearance of the structure when viewed from the lake's surface. Building materials, and color shall be analyzed to determine which facade and roof materials minimize the appearance and blend the structure into the shoreland and vegetation.*

**Criteria met.**

5. *Lot coverage on a project basis shall be restricted to the provisions for maximum impervious surface coverage as provided for in this Ordinance.*

**Criteria met.**

6. *Residential densities on a project basis shall not be allowed to exceed the maximum allowed density of the base zoning districts for which the project is proposed.*

The proposed addition does not increase the density allowed under the base zoning district. **Criteria met.**

7. *All projects shall be in conformance with the Shoreland Management Plan, Comprehensive Plan, and Zoning and Subdivision Ordinances of the City of Tonka Bay.*

**Criteria met.**

8. *All projects shall be subject to the review by the Minnehaha Creek*

*Watershed District and the City Engineer.*

The City Engineer has reviewed and approved the proposed improvements along with the Minnehaha Watershed District. Copies of the MCWD approval will be recorded on the property record at City Hall. **Criteria met.**

**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 12-6-15.

**Recommendation:**

Staff recommends approval of the requested variances and conditional use permits based on the findings detailed in the report and as outlined in the template approval motion below.

**Template Approval Motion all Variances and Conditional Use Permits:**

"I move that we direct staff to prepare a resolution of approval for the requested variances and conditional use permits to allow for the construction of an addition to the existing single family home on the property located at 160 Sunrise Ave. 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".

- a. The proposed use as a single-family home will not change and is consistent with the City's Comprehensive Plan.
- b. Granting the requested variances and Conditional Use Permits will not impair an adequate supply of light and air to adjacent parcels.
- c. Granting the variances and Conditional Use Permits 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.
- d. Granting the variances will not increase the danger of fire or endanger the public safety.
- e. Granting the variances will not diminish or impair established property values in the neighborhood.
- f. Granting the variances will not alter the essential character of the locality.
- g. The continued use of the property as a single-family home is a reasonable use of the property.
- h. The requests are in harmony with the general intent of the ordinance.
- i. There is a demonstrated need for the use.

j. The proposed use conforms with all performance standards

***Template Denial  
Motion for Variances  
and Conditional Use  
Permits:***

“I move that we direct staff to prepare a resolution of denial for the requested variances and conditional use permit based on the following findings of fact:”

a. (Provide findings to support conclusion)

***Recommended  
Conditions (if  
approved variances  
and Conditional Use  
Permit):***

1. The Applicant shall submit an updated survey showing the proper establishment of the benchmark used to determine the finished grades and must be approved by the City Engineer.
2. 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).
3. 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 (if needed) shall be provided to the city prior to a building permit being authorized.
4. Erosion control measures shall be shown on the building permit plans and shall be subject to review and approval by the City Engineer.
5. 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.
6. Construction shall follow the survey and plans as submitted or as 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. The variance shall expire one year from the date of the resolution. City Council approval will be required for any subsequent extension.
9. No building permit for the home will be issued unless either the elevation of the proposed slab in the mechanical area is raised to the RFPE (933.5 ft.) or above or a Conditional Use Permit is approved for alternative floodproofing measures on the site.