

Tonka Bay City Council Agenda Item
Executive Summary

Title of Item: **CONDITIONAL USE PERMIT REQUEST:** Application from Dan Murphy on behalf of the property owners Dirk & Wendy McMahon requesting a conditional use permit to exceed the maximum height of 15 ft. for an accessory structure on the property located at 60 Wildhurst Road – R-1A zoning, Shoreland Overlay – PID: 28-117-23-24-0044

Report Date: **01-18-16**

Meeting Date: **01-26-16**

60 Day Review deadline: **60 day period ends 03-07-16**

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 demolish the existing garage and construct a new garage on the property located at 60 Wildhurst Road. In summary, the requested conditional use permit is as follows:

1. **A conditional use permit to exceed the maximum height of 15 ft. for an accessory structure** within the R-1A District.

Staff believes that the Applicant has met the Statutory and City Criteria for approving of the requested conditional use permit. Staff has provided a template approval motion for the CUP on Page 5 as well as findings of fact.

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

To: City Council

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

Meeting Date: January 26, 2016

Applicant: Dan Murphy

Owners: Dirk & Wendy McMahon

Location: 60 Wildhurst Road

Zoning: R-1A

| Introductory Information | |
|---------------------------------|---|
| Proposed Project: | The Applicants are proposing to demolish the existing detached garage on the property and construct a new garage. The proposed garage is 998 sq. ft. and 19' 11 ¾ " in height. |
| CUP Request(s): | The proposed action will require the following conditional use permit: <ul style="list-style-type: none"> ▪ A conditional use permit for a garage 19' 11 ¾ " in height when 15 feet is the maximum permitted. |
| Findings | |
| Site Data: | Lot Size – 60,600 square feet Existing Use – Single Family Home Existing Zoning – R-1A Shoreland Property Identification Number (PID): 28-117-23-24-0044 |
| Comp Plan Guidance: | <ul style="list-style-type: none"> ▪ The comprehensive plan guides this lot for single family use. The corresponding zoning assigned to this property (R-1A) allows for single family homes. |
| Lot Area and Width: | <ul style="list-style-type: none"> ▪ The lot area requirement in the R-1A Shoreland District is 20,000 square feet. The lot of record is 60,600 square feet and is therefore a conforming lot. ▪ The lot width requirement in the R-1A District is 75 feet. The lot of record is 149 feet wide at the street and narrows slightly moving towards the rear of the lot. Lot width is measured at the required front building setback (50 feet from the OHWL). The exact lot width has not been provided at that point; however, based on the scaled survey provided the lot width is approximately 140 feet and therefore exceeds the minimum required width. |

Front-Yard Setback:

- The front-yard (lakeside) setback in the R-1A District for accessory structures is 50 feet.
- The proposed garage is located in the rear yard and is over 150 feet from the OHWL which meets the ordinance requirement.

Side Yard Setback:

- The side yard setback in the R-1A District is 8 feet.
- The proposed garage is located 16 feet from the north side lot line which meets the ordinance requirement.

Rear Yard Setback:

- The rear-yard setback (street side) in the R-1A District for accessory structures is 8 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 148 foot rear yard setback which meets the ordinance requirement.

Height:

- The maximum height limit within the R-1A District for accessory structures is 15 feet.
- The height of accessory buildings is measured from the top of the finished ground floor elevation to the top cornice line of a flat and mansard roof, and to the uppermost part on a shed, pitched, hipped, round or other arch-type roof.
- The height of the proposed garage is 19' 11 ¾ "
- A conditional use permit is required for accessory buildings that exceed the height standards.

Floor Area Ratio:

- The maximum floor area ratio (FAR) permitted by code in the R-1A District is 0.30.
- The existing home, proposed garage and boathouse will include 8,738 sf of space for a FAR of 0.144.

Hardcover:

- The maximum hardcover permitted on this lot without any review is 25 percent; the proposed improvements indicate hardcover of 20%. This includes the existing home, proposed garage, boathouse, porch, deck, patios, walkway, shed and driveway (totaling 12,210 sf. of lot coverage).

Application Review:

Applicable Code Definitions:

Building Height, Accessory Buildings. The height of accessory buildings measured from the top of the finished ground floor elevation to the top cornice line of a flat and mansard roof, and to the uppermost part on a shed, pitched, hipped, round or other arch-type roof.

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.

Applicable Codes: **1011.04 Accessory Buildings, Structures, Uses and Equipment; subdivision (1), c.**

No accessory building shall exceed the allowable building height except to match roof pitch or style of the principal structure. If the height standards are exceeded, a conditional use permit, according to the provisions of Section 1003 and Section 1011.04.5 of this Ordinance, shall be required.

1017.07 R-1A, Lot Coverage and Height;

Subd. 4. Accessory Building Height. Accessory buildings shall be limited to a maximum height of fifteen (15) feet.

CUP Review: The proposed action will require the following conditional use permit:

- A **conditional use permit** for a garage 19' 11 ¾ " in height when 15 feet is the maximum permitted for an accessory structure.

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 detached garage is compatible with the single family use of the property. **Criteria met.**

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

The proposed garage conforms to all performance standards for accessory structures in the R1-A district. **Criteria met.**

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

The requested conditional use permit for height will allow for the roof pitch of the garage to match that of the principal structure. The line of the lower portion of the garage roof matches the eave depth on the house and the location of the roof vent on the proposed garage matches the south elevation of the house. The proposed garage should be more aesthetically compatible with the existing home and thus have a positive impact on the character of the area. **Criteria met.**

5. *The demonstrated need for such use*

The need for the conditional use permit to allow the garage to exceed 15 feet in height is so that the roof pitch of the garage can match that of the principal structure. Without the conditional use permit, the structure would not be as architecturally compatible with the home. **Criteria met.**

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

The proposed garage should result in an improvement to the property 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.*

The proposed garage should not have any impact on public utilities. **Criteria met.**

Resident Concerns:

None to date.

Engineering Reports:

No additional comments.

Other Comments:

The applicants are proposing to install a full bathroom within the accessory building. Section 1011.02, Subd. 2, a. states that "No garage, tent, accessory building, travel trailer or motor home shall at any time be used as living quarters, temporarily or permanently". This requirement has been communicated to the owners.

Staff recommends that a restrictive covenant document be recorded with the County Recorder and that a condition to this effect be included in the CUP approval.

For additional consideration with regard to the CUP request, staff offers the following:

- "Garage, Private" is defined as: "An accessory building or accessory portion of the principal building which is intended for and used to store the private passenger vehicles and non-commercial trucks not exceeding twelve thousand (12,000) pounds gross weight, of the family or families resident upon the premises, and in which no business or industry is carried on unless specifically authorized by this Ordinance.
- "Dwelling Unit" is defined as: "A building or portion thereof,

designated exclusively for residential occupancy, including one-family, two-family, and multiple family dwellings, but not including hotels, motels, boarding houses, or manufactured housing”

- “Occupancy” is defined as: “The purpose for which a building is used or intended to be used. The term shall also include the building or room housing such use. Change of occupancy is not intended to include change of tenants or proprietors.”
- “Use” is defined as: “The purpose or activity for which the land or building thereon is designated, arranged, or intended or for which it is occupied, utilized or maintained, and shall include the performance of such activity as defined by the performance standards of this Ordinance”

Conclusion

Council Options:

The City Council has the following options:

- 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 ITEMS and request additional information.

The 60-day review period for this application expires on 03-07-16.

Recommendation:

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

Template Approval Motion for Conditional Use Permit for Accessory Structure Height:

“I move that we direct staff to prepare a resolution of approval of the requested conditional use permit for an accessory structure exceeding 15 feet in height on the property located at 60 Wildhurst Road based on the findings of fact listed in the report. Furthermore, the conditional use approval shall include the conditions listed within the staff report as may have been amended here tonight”.

- a. The proposed use of the property as a single-family home will not change and is consistent with the City’s Comprehensive Plan.
- b. Granting the requested Conditional Use Permit will not impair an adequate supply of light and air to adjacent parcels.
- c. Granting the Conditional Use Permit 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 variance will not diminish or impair established property values in the neighborhood.
- e. Granting the Conditional Use Permit will not alter the essential character of the locality.
- f.

***Template Denial
Motion for
Conditional Use
Permit for Accessory
Structure Height:***

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

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

a. (Provide findings to support conclusion)

1. The Applicant shall obtain all necessary permits and approvals from the City of Tonka Bay and other applicable entities with jurisdiction prior to any construction. This includes, but shall not be limited to permits from the Minnehaha Creek Watershed District (MCWD) and the Lake Minnetonka Conservation District (LMCD).
2. The MCWD shall review and approve the final grading plans approved by the City Engineer prior to any work being authorized. Proof of MCWD approval (if needed) shall be provided to the city prior to a building permit being authorized.
3. Erosion control measures shall be shown on the building permit plans and shall be subject to review and approval by the City Engineer.
4. 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.
5. Construction shall follow the survey and plans as submitted or as required to be updated by the City Engineer.
6. Building of structures shall not occur within any existing or proposed easements on the property.
7. The Conditional Use Permit shall expire one year from the date of the resolution. City Council approval will be required for any subsequent extension.
8. A restrictive covenant shall be recorded with the County Recorder indicating that the detached garage shall not, at any time, be used as living quarters, temporarily or permanently.