



ITEM NO. 7A

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CITY OF TONKA BAY MEMORANDUM

To: City Council Members
Lindy Crawford, City Administrator

From: Erin Perdu, AICP, City Planner
Justin Messner, City Engineer

Date: July 20, 2016
City Council Regular Meeting for July 26, 2016

WSB Project No. 01987-510

Request: **Request for approval of four variances and two conditional use permits at the property located at 200 Birch Bluff Rd., PID: 28.117.23.32.0010**

- **Variance of 10,600 square feet from the required minimum lot area of 20,000 square feet**
- **Variance of 25 feet from the minimum lot width of 75 feet**
- **Variance of 13' 4 3/8" from the minimum rear yard setback of 25 feet**
- **Variance of 7 feet from the required finished fill elevation buffer of 15 feet**
- **Conditional use permit for excess Floor Area Ratio (33.5% where 30% is permitted)**
- **Conditional use permit for a Shoreland Impact Plan to allow for 40.8% impervious surface coverage**

RECOMMENDATION

Staff recommends approval of the requested variances and conditional use permits. Staff has provided findings of fact for approval starting on page 6 of this report.

GENERAL INFORMATION

Applicant: David Wagner / Sala Architects

Owners: Patrick R Matre

Location: 200 Birch Bluff Road

Existing Land Use / Zoning: Single-Family Residential; zoned R1-A Single Family Residential with a Shoreland Overlay

Surrounding Land Use / Zoning: North: Lake Minnetonka
East: Single-Family Residential; zoned R1-A Single Family, Shoreland Overlay

South: Vacant; zoned R1–A Single Family, Shoreland Overlay
West: Single-Family Residential; zoned R1-A Single Family, Shoreland Overlay

Comprehensive Plan: The Tonka Bay 2009-2030 Comprehensive Plan guides this property for Single Family Residential land use of less than 2.9 dwelling units per acre.

Deadline for Agency Action:	Application Date:	06-22-16
	60 Days:	08-21-16
	Extension Letter Mailed:	N/A
	120 Days:	10-20-16

Overview. The applicant is seeking to construct a new residence to replace the current, dated single family home on the property. The applicants first explored the option of remodeling the existing home, but due to the significant issues with the home remodeling is not a viable option. They are requesting variances from required minimum lot area, required minimum lot width, required minimum rear yard setback (for the setback of the proposed elevated walkway) and a variance from the required finished fill elevation buffer. The applicant is requesting conditional use permits to allow for excess floor area and impervious surface coverage. Specifically, the requests are as follows:

	Required	Proposed	Variance/CUP
Minimum lot size	20,000 sf.	9,400 sf.	10,600 sf.
Minimum lot width	75 feet	50 feet	25 feet
Minimum rear yard setback	25 feet	11' 7 5/8"	13' 4 3/8"
Finished fill elevation buffer	15 feet	8 feet around home (distance to side lot line)	7 feet
Floor Area Ratio	30%	33.5%	3.5%
Impervious Surface Coverage	25%	40.8%	15.8%

CONSIDERATIONS RELATED TO THE VARIANCE REQUESTS

1. Ordinance Authority.

Section 1004: Administration – Appeals from the Board of Adjustment and Appeals, Section 1004.02 Subd. 3 *Review Criteria*

Section 1017: R-1A, Single Family Residential District, Section 1017.06 *Lot Area and Setback Requirements*

Section 1070: S, Shoreland District, Section 1070.08 Subd. 1 *Lot and Setback Standards*

Chapter 1040, Section 4.24: “The finished fill elevation must be no lower than one foot below the regulatory flood protection elevation and shall extend at such elevation at least 15' beyond the limits of the structure constructed thereon.”

2. Statutory Criteria.

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

All Requests: The purpose and intent of the Zoning Ordinance is to promote and protect the public health, safety and general welfare. In addition, the Shoreland District intends to reduce the effects of overcrowding, prevent pollution of waters, minimize flood damages, maintain property values and maintain natural characteristics of shorelands. The proposed use of the property for a single family home is consistent with the purpose and intent of the R1-A and Shoreland Overlay districts. Further, the proposed site plan includes a home that is similar in size and massing to the adjacent home to the south and is well below the maximum height limit. One criterion the council may consider is whether or not the area is already overcrowded, and to what extent the proposed home contributes to that condition. In staff's opinion, the placement of the proposed home on this pre-existing lot would not contribute to overcrowding beyond what currently exists in the area. While the floor area of the new home is larger, the height reduction (from three stories to two) will be an improvement from the current home. The applicant is also correcting an existing encroachment into the north side yard setback. **Criteria met.**

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

All Requests: The proposed variances to allow for the construction of a single family home are consistent with the comprehensive plan, which guides this property for single family residential use. **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 Requests: The property owner is seeking to build a new single family home on the lot where they currently reside, thus continuing the use of the property for a permitted purpose. Their current home was built in 1925 and has developed significant problems over the years. The Applicant has investigated the possibility of remodeling the existing home, but found the issues with it to be too significant to pursue that option. The use of the property for a new single family home is a reasonable use. **Criteria met.**

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

All Requests: The unique circumstances on this property are largely related to the small size and narrowness of this lot. The lot was created prior to the adoption of the Ordinance standards. The majority of the lot is contoured at or below the 100-year floodplain as well. These factors make it impossible to construct a new single family home without the need for variances. **Criteria met.**

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

All Requests: The essential character of the locality will not be negatively impacted as a result of approval of the requested variances. The proposed new home fits well with the character of the neighborhood. The proposed home does meet the required side yard setbacks, despite the narrowness of the lot and meets the required front (lakeside) setback despite the small size of the lot. It should also be noted that the only portion of the home encroaching on the rear setback is the proposed elevated walkway; the proposed attached garage does meet the required 25-foot setback. The setback of the proposed walkway is less than the adjacent garage to the north. **Criteria met.**

3. City Tests.

1. *Will the variance impair an adequate supply of light and air to adjacent property?*
All Requests: No. The home should not impair an adequate supply of light and air from reaching adjacent property. The current home is three stories tall, where the proposed home is only two stories. This will increase the supply of light and air to adjacent properties over the current conditions. The proposed garage is also 4.5 feet further back from the street than where the current garage sits, also increasing the supply of light and air. The proposed home meets the required setbacks as well. **Criteria met.**
2. *Will the variance unreasonably increase the congestion in the public street?*
All Requests: No. The proposed home will have no new effect on congestion in the public street, as the use of the property will remain the same. **Criteria met.**
3. *Will the variance increase the danger of fire or endanger the public safety?*
All 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. Further, an updated home being located on the lot will have a much lower risk of fire than the current home, which was constructed in 1925. **Criteria met.**
4. *Will the variance unreasonably diminish or impair established property values within the neighborhood?*
All Requests: No. The proposed new home would not have a negative impact on neighboring property values. Conversely, staff anticipates that constructing a new home to replace the aging one will have a positive impact on neighboring property values. **Criteria met.**

Resident concerns: The City has received one written statement from a neighbor in opposition to the proposed variances. The text of the letter is as follows:

"We are strongly opposed to the requested variances for the following reasons:

1. *The home is already too large for the lot.*
2. *Any fill to elevate will affect the neighbors homes. We already receive runoff, especially from 230 Birch Bluff. The builders (prior to the present owners) were required by the city to install water holding areas prior to adding fill to elevate the house, as part of the variance agreement. I brought this to the attention of the builder, and this was ignored. I then called the city of Tonka Bay about this, and this was also ignored by the city."*

4. Engineering Considerations:

1. 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 above the Regulatory Flood Protection Elevation (RFPE). While the proposed buffer is smaller than is generally required by code, the home and garage should still be accessible in the event of a flood.
2. The proposed construction allows the construction of the home within the floodplain without adding additional fill within the floodplain as well as maintaining the first floor elevation above the RFPE of 935.5. The proposed construction increases floodplain storage volume on the property by 1,905 cu ft from the existing 1,454 cu ft to 3,359 cu ft.

3. 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. Similar permit will be required from the Minnehaha Creek Watershed District and MN Dept. of Natural Resources. **Copies of the permit will need to be submitted to the city prior to issuance of the building permit.***

CONSIDERATIONS RELATED TO THE CUP REQUESTS

1. Ordinance Authority.

Section 1003 – *Administration – Amendments and Conditional Use Permits*, Section 1003.01, Subd. 8: *Criteria* and Section 1003.03: *Conditional Use Permit*.

Section 1017.07: Lot Coverage and Height (within the R1-A district)

Section 1070.11: Impervious Surface Coverage (within the Shoreland district)

2. CUP Criteria Review.

The proposed action will require the following conditional use permits:

1. **A conditional use permit to allow for a FAR exceeding the ordinance maximum** - for a FAR of 33.5% where 30% is permitted. 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:
 - a. *The proposed action has been considered in relation to specific policies and provision 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 propose 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 to 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. The proposed home will be similar in character to the surrounding homes. The proposed home will also meet the side and front setback requirements, as well as height requirements, lessening the impact of the home on the surrounding area. **Criteria met.***
 - e. *The demonstrated need for such use. The existing home on the property is dated and has several functional issues; the house is undersized with low ceilings, narrow hallways and a steep staircase. There are also issues caused by substandard construction, including: water infiltration, moisture issues, air leakage, poor insulation and energy inefficiency. These factors contribute to the need to construct a new home, rather than remodeling the existing one. The reason for the FAR*

increase is to provide a functional house that allows for accessibility as the property owners needs change into the future. High water table and floodplain elevations on the site prevent the owners from increasing the floor area by constructing a basement **Criteria met.**

- f. *The proposed use will not tend to or actually depreciate the area in which it is proposed.* The proposed new single family home is a significant improvement over the existing home. Staff does not anticipate any negative impact 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.* There is no proposed change in use of the property, and therefore no impact on public services is anticipated. **Criteria met.**

2. A conditional use permit for a Shoreland Impact Plan to allow for impervious coverage of 40.8%. 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:

- 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 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. **Criteria met.**
- b. *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 new single family home does not change the land use and is consistent with the use of the surrounding neighborhood. **Criteria met.**
- c. *The proposed use conforms to all performance standards contained herein.* **Criteria met.**
- d. *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.**
- e. *The demonstrated need for such use.* The applicant is proposing a 4.1% increase in hardcover over the current hardcover on the property. The purpose for the increase is to make the new home more functional and modern, and to allow accessible spaces on the main level, on a relatively small lot. To offset the increase in hardcover, the applicant has proposed a 582 cu. ft. storm water retention and infiltration area, and a north and south rain garden with 1075 cu. ft. of storage and infiltration. **Criteria met.**
- f. *The proposed use will not tend to or actually depreciate the area in which it is proposed.* Staff does not anticipate that the proposed new home will have any negative impact to adjacent property values. **Criteria met.**
- g. *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.**

3. Resident Concerns. None reported to date.

4. Engineering Considerations.

The intent of the stormwater treatment requirements is to encourage the use of Best Management Practices (BMPs) which are structural, vegetative, or managerial practices designed to treat, prevent, or reduce degradation of water quality due to stormwater runoff. BMPs should reflect and incorporate existing grade, natural features, wetlands, and watercourses on the site, to the maximum extent feasible. The City Engineer has reviewed the proposed BMPs. Approval of the requested variance/CUP as designed will reduce the volume of stormwater runoff, enhance the water quality of stormwater runoff, reduce soil erosion, maintain and improve wildlife habitat, and contribute to the aesthetic values of the project. ***A Stormwater Facility Maintenance Agreement will be required by the property owner to ensure the proposed BMPs are constructed and maintained into perpetuity of the proposed use prior to issuance of the building permit.***

POTENTIAL ACTION

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

The 120-day review period for this application expires on August 21, 2016. If the Council fails to preliminarily approve or disapprove the request within the review period, the application is deemed preliminarily approved.

RECOMMENDATION

Based on the findings of fact in this report and compliance with the required variance and conditional use permit criteria set forth in the Tonka Bay City Code, staff recommends approval of the requested variances and conditional use permits as outlined in the template motion below.

"I move that we direct staff to prepare a resolution of approval of the requested lot area, lot width, rear setback, and finished fill elevation variances and conditional use permits for excess floor area ratio and impervious surface on the property located at 200 Birch Bluff Road based on the findings of fact listed in the report. Furthermore, the requests shall include the conditions listed within the staff report as may have been amended here tonight".

- a. The proposed use of the property for single family residential use is consistent with the City's Comprehensive Plan.
- b. Granting the requested conditional use permits will not impair an adequate supply of light and air to adjacent parcels.
- c. Granting the conditional use permits will not unreasonably increase congestion in the public street.
- d. Granting the conditional use permits will not diminish or impair established property values in the neighborhood.
- e. Granting the conditional use permits will not alter the essential character of the locality.
- f. The variance requests are in harmony with the general purposes and intent of this Ordinance.
- g. The variance requests are consistent with the comprehensive plan.
- h. The property in question meets the "practical difficulties" test.

- i. The variance requests will not impair light and air to adjacent property, unreasonably increase congestion, increase the danger of fire or otherwise endanger the public safety.
- j. The variances will not unreasonably diminish or impair established property values within the neighborhood, or in any way be contrary to the intent of the zoning ordinance.

Recommended conditions (if approved):

All requests:

1. The Applicant shall submit a landscape plan for staff and City Engineer approval, showing any planned removals and replacements.
2. The Applicant shall obtain a demolition permit from the City for the existing structure before a building permit for the new home is issued.
3. 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).
4. 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.
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. Variances shall expire one year from the date of the resolution. City Council approval will be required for any subsequent extension.

Variance to Impervious Coverage

9. The amount of impervious surface on the site may not exceed 40.8 percent.

Variance to Storm Water Treatment Requirements

10. Erosion control measures shall be shown on the building permit plans and shall be subject to review and approval by the City Engineer.
11. The applicant shall enter into a Stormwater Facilities Maintenance Agreement and Restrictive Covenant with the City of Tonka Bay prior to a building permit being authorized.
12. Following construction, the applicant shall conduct an "as-built" survey and submit an updated site plan to the City Engineer for approval prior to issuance of the certificate of occupancy.