

CITY OF TONKA BAY ITEM NO. 7A

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: **11-25-14**

Meeting Date: **12-9-14**

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

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 17 feet from the required 25 foot rear yard setback** to allow for the construction of a detached garage 8 feet from the rear property line;
3. 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;
4. A **variance of 1.8 feet from the required finished floor elevation of 933.5 feet** to allow for the construction of a detached garage with a finished floor elevation of 931.7 ft.; and
5. A **variance of 1.8 feet from the required finished fill elevation of 933.5 feet for 15 feet beyond the limits of the structure** to allow for the construction of a detached garage with a finished fill elevation of 931.7 and the existing home top foundation elevation of 931.8 feet.

Staff believes that the applicant has not met the Statutory and City Criteria for approving all of the requested variances. Staff has provided a template approval motion for the lot area, setback, lot width, and 15-foot finished fill radius variances on page 9, a template denial motion for the finished floor elevation and finished fill elevation, as well as findings of fact for approval/denial for the requested variances.

City of Tonka Bay Planning Department
Variance Report

To: City Council

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

Meeting Date: December 9, 2014

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 property owners are 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 17 feet from the required 25 foot rear yard setback** to allow for the construction of a detached garage 8 feet from the rear property line;
3. A **variance of 26 feet from the minimum required lot width** to allow for the construction of a new garage on a lot that is 49 feet wide;
4. A **variance of 1.8 feet from the required finished floor elevation of 933.5 feet** to allow for the construction of a detached garage with a finished floor elevation of 931.7 ft.; and
5. A **variance of 1.8 feet from the required finished fill elevation of 933.5 feet for 15 feet beyond the limits of the structure** to allow for the construction of a detached garage with a finished fill elevation of 931.7 feet and the existing home top foundation elevation of 931.8 feet.

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.
- 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; 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; therefore a variance from the lot width is 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 8 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 of 65.7 feet.

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 ground floor elevation to the top cornice line to the uppermost part on a shed, pitched, hipped, round or other arch-type roof.
- The existing garage floor elevation is 931.1 feet. Proposed is 931.7 feet.
- The proposed new garage will measure 14' 10" feet which meets the City ordinance requirements.

Floor Area Ratio (FAR):

- 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).
- The proposed home will include 2,928sf of space for a FAR of 0.23, which complies with the Code.

Hardcover:

- 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.
- 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 garage. This exceeds the 25% maximum impervious surface coverage by 8.6%.

Finished floor and fill elevations:

- 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.
- 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.
- The proposed garage has a finished floor elevation of 931.7', thus requiring a variance.
- Staff does not have information on the proposed finish fill elevations 15' beyond the limits of the structure, however the existing home located 13' from the proposed garage has elevations at the corners ranging from 930.2' to 931'. Thus, a variance from the finished fill elevation requirement is necessary.

Application Review:

Applicable Code Definitions:

Accessory Building or Use. 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.

Building Setback. The minimum horizontal distance between the building and the lot line.

Floor Area, Gross. The sum of the gross horizontal areas of all floors of the building or portion thereof devoted to a particular use, including accessory 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.

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:

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.

1070.11 Impervious Surface Coverage; subdivision (1) a1. 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 minimum required lot width** requirement to allow for the construction of a new garage on a lot that is 49 feet in width;
3. A **variance of 17 feet from the required 25 foot rear yard setback** to allow for the construction of a detached garage 8 feet from the rear property line;
4. A **variance of 1.8 feet from the required finished floor elevation of 933.5 feet** to allow for the construction of a detached garage with a finished floor elevation of 931.7 ft.; and
5. A **variance of 1.8 feet from the required finished fill elevation of 933.5 feet for 15 feet beyond the limits of the structure** to allow for the construction of a detached garage with a finished fill elevation of 931.7 feet and the existing home top foundation elevation of 931.8 feet.

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 (by 1.8 feet), 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.**

Finished Floor Elevation Request: The General Floodplain Ordinance establishes standards to protect public safety and property for all lands designated as flood plain within the City's jurisdiction. The requirements of the floodplain ordinance shall apply in addition to other legally established regulations of the City.

Section 3.2 of the General Floodplain Ordinance states that "no structure shall be constructed, located, extended, converted, repaired, maintained or structurally altered without full compliance with the terms of this Ordinance and other applicable regulations which apply to uses within the jurisdiction of this Ordinance." Further, Section 4.25 of this Ordinance states in part "all structures... shall be constructed... so that the lowest floor... is at or above the regulatory flood protection elevation" (RFPE). In this case, the RFPE (two feet above the 100-year flood level) is 933.5 feet. This requirement was communicated to the applicant in the pre-application letter (dated September 29, 2014). While the plans submitted do raise the finished floor elevation slightly from the existing garage (to 931.7 feet from 931.1 feet), the proposed elevation is still nearly two feet lower than required. **Criteria not met.**

Finished Fill Elevation Request: Section 4.25 of the General Floodplain Ordinance states that the "finished fill elevation must be no lower than one foot below the RFPE and extend at such an elevation at least 15' beyond the limits of the structure constructed thereon." The plans for the proposed garage indicate that the existing home on the property (located 13 feet from the proposed garage) has a top foundation elevation of 931.8 feet, which creates a constraint for the applicant to extend the finished fill elevation the full 15' beyond the limits of the garage structure. Given the location of the proposed garage it is impossible to meet the 15-foot radius requirement at this elevation; however the Applicant is not proposing to meet this requirement within the land area at any rate. As stated above, it appears that a grading and drainage plan could be developed to better accommodate the intent of the Ordinance. **Criteria not 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 home on the lot given the existing site constraints (setbacks and lot shape), it is reasonable that the Applicants are proposing to construct the proposed home further from the lakeshore by placing the home closer to the west property line as proposed. **Criteria met.**

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

Setback and area requests: The property is unique in that it is narrower and smaller than the typical lot in the R-1 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. **Criteria met.**

Elevation Requests: While doing this will create the need for a potential retaining walls, given the surrounding elevations on neighboring properties, Staff is not aware of any unique circumstances that prevent the landowner from presenting a grading and drainage plan that includes raising the finished floor elevation and finished fill elevations of the garage and surrounding area to meet the floodplain ordinance requirement. **Criteria not 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 plan dated 10/20/14 prepared by Gregory Prash of The Gregory Group shows a finished floor elevation of 931.7' with grades immediately surrounding the new proposed garage at elevations ranging from 930.2' to 931'. The City Engineer and City Administrator have reviewed and administratively and do not approve the proposed plans.

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 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 12-26-14. An extension letter may be sent to the applicant and the home owners. A final decision MUST be made prior to 2-24-14.

Recommendation:

Staff recommends approval of the requested setback, area and lot width variances and denial of the requested finished floor elevation and finished fill elevation radius variances based on the findings detailed in the report and as outlined in the template approval motion below.

Template Denial Motion for all Variances: (Not Recommended)

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

Template Denial Motion for Elevation Variances: (Recommended)

"I move that we direct staff to prepare a resolution of denial for the requested finished floor and finished fill elevation variances based on the following findings of fact:"
a. The request is not in harmony with the general purposes and intent of the General Floodplain Ordinance.
b. The request does not present a practical difficulty for the applicant due to any unique circumstances on the property.
c. The request is not in compliance with Minnesota Rules 6120.6100 as they modify permissible methods of flood protection which provide for a lesser degree of flood protection than stated in the standards.

**Template Approval
Motion for Area,
Width, Rear Yard
Setback, and 15-foot
fill elevation radius
Variances:
(Recommended)**

“I move that we direct staff to prepare a resolution of approval for the requested lot area, lot width, rear setback, and 15-foot fill elevation radius 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 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. It is how the property is zoned and it is how the property has been used in the past.
- h. The variance requests are in harmony with the general intent of the ordinance.

**Template Approval
Motion for all
Variances:
(Not Recommended)**

“I move that we direct staff to prepare a resolution of approval for the requested variances based on the following findings of fact:”

- a. (Provide findings to support conclusion)

**Recommended
Conditions:**

1. The applicant shall submit an updated grading plan showing the LFE of the new detached garage at 933.5’ or greater and the finished fill elevation must be no lower than one foot below the RFPE and shall extend at such elevation to the maximum extent practicable as determined and 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 variances shall expire one year from the date of the resolution. City Council approval will be required for any subsequent extension.



Engineering ■ Planning ■ Environmental ■ Construction

701 Xenia Avenue South
Suite 300
Minneapolis, MN 55416
Tel: 763-541-4800
Fax: 763-541-1700

November 3, 2014

West Point II, LLC
Attn: Mark Briol
55 West Point Avenue
Tonka Bay, Minnesota 55331

Re: 55 West Point Avenue Application Request
Tonka Bay, Minnesota
WSB Project No. 01987-390

Dear Mr. Briol,

On October 15, 2014 the City received your Variance Application for the property located at 55 West Point Avenue. On October 21, 2014, City Administrator Joe Kohlmann sent written correspondence to inform you that your application was incomplete as it was missing pages of the application including the signature page and all required copies of your plans.

On October 27, 2014 the City received a new Variance Application. I have reviewed for completeness the new Application for a variance to allow for the construction of a new detached garage on the property located at 55 West Point Avenue in Tonka Bay. Staff needs a copy of the stormwater management plan proposed onsite.

Your application will tentatively be added to the December 9th City Council meeting agenda, pending submittal of the stormwater management plan. The meeting will include a public hearing on the proposed application.

Please feel free to contact me at 763-287-8521 or by email at kjohnson@wsbeng.com if you have any questions or need clarification regarding this letter or the application process. Thank you.

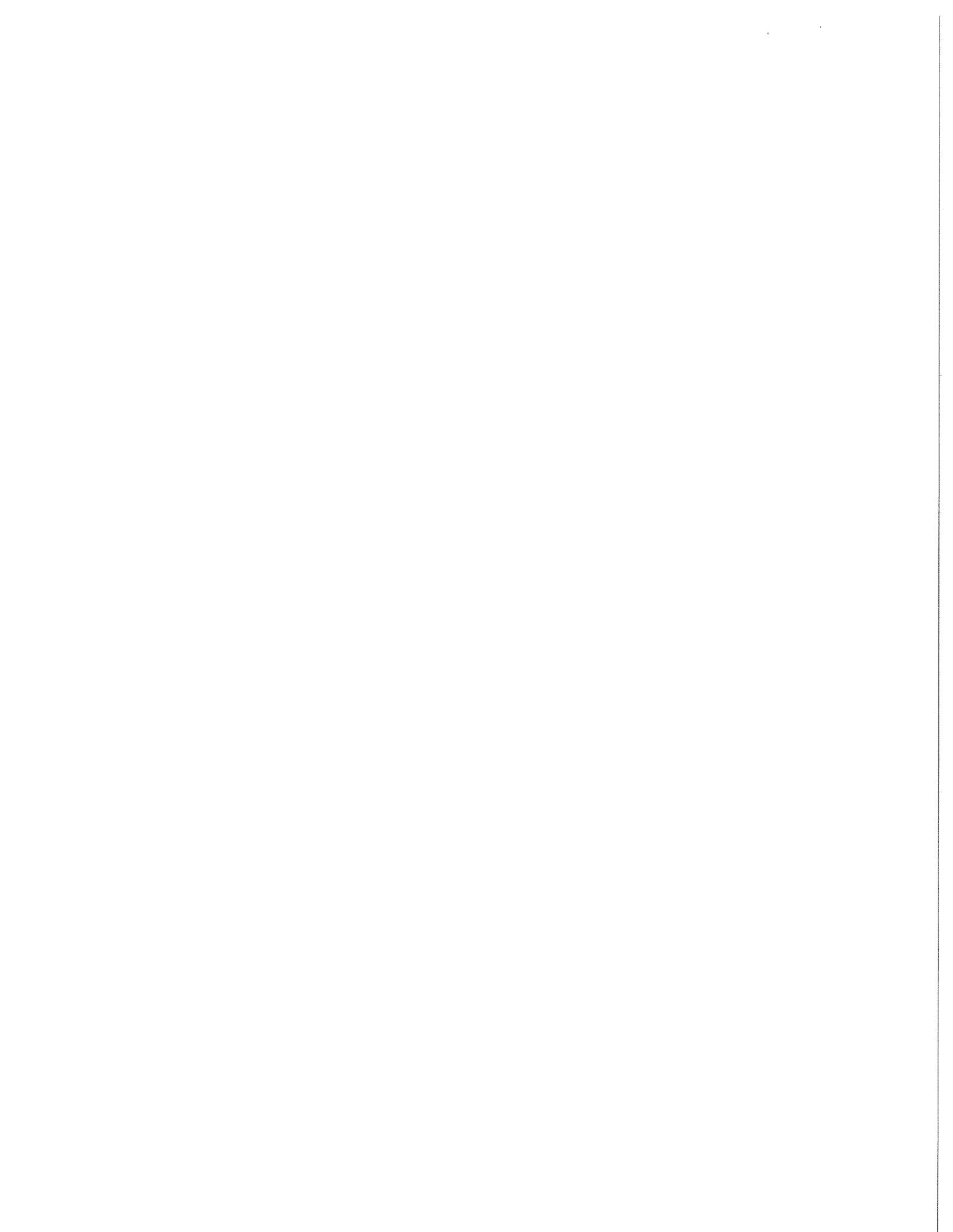
Sincerely,

WSB & Associates, Inc.

A handwritten signature in cursive script that reads "Kelsey Johnson".

Kelsey Johnson, AICP
City Planner

cc: Joe Kohlmann, City Administrator (e-mail only)
James Penberthy, City Attorney (e-mail only)
Justin Messner, City Engineer (e-mail only)
Todd Ofsthun, TCO Design



TCO Design

9330 Thomas Avenue North
Brooklyn Park, MN 55444
763-424-3676
todd@tcodesign.net

November 5, 2014

SHORELAND IMPACT PLAN
55 West Point Avenue
Tonka Bay, MN 55331

The Briol's are proposing to remove and then replace an existing detached garage on the road side of their property. The new garage will be set 8' from the road and 8' from the North property line. These new setbacks will be an improvement on the existing condition by meeting setback, raising the garage floor slightly and increasing drainage area along the North side of the new garage.

The property is located on Lake Minnetonka and falls within the shoreland zoning district. The shoreland ordinance states that where appropriate and practices are in place for the treatment of storm water, impervious surface coverage of 26% to 35% may be allowed. The proposed 33.6% of impervious area falls within this criteria. The very slight increase of impervious surface from 32.68% to 33.6% is due to a simple clean up and rearrangement of the existing garage, driveway and sidewalk. Please refer to the existing and proposed survey for existing and proposed conditions. The following summary describes the plan proposed to reduce shoreland impact.

The property has minimal topographic pitch. The natural pitch on the Lake side will not be changed by this project. Seventy (70) percent of the lot toward the Lake will not be altered. The proposed garage will be on 25% of the lot on the road side. The sidewalk will be slightly altered from the proposed garage to the existing house stoop.

The effect of the proposed detached garage has little or no impact on the existing landscape and natural surroundings. There will actually be an improvement of drainage area with the new 8' setback from the North property line.

To address storm water impact, new gutters and downspouts will be installed on the new detached garage to direct roof water to on site yard area around the garage. In addition, new gutters and downspouts will be added to the existing house to direct roof runoff away from the lake. Please refer to proposed conditions survey for location of downspouts.

Measure will be taken during construction to minimize the impact of construction in the case of large scale rain events. There will be approved silt fences installed along the North and South sides of the site to protect adjacent properties. The silt fences will run along the property lines and then turn and continue to the corners of the house to minimize any silt runoff toward the Lake. In addition, bio logs will be used on the road side of the site. The bio logs are being used on the road side because they are less susceptible to damage during construction.

After a discussion with Justin Messner, it is my understanding that this shoreland impact plan addresses all of the criteria outlined in section 1070.16 of the City code and supports the overall objective of the Shoreland district.

Thank you for your consideration,

Sincerely,

Todd Ofsthun, TCO Design, 952-994-8276

Commercial Drafting and Home Design
Dedication to excellence

C/O JOE KOHLMANN

CITY OF TONKA BAY
VARIANCE APPLICATION

Phone: (952) 474-7994 Fax: (952) 474-6538
www.cityoftonkabay.net

RECEIVED

OCT 27 2014

CITY OF TONKA BAY

Application fee: \$150.00

The application fee is used to cover publication costs, County recording fees, postage and other supplies.

Escrow fee: \$1,150.00

The escrow fee is charged to cover staff expenses, engineering, planning and attorney expenses (as billed) which may be incurred because of your application. All staff time is billed at the regular employee rate plus 30% for overhead costs, which includes benefits, buildings, lights, heat, etc.

Any remaining funds, after expenses, are returned to the applicant. Expenses incurred over \$1100 will be billed to the applicant.

APPLICATION DATE _____

SITE ADDRESS (or legal description) 55 West Point Avenue, Tonka Bay, MN
PID NUMBER 55331

NAME OF PROPERTY OWNER(S) West Point II, LLC
MAILING ADDRESS 55 West Point Avenue, Tonka Bay, MN 55331
Street Address City State Zip

PHONE 612-850-0143 E-MAIL mark@brillaw.com

NAME OF APPLICANT(S) (if different from above) n/g

MAILING ADDRESS n/g
Street Address City State Zip

PHONE n/g E-MAIL _____

Initial where indicated that you have read and understand the requirement(s):

- A. All property owners must sign as co-applicants.
- B. The property corners and proposed construction must be flagged/staked at the time of the application and maintained until the council makes a determination.
- C. Survey Requirements:

1. **Initial Survey**
Every application for building permit (excluding interior remodels, re-roofs, re-siding and general maintenance) shall be accompanied by a certified survey at a scale and in quantities deemed necessary by the City of Tonka Bay unless waived in accordance with the City's survey exemption policy (attached). Because the survey will be used to determine an application's conformance with City Code, it shall be the responsibility of the applicant to ensure information provided on the survey corresponds to submitted building plans (including existing and proposed topography). An issued building permit shall only authorize those land alterations identified on the associated survey. Surveys shall include all information as deemed necessary by the City to provide for the enforcement of city code. See below for more details in the "Submit with Application" section, Item 1.
2. **Foundation Survey**
Applications for new structures shall require that an as-built foundation survey be submitted by a time specified by the City (general prior to completing a foundation inspection) unless waived in accordance with the City's survey exemption policy. The as-built foundation survey shall certify both the final setbacks of the structure being built, and the elevations at which the new structure exists. Failure to provide the foundation survey is in direct violation of this ordinance and expenditures incurred beyond the construction of the foundation will not be considered in determining the actions required to bring the building back into conformance if not built to approved plans.
3. **As-Built Survey**
Applications for new structures shall require that an as-built survey be submitted upon completion of work unless waived in accordance with the City's survey exemption policy. The as-built survey shall certify the final topography of the site, verify the drainage patterns existing upon completion of work, and the distance from average ground level to the highest roof peak. Any additional information needed by the city to ensure compliance with code can also be required. The city reserves the right to withhold the certificate of occupancy for dwelling units until final grading addresses all problems that may be detrimental to adjacent properties.
- D. The applicant or representative thereof shall appear before the City Council to answer questions concerning the proposed conditional use permit. See attached public hearing information sheet.

Submit with Application:

1. Eleven (11) to scale copies and Eleven (11) reduced (8-1/2" x 11" or 11" x 17") copies of a certified survey of the property. The survey shall include all information necessary to enforce applicable zoning regulations. Such information may include but is not limited to:
 - Location and Floor Area of existing and proposed structures
 - Lot Lines
 - Parcel size in acres and square feet
 - Building setbacks (closest point of building to each property line)

- Low floor elevations of existing and proposed structures
 - Water features (lakeshore, wetlands, etc.)
 - Existing and proposed topography – including ground elevations at corners of existing and proposed structures.
 - General location of vegetation
 - Location of structures on adjacent lots
 - Easements
 - Existing and proposed impervious surface calculations.
 - Location of public and private sewer lines or wells.
2. Hardcover calculation – current and proposed
 3. Floor area ratio – current and proposed
 4. Landscape plan and grading and drainage plan (current and proposed)
 5. Payment

Additional Information

- A. The request for variances shall be placed on the agenda of the first City Council meeting occurring at least thirty (30) days from the date of official submission unless waived by the Zoning Administrator. Upon receipt of a completed application, the Zoning Administrator shall set a public hearing for a regular meeting of the City Council. The City Council shall conduct the hearing.
- B. Notice of said hearing shall be published in the official newspaper at least ten (10) days prior to the hearing and written notification of said hearing shall be mailed at least ten (10) days prior to all property owners within three hundred fifty (350) feet of the boundary of the property in question.
- C. For properties within the Shoreland, Floodway or Flood Fringe Overlay District, the City will submit to the Commissioner of Natural Resources a copy of the application for proposed variances so that the Commissioner will receive at least ten (10) days notice of the hearing.
- D. The applicant or representative thereof shall appear before the City Council to answer questions concerning the proposed variance.
- E. A variance of the Ordinance shall be by four-fifths (4/5) vote of the entire City Council.
- F. If approved, the variance shall become null and void twelve (12) months after the date of approval, unless the property owner or applicant has substantially started the construction of any building, structure, addition or alteration, or use requested as part of the permit.
- G. Prior to approving an application for a variance, the City shall verify ownership, and that there are no delinquent property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the permit application relates.
- H. By state statute, there are three definitive criteria that all variances must address. The three criteria are as follows:
 1. Is the variance request reasonable? The hardship requirement does not mean that a property owner must show the land cannot be put to any reasonable use without the variance. Rather, the property owners must show that they would like to use their property in a reasonable manner that is prohibited by the ordinance.
 2. Does the application present unique circumstances?
 3. If approved, would the variance alter the essential character of the locality?

1004.02 GENERAL PROVISIONS AND STANDARDS

Subd. 3. Review Criteria. In considering all requests for a variance and in taking subsequent action, the City Council shall make a finding of fact that the proposed action will not:

- a. Impair an adequate supply of light and air to adjacent property.
- b. Unreasonably increase the congestion in the public street.
- c. Increase the danger of fire or endanger the public safety.
- d. Unreasonably diminish or impair established property values within the neighborhood, or in any way be contrary to the intent of this Ordinance.
- e. Violate the intent and purpose of the Comprehensive Plan.
- f. Violate any of the terms or conditions of Subd. 4., below.

Subd. 4. Conditions. A variance from the terms of this Ordinance shall not be granted unless it can be demonstrated that:

- a. Undue hardship will result if the variance is denied due to the existence of special conditions and circumstances which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same district.
 - 1. Special conditions may include exceptional topographic or water conditions or, in the case of an existing lot or parcel of record, narrowness, shallowness, insufficient area or shape of the property.
 - 2. Undue hardship caused by the special conditions and circumstances may not be solely economic in nature, if a reasonable use of the property exists under the terms of this Chapter.
- b. Literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance or deny the applicant the ability to put the property in question to a reasonable use.
- c. The special conditions and circumstances causing the undue hardship do not result from the actions of the applicant.
- d. Granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures or buildings in the same district under the same conditions.

West Point II, LLC

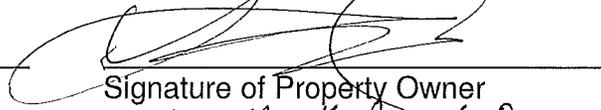


Signature of Applicant

By: MARK BRIOT, Owner

Signature of Applicant

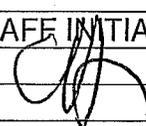
West Point II, LLC



Signature of Property Owner

By: MARK BRIOT, Owner

Signature of Property Owner

This Section Completed by Staff			
FEE	FOR	DATE PAID	STAFF INITIALS
\$150.00	Application Fee	10-27-14	
\$1,150.00	Escrow Fee*	10-27-14	