

Tonka Bay City Council Agenda Item  
Executive Summary

*Title of Item:* **VARIANCE REQUESTS:** Application from Mark Briol on behalf of West Point II, LLC requesting variances to allow for the construction of a new detached garage located at 55 West Point Avenue – R-1A zoning – PID: 27-117-23-32-0015

*Report Date:* **02-04-15**

*Meeting Date:* **02-10-15**

*60 Day Review deadline:* **60 day period ended 12-26-14**

*60-Day Extension Letter Sent:* **12-12-14**

*120-Day Review Deadline:* **120 day period ends 02-24-15**

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

*Summary:* The Applicant is seeking to tear down the existing nonconforming detached garage and construct a new detached garage on the property located at 55 West Point Avenue. Construction of the new garage as proposed requires five (5) variances.

In summary, the requested variances are as follows:

1. A **12,510 square foot variance from the minimum lot area** requirement to allow for the construction of a new garage on a lot that is 7,490 square feet in area;
2. A **variance of 26 feet from the required 75 foot lot width** to allow for the construction of a new garage on a lot that is 49 feet wide;
3. A **variance of 8.8 feet from the required 25 foot rear yard setback** to allow for the construction of a detached garage 16.2 feet from the rear (street side) property line;
4. A **variance from the required 15 foot flood plain buffer** around all extended structures.
5. A **variance of 5% from the maximum allowable grade elevation of a parking area** to allow a driveway slope of 10%.

Staff believes that the applicant has met the Statutory and City Criteria for approving all of the requested variances. Staff has provided a template approval motion as shown on Page 10 as well as findings of fact for approvals.

City of Tonka Bay Planning Department  
Variance Report

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*To:* **City Council**

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

*Meeting Date:* **February 10, 2015**

*Applicants:* West Point II, LLC

*Owners:* Mark Briol, West Point II, LLC

*Location:* **55 West Point Avenue**

*Zoning:* **R-1A**

**Introductory Information**

*Proposed Project:* The Applicant is proposing to tear down the existing nonconforming detached garage and construct a new detached garage on the property located at 55 West Point Avenue.

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

1. A **12,510 square foot variance from the minimum lot area** requirement to allow for the construction of a new garage on a lot that is 7,490 square feet in area;
2. A **variance of 26 feet from the required 75 foot lot width** to allow for the construction of a new garage on a lot that is 49 feet wide;
3. A **variance of 8.8 feet from the required 25 foot rear yard setback** to allow for the construction of a detached garage 16.2 feet from the rear (street side) property line;
4. A **variance from the required 15 foot flood plain buffer** around all extended structures.
5. A **variance of 5% from the maximum allowable grade elevation of a parking area** to allow a driveway slope of 10%.

**Findings**

*Site Data:* Lot Size – 7,490 square feet  
Existing Use – Single Family Home  
Existing Zoning – R-1A Shoreland  
Property Identification Number (PID): 22-117-23-32-0015

*Comp Plan Guidance:*

- 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:*

- The lot area requirement in the R1-A Shoreland District is 20,000 square feet. The lot of record is 7,490 square feet and is therefore a nonconforming

lot.

- Under City Code, the property would be treated as a nonconforming lot and would be allowed for single family use (as it is currently occupied) as long as the lot's area and frontage were within 60 percent of the district's requirements (i.e. 12,000 square feet). The existing lot does not meet this provision.
- Furthermore, 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.
- As outlined later in this report, the impervious surface coverage exceeds 25 percent of the lot, and the lot does not meet the 60 percent threshold for nonconforming lots pursuant to City Code; therefore a variance from the lot area is required.
- The lot width requirement in the R1-A District is 75 feet. The lot of record is 49 feet. While the lot width meets the 60 percent threshold for nonconforming lots pursuant to City Code (i.e. 45 feet), due to the amount of impervious surface and the noncompliance with State Statute, a variance from the lot width is also required.

***Rear-Yard Setback:***

- The rear-yard setback (street side) in the R1-A District is 25 feet.
- On lakefront homes, the rear yard is considered the opposite side of the front which is the lake side.
- The Applicant is proposing an 16.2 foot rear yard setback and thus a variance is required.

***Front-Yard Setback:***

- The front-yard (lakeside) setback in the R1-A District for accessory 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.
- The Applicants are proposing a front-yard setback for the proposed accessory structure of over 120 feet, which far exceeds this requirement.

***Side Yard Setback:***

- The side yard setback in the R1-A District is 8 feet.
- The construction of the new detached garage will meet this minimum requirement as the Applicant is proposing a side yard setback of 8' from the north property line and 16.7' from the south property line.

***Height:***

- The maximum height limit within the R1-A District for accessory structures is 15 feet.
- The height of accessory buildings is measured from the top of the finished

	<p>ground floor elevation to the top cornice line to the uppermost part on a shed, pitched, hipped, round or other arch-type roof.</p> <ul style="list-style-type: none"> <li>▪ The existing garage floor elevation is 931.1 feet. Proposed is 931.7 feet.</li> <li>▪ The proposed new garage will measure 14' 10" feet which meets the City ordinance requirements.</li> </ul>
<p><b>Floor Area Ratio (FAR):</b></p>	<ul style="list-style-type: none"> <li>▪ The maximum floor area ratio (FAR) permitted by code in the R1-A District is 0.30 unless otherwise allowed by approval of a conditional use permit (CUP).</li> <li>▪ The proposed home will include 2,928sf of space for a FAR of 0.23, which complies with the Code.</li> </ul>
<p><b>Hardcover:</b></p>	<ul style="list-style-type: none"> <li>▪ The maximum hardcover permitted on this lot without any review is 25 percent; hardcover between 26 percent and 35 percent may be allowed provided structures and practices are in place for the treatment of storm water runoff and/or prevent storm water from directly entering a public water with approval of the City Engineer and City Administrator.</li> <li>▪ The property has an existing hardcover of 32.68%. The Applicants are proposing a hardcover of 35% with the construction of the new garage. This exceeds the 25% maximum impervious surface coverage by 10%.</li> <li>▪ The Applicants will be required to treat storm water runoff.</li> </ul>
<p><b>Finished floor and fill elevations:</b></p>	<ul style="list-style-type: none"> <li>▪ In the floodplain, all structures (including accessory structures) must be constructed on fill so that the lowest floor is at or above the regulatory flood protection elevation (RFPE). In this case, the RFPE is 933.5 feet.</li> <li>▪ In the floodplain, the finished fill elevation must be no lower than one foot below the RFPE and shall extend at such elevation at least 15 feet beyond the limits of the structure (932.5').</li> <li>▪ The proposed garage has a finished floor elevation of 933.5'.</li> <li>▪ There are areas within 15' of the primary residence that will be below the 932.5 elevation (and located on adjacent property not owned by the Applicant/Property Owner), so a variance from the required floodplain buffer will be necessary.</li> </ul>
<p><b>Driveways:</b></p>	<ul style="list-style-type: none"> <li>▪ Driveway slopes cannot exceed 5%.</li> <li>▪ The Applicant is proposing a driveway slope of 10%, thus a variance is needed.</li> </ul>

**Application Review:**

<p><b>Applicable Code Definitions:</b></p>	<p><b>Accessory Building or Use.</b> A subordinate building or use which is located on the same lot on which the main building or use is situated and which is reasonably necessary and incidental to the conduct of the primary use of such building or main use.</p> <p><b>Building Setback.</b> The minimum horizontal distance between the building and the lot line.</p> <p><b>Floor Area, Gross.</b> The sum of the gross horizontal areas of all floors of the building or portion thereof devoted to a particular use, including accessory</p>
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storage areas located within selling or working space such as activities, to the production or processing of goods, or to business or professional offices. However, the floor area shall not include basement or cellar floor area other than area devoted to retailing activities, the production or processing of goods, or to business or professional offices. The floor area of a residence shall not include the cellar area.

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

**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 not setback line is established, the distance between the side lot lines measured along the public right-of-way.

**Lowest Floor.** The lowest floor of the lowest enclosed area (including basement).

**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:* **1011.06 Off-Street Parking Regulations; subdivision (7) e 10.** The grade elevation of any parking area or portion thereof shall not exceed five (5) percent.

**1017.06 Lot Area and Setback Requirements; subdivision (1).** Lots in the R-

1A Zoning District shall have a lot area of not less than twenty thousand (20,000) square feet.

**1017.06 Lot Area and Setback Requirements; subdivision (2).** Lots in the R-1A Zoning District shall have a lot width of not less than seventy-five (75) feet.

**1017.06 Lot Area and Setback Requirements; subdivision (4) c.** Principal structures in the R-1A Zoning District shall be setback not less twenty-five (25) feet from the rear yard lot line.

**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).

**1070.11 Impervious Surface Coverage; subdivision (1) a 1.** Where appropriate and where structures and practices are in place for the treatment of storm water runoff and or/prevent storm water from directly entering a public water, impervious surface coverage may be allowed to exceed twenty-five (25) percent to a maximum of thirty-five (35) percent on any one site with approval of the City Engineer and City Administrator.

The proposed action will require the following variances:

1. A **12,510 square foot variance from the minimum lot area** requirement to allow for the construction of a new garage on a lot that is 7,490 square feet in area;
2. A **variance of 26 feet from the required 75 foot lot width** to allow for the construction of a new garage on a lot that is 49 feet wide;
3. A **variance of 8.8 feet from the required 25 foot rear yard setback** to allow for the construction of a detached garage 16.2 feet from the rear (street side) property line;
4. A **variance from the required 15 foot flood plain buffer** around all extended structures.
5. A **variance of 5% from the maximum allowable grade elevation of a parking area** to allow a driveway slope of 10%.

*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:**

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.*

Lot Area and Width Request: 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 and detached garage on the property. The Applicant proposes to use the property in the same manner as it was previously. Staff finds that the newly constructed detached garage in this location would not contribute to overcrowding and therefore is in harmony with the general purposes and intent of the ordinance. **Criteria met**

Setback Request: 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 garage is located on a riparian lot where the rear yard is that side of the property opposite the lakeside, which in this case runs parallel to West Point Avenue. The Applicants currently have a detached garage that is located close to the rear property line.

The proposed redevelopment would pull the garage further off of West Point Avenue and further from the side (northern) property line so that the structure meets the side setback requirements.

It appears the Applicant has provided adequate space for recreational activities/open space and areas to handle stormwater runoff. The new garage has been located so as to minimize the impacts to the lakeside of the property. **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 detached garage's low floor will be at the RFPE. While the proposed buffer is smaller than is generally required by code, the 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 a garage on this property 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.*

The property owners are proposing to continue to use the property for a single family home and continue to have a detached garage (a permitted accessory use) on the property. The new placement of the detached garage brings the structure closer to compliance with the required setbacks of the districts, and the Applicants are proposing to use the property in a reasonable manner. Furthermore, the Applicants are not changing the front yard (lakeside) setback that the current home meets/exceeds; this meets the intent of having the setback (to maintain views to/from the lake). With the limited area to construct a new detached garage on the lot given the existing site constraints (setbacks and lot shape), it is reasonable that the Applicants are proposing to construct the proposed detached garage to improve the existing nonconforming provisions (i.e. setbacks and finished fill elevation). **Criteria met.**

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

All Requests: The property is unique in that it is narrower and smaller than the typical lot in the R-1A District, which limits the amount of buildable area on the lot. This is a circumstance that was not created by the landowner, thus the need for the lot width and lot area variances. The Applicant is proposing to move the detached garage closer to the existing home in an effort to minimize the driveway slope to the maximum extent practicable while still meeting the low floor elevation criteria for new structures.

Furthermore, the entire City of Tonka Bay falls under the floodplain ordinance. Given the elevations of most property in and around the lake, the floodplain buffer creates circumstances to the property that are beyond the control of the property owner. The proposed garage will have all of its entrances and the low floor at the RFPE elevation, and access to the garage will be provided in the event of a flood. Additionally, the proposed garage will not be increasing pollution to the water, nor will it be increasing crowding on the lake or altering shoreline. **Criteria met.**

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

The essential character of the locality will not be negatively impacted as a result of approval of the requested variances. The non-conforming size and width of the lot pose a challenge to place an accessory structure to meet the required provisions of the City Code. The Applicant has given special attention to meeting the required side yard setback and pushing the garage farther back from the rear (street) side than the current garage.

Furthermore, the proposed garage fits into the character of the neighborhood in terms of size and location along Lake Minnetonka

and will have a similar setback as other garages along the West Point Avenue corridor. **Criteria met.**

**B. City Tests:**

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

All Variance Requests: No. The proposed garage should not impair an adequate supply of light and air from reaching adjacent property. The proposed garage will be under the height requirements of the City Code and will meet the required side yard setbacks.

Furthermore, the new garage will improve upon the existing rear and side yard setbacks. **Criteria met.**

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

All Variance Requests: No. The current use of the property is for a single-family home, which will not change as a result of granting the variance. **Criteria met.**

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

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

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

All Variance Requests: The proposed construction of the new garage will be an improvement to the property which is anticipated to 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.**

**Engineering Reports:**

As noted previously, the existing property has an existing hardcover of 32.68%. The Applicants are proposing a hardcover of 33.6% with the construction of the new detached garage, which exceeds the 25% maximum impervious surface coverage by 8.6%.

The Applicant submitted a Shoreland Impact Plan dated November 5, 2014

by Todd Ofsthun of TCO Design stating that new gutters and downspouts will be installed on the detached garage to direct roof water to the on-site yard area around the garage. In addition, new gutters and downspouts will be added to the existing house to direct runoff away from the lake.

The proposed grades shown on the updated plan dated 1-21-15 prepared by Gregory Prash of The Gregory Group shows a finished floor elevation of 933.5' with grades immediately surrounding the new proposed garage at elevations ranging from 932.5' and 933.5'. The City Engineer and City Administrator have reviewed and administratively approve the proposed plans with the condition that the proper establishment of the bench mark used in the survey to determine finished grades be verified and the maximum driveway slope cannot exceed 10%.

**Resident Concerns:** None at this time.

**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 expired on 12-26-14. An extension letter was sent to the Applicant and the Home Owners on 12-12-14. A final decision MUST be made prior to 02-24-15.

**Recommendation:**

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

**Template Denial Motion for all Variances:**

"I move that we direct staff to prepare a resolution of denial for all of the requested variances based on the following findings of fact:"  
a. (Provide findings to support conclusion)

**Template Approval Motion for all Variances:**

"I move that we direct staff to prepare a resolution of approval for the requested lot area, lot width, rear setback, 15-foot floodplain buffer, and driveway slope variances to allow for the construction of a detached garage on the property located at 55 West Point Avenue 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 will not impair an adequate supply of light and air to adjacent parcels.
- c. Granting the variances 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. A detached garage is a reasonable accessory use to a single-family home. It is how the property is zoned and it is how the property has been used in the past.
- h. The location of the detached garage is an improvement over the existing nonconforming setback conditions by meeting the required side yard setbacks.
- i. The variance requests are in harmony with the general intent of the ordinance.
- j. The landowners do not own all property within 15' of the proposed home.

***Recommended  
Conditions (if  
approved variances):***

- 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 maximum driveway grade/slope shall not exceed 10%.
- 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. Erosion control measures shall be shown on the building permit plans and shall be subject to review and approval by the City Engineer.
- 6. 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.
- 7. Construction shall follow the survey and plans as submitted or as required to be updated by the City Engineer.
- 8. Building of structures shall not occur within any existing or proposed easements on the property.
- 9. The variances shall expire one year from the date of the resolution. City Council approval will be required for any subsequent extension.