



CITY OF TONKA BAY MEMORANDUM

To: City Council Members
Lindy Crawford, City Administrator

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

Date: June 15, 2016
City Council Regular Meeting for June 28, 2016

WSB Project No. 01987-580

Request: **Request for approval of a conditional use permit and variance for impervious proposed at seventy seven (77) percent, a variance to allow for a zero foot setback for the parking lot, a variance from the storm water treatment requirements, a conditional use permit for the proposed drive through and a conditional use permit for a warehouse/indoor storage use on the property located at 5420 Manitou Road – C-2 zoning, Shoreland Overlay – PID: 33-117-23-12-0050**

RECOMMENDATION

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 on Page 7 as well as findings of fact.

GENERAL INFORMATION

Applicant: John Studer, Kinghorn Construction

Owners: Matt Midboe, MJM Properties

Location: 5420 Manitou Rd.

Existing Land Use / Commercial/vacant; zoned C-2 Commercial with a Shoreland Zoning: Overlay

Surrounding Land Use / Zoning:
 North: Manitou Park; zoned P-Park District, Shoreland Overlay
 West: Manitou Park; zoned P-Park District, Shoreland Overlay
 South: Single-Family and Attached Residential; City of Shorewood
 East: Commercial; zoned C-2 General Commercial, Shoreland Overlay

Comprehensive Plan: The Tonka Bay 2009-2030 Comprehensive Plan guides this lot for commercial use. The corresponding zoning assigned to this property (C-2) allows for most retail uses as a permitted use and limited warehouse/indoor storage as a conditional use

Deadline for Agency Action:	Application Date:	05-25-16
	60 Days:	07-24-16
	Extension Letter Mailed:	N/A
	120 Days:	09-22-16

CONSIDERATIONS RELATING TO THE REQUEST

1. Overview. The Applicants are proposing to construct a 4,100 square foot addition for retail purposes, including a coffee shop with a proposed drive through. The existing 4,912 square foot building will be used as a warehouse. The proposed action will require the following conditional use permits:

- a. A **conditional use permit** for impervious surface proposed at 77 percent in the Shoreland District.
- b. A **conditional use permit** for the proposed drive through.
- c. A **conditional use permit** for the warehouse/indoor storage use.

The action will also require the following variances:

- a. A **variance** for impervious surface proposed at 77 percent in the Shoreland District.
- b. A **variance** to allow for a zero foot setback for the parking lot along the south property line.
- c. A **variance** from the storm water treatment requirements.

2. Ordinance Authority.

Section 1070.11 Impervious Surface Coverage; subdivision 1 Allowable Coverage, a, 3 states that a shoreland impact plan/conditional use permit and variance are required for sites where impervious surface coverage is 46% or more.

1011.06 Off-street Parking and Loading; subdivision 7 Parking Area Design and Maintenance, c. 1 includes front, side and rear setbacks of at least five (5) feet from property lines from parking areas in all zoning districts.

1024.03 Conditional Uses (in the C-2 District); subdivision 4 provides standards for accessory, enclosed retail, coffee house drive through, rental or service activity other than that allowed as a permitted use.

1024.03 Conditional Uses (in the C-2 District); subdivision 5 provides standards for limited warehouse, indoor storage, commercial truck storage.

3. Statutory Criteria (variance requests).

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

Impervious surface: The intent of limiting the amount of impervious surface on a property is to minimize the amount of storm water runoff. Impervious surface coverage exceeding 46% may be allowed provided appropriate structures and practices are in place for the treatment of stormwater runoff. The City Engineer has reviewed the proposed grading plan and where storm water will be directed. Although the impervious surface coverage is proposed to increase by 6.0%, the approval of the requested variance/CUP should result in a net decrease of stormwater being directed to adjacent properties and public facilities. **Criteria met.**

Parking setback: The intent of the parking lot setback is to minimize potential impacts from parking of vehicles directly adjacent to neighboring property. In this case, the adjacent property to the south is owned by Hennepin County and is used as a regional trail. There are several trees south of the parking lot on the county property. The variance is needed to allow for the required drive aisle width behind stalls adjacent to the south side of the building. Vehicles would not be parked directly adjacent to neighboring property. There should not be any impacts to neighboring property as a result of the variance. In addition, the existing paved area is encroaching the neighboring property. The applicant is lessening the non-conformity by having the parking lot completely on the subject property but on the property line. **Criteria met.**

Stormwater treatment: 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 should 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. **Criteria met.**

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

All requests: The variances are being requested in order to redevelop the site for commercial purposes. The comprehensive plan guides the property for Commercial use. The requested variances are consistent with the comprehensive plan. **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.*

Impervious surface: The applicant is proposing to increase the amount of impervious surface on the property in order to accommodate a building addition of 4,100 sq. ft. for commercial purposes. The amount of impervious accounts for the building, off-street parking areas and paved walkways. Staff finds the proposed use of the property to be reasonable. **Criteria met.**

Parking lot setback: For the proposed uses, the applicant is required to provide 23 off-street parking spaces. In order to meet this requirement, the applicant is proposing to locate several stalls along the south side of the existing building. The zoning ordinance requires stalls be 20 feet in length. For 90 degree parking stalls, a drive aisle of 24 feet is required behind the stalls. In order to comply with the required stall length and drive aisle width, the perimeter of the parking lot would need to extend to the south property line. If the five foot setback for the parking lot were enforced, the applicant would need a variance to drive aisle width, parking stall length or would not be able to locate stalls on the south side of the building. There does not appear to be any other space available on the property to locate the additional parking stalls that would not require a variance. Staff finds the request reasonable. **Criteria met.**

Stormwater requirements: The applicant is proposing to increase the amount of impervious surface on the property in order to accommodate a building addition of 4,100 sq. ft. for commercial purposes. Staff finds the proposed site improvements offer a cost effective approach to implementing BMPs that fit the size and topography of the existing site while effectively providing treatment and volume reduction of stormwater runoff prior to discharging from the site. **Criteria met.**

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

Impervious surface: The applicant is proposing improvements to a site that already has 70.9 percent impervious surface. Given the size and configuration of the existing site it is unlikely that the site would ever be redeveloped for commercial purposes without needing a variance to impervious surface. The amount of impervious would need to be reduced to below 46 percent to avoid needing a variance. **Criteria met.**

Parking lot setback: The existing parking lot area encroaches the property to the south. The property owner is reducing the non-conformity by bringing the parking lot completely on the subject property. The applicant needs the variance in order to meet the drive aisle width. **Criteria met.**

Stormwater requirements: The applicant is proposing improvements to a site that already has 70.9 percent impervious surface and little-to-no stormwater treatment. The size of the parcel combined with the current use restrict the amount of space on the site for a stormwater detention basin and alternative subsurface stormwater detention systems are not conducive to the existing property grades and configuration without substantial redevelopment of the property. The property owner is reducing the non-conformity by constructing numerous BMPs for the collection and treatment of stormwater runoff on the subject property. **Criteria met.**

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

All requests: The requested variances should not have a detrimental impact on the essential character of the locality. The requested variances will allow for redevelopment of the site and add two commercial businesses to the area. The two new commercial tenants should contribute to the vibrancy and character of the area. **Criteria met.**

4. Variance Permit Criteria

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

All requests: Granting of the requested variances should not impair an adequate supply of light and air to adjacent property. **Criteria met.**

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

All requests: The variances are needed to allow for commercial redevelopment of the site. Although two new commercial tenants will increase the number of trips to and from the property, the increase in traffic should not be considered unreasonable. **Criteria met.**

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

All requests: The requested variances should not increase the danger of fire or endanger the public safety. **Criteria met.**

4. *Will the variance unreasonably diminish or impair established property values within the neighborhood, or in any way be contrary to the intent of the zoning ordinance?*

All requests: The proposed redevelopment of the site for commercial purposes 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.**

5. Conditional Use Permit Criteria

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.*

All requests: The Comprehensive Plan guides this area for Commercial use. The subject property is zoned C-2 Commercial. The proposed uses are all permitted or conditional uses in the C-2 district. Provided Council finds the other CUP criteria are met, staff finds the request is consistent with the goals and policies of the Comprehensive Plan. **Criteria met.**

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

All requests: The existing and future land use for the property is for commercial use. The CUP for impervious surface does not impact the future land use of the site. The CUP for the drive through is accessory to the coffee shop which is a permitted use. The warehouse/indoor storage use is accessory to the overall retail/commercial use of the property. Staff believes that the requested conditional use permits are consistent with the present and future land use of the area. **Criteria met.**

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

Impervious Surface: The CUP for impervious surface requires that a shoreland impact plan be submitted. The proposed improvements 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. **Criteria met.**

Drive through: The drive through facility is required to comply with the conditions outlined in 1024.03 Conditional Uses (in the C-2 District); subdivision 4, which requires that the city's standards for off-street parking, loading and signage be met. The proposed site plan appears to meet the off-street parking and loading requirements. Details on signage have not been provided but will be required to comply with city code or a separate variance will be required. **Criteria met.**

Warehouse: The limited warehouse use is required to comply with the conditions outlined in 1024.03 Conditional Uses (in the C-2 District); subdivision 5 (outlined above). It appears that the proposed warehouse use complies with all conditions and performance standards in city code. **Criteria met.**

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

All requests: The requested conditional use permits should not have a negative impact on the character of the surrounding area. Redevelopment of the site will result in more commercial options for the neighborhood and add jobs to the community. The site has adequate off-street parking and space for cars to queue for the drive through. **Criteria met.**

5. *The demonstrated need for such use.*

Impervious surface: The conditional use permit to allow for impervious surface at 77 percent is needed to allow for the proposed 4,100 sq. ft. building addition and to provide sufficient off-street parking and loading space. The site is already at 70.9 percent impervious. The applicant is proposing to increase the amount of impervious on the site by 2,099 sq. ft. (6 percent) to 76.9 percent. **Criteria met.**

Drive through: One of the tenants of the commercial building is to be a coffee shop. A drive through facility is a common request for a coffee shop and other fast food restaurants as it is a convenience to their customers. **Criteria met.**

Warehouse: The applicant has stated that activities in the proposed warehouse include:

- Storage of various goods, including but not limited to, clothing apparel, footwear, and miscellaneous items related to general outdoor activities to be sold at a later date.
- Sorting of various goods, including but not limited to, clothing apparel, footwear and miscellaneous items related to general outdoor activities to be sold at a later date.
- No outdoor storage of commercial vehicles is required or requested.

Staff finds the proposed uses reasonable. **Criteria met.**

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

All requests: The proposed redevelopment of the site for a coffee shop and retail use should provide additional commercial options to the area and not result in depreciation to the area. **Criteria met.**

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

All requests: Approval of the requested conditional use permits should not have any impact on public utilities. **Criteria met.**

6. **Resident concerns:** None reported to date.

7. **Engineering Considerations:** None.

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 60-day review period for this application expires on July 24, 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

conditional use permits and variances based on the findings detailed in the report as outlined in the template motion below.

"I move that we direct staff to prepare resolutions of approval of the requested conditional use permits for impervious surface at 77 percent, a drive through, and limited warehousing and also variances for impervious surface at 77 percent, a 0 foot parking lot setback, and from the stormwater treatment requirements on the property located at 5420 Manitou 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 commercial use is consistent with the City's Comprehensive Plan.
- b. Granting the requested conditional use permits and variances will not impair an adequate supply of light and air to adjacent parcels.
- c. Granting the conditional use permits and variances will not unreasonably increase congestion in the public street.
- d. Granting the conditional use permits and variances will not diminish or impair established property values in the neighborhood.
- e. Granting the conditional use permits and variances 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):

Conditional Use Permit for Impervious Coverage

1. The amount of impervious surface on the site may not exceed 77 percent.
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.

Conditional Use Permit for Drive Through

1. Adequate off-street parking and off-street loading in compliance with the requirements of Sections 1011.05 and 1011.06 of the Tonka Bay Zoning Ordinance is provided.
2. All signing and informational or visual communication devices shall be in compliance with Section 330 of the Tonka Bay City Code.
3. The provisions of Section 1003, Subd. 8 of the Tonka Bay Zoning Ordinance are considered and satisfactorily met.

Conditional Use Permit for Warehouse/Indoor Storage

1. Vehicular access points shall create a minimum of conflict with through traffic movement, shall comply with Section 1011.06 of this Ordinance and shall be subject to the approval of the City Engineer.
2. Adequate off-street parking and off-street loading in compliance with requirements of Sections 1011.05 and 1011.06 of this Ordinance is provided.
3. The entire site other than that taken up by a building, structure or plantings shall be hard surfaced with a material to control dust and drainage which is subject to the approval of the City Engineer.
4. A minimum lot area of twenty thousand (20,000) square feet and the minimum lot width of one hundred (100) feet shall be required.
5. A drainage system subject to the approval of the City Engineer shall be installed.
6. Any lighting shall be accomplished in such a way as to have no direct source of light visible from adjacent land in residential use or from the public right-of-way and shall be in compliance with Section 1011.02 of this Ordinance.
7. Provisions shall be made to control and reduce noise.
8. There shall be no open or outside storage unless approved through a conditional use permit subject to this Section and Section 1003.
9. There shall be no repair of trucks except those stored on the premises and only within an enclosed structure.
10. Any existing signage advertising a business or tenant that no longer occupies the property shall be removed prior to building permit issuance.

Variance to Impervious Coverage

1. The amount of impervious surface on the site may not exceed 77 percent.
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.

Variance to Parking Lot Setback

1. Parking stalls may not be striped within five feet of any property line.

Variance to Storm Water Treatment Requirements

1. Erosion control measures shall be shown on the building permit plans and shall be subject to review and approval by the City Engineer.
2. 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.
3. 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.
4. Construction shall follow the survey and plans as submitted or as required to be updated by the City Engineer.
5. Building of structures shall not occur within any existing or proposed easements on the property.