

# CITY OF TONKA BAY ITEM NO. 7A

## Tonka Bay City Council Agenda Item Executive Summary

*Title of Item:* **CONDITIONAL USE PERMIT REQUEST:** Application from Mike Randall of Signature Pools Ltd. on behalf of the property owners Fritz and Lorina Burgess requesting a conditional use permit to exceed the amount of allowable impervious surface for the construction of a pool, patio, outdoor kitchen and bar area, and sidewalk improvements at 20 Clay Cliffe Dr – R-1A zoning – PID: 28-117-23-12-0014

*Meeting Date:* **5-14-13**

*60 Day Review deadline:* **60 day period ends 6-7-13**

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

*Summary:* The applicants wish to construct a new pool, patio, outdoor kitchen and bar area, and sidewalk improvements which will increase the amount of impervious surface on the property from 36.5 percent to 40.6 percent. The Zoning Ordinance permits impervious surface up to 25 percent with no review. Because the property is already over the amount of allowable impervious surface, and is increasing that amount, a conditional use permit is required. The applicants will be removing 1,150 square feet of existing concrete and adding 2,370 square feet of impervious for a net increase of 1,220 square feet of impervious for the proposed improvements.

In summary, a conditional use permit will be required for the following:

1. A **15.6% increase** over the allowed 25% impervious surface coverage.

Staff believes that the applicant has met the Statutory and City Criteria for approving conditional use permits. Staff has provided a template approval motion on page four as well as findings of fact for approval of the conditional use permit.

City of Tonka Bay Planning Department  
**Staff Report**

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**To: City Council**

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

**Meeting Date: May 14, 2013**

**Applicant:** Mike Randall

**Owner:** Fritz and Lorina Burgess

**Location: 20 Clay Cliffe Dr.**

**Zoning: R-1A**

**Introductory Information**

**Proposed Project:** The applicant is seeking to construct a new pool, patio, outdoor kitchen and bar area, and sidewalk improvements at 20 Clay Cliffe Drive.

**CUP Request(s):** The proposed action will require the following conditional use permits:  
1. A **15.6% increase** over the allowed 25% impervious surface coverage.

**Findings**

**Site Data:** Lot Size – 29,366 square feet  
Existing Use – Single Family Home  
Existing Zoning – R-1A  
Property Identification Number (PID): 28-117-23-12-0014

**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.

**Floodplain Buffer:**

- The property is not located within a floodplain.

**Lot Area:**

- The lot area requirement in the R-1A District is 20,000 square feet. The lot of record is 29,366 square feet.

**Setbacks:**

- The proposed project meets all required setbacks.

**Hardcover:**

- The maximum hardcover permitted on this lot without any review is 25 percent; hardcover between 36 percent and 45 percent can be allowed provided structures and practices are in place for the treatment of storm water and conditional use permit is approved.

- The applicants are proposing hardscover in the amount of 11,937 square feet, which is 40.6 percent of the lot.
- A Shoreland Impact Plan must be submitted by the applicant and approved by the City Engineer, which address how storm water will be managed on the property.
- A Stormwater Facilities Maintenance Agreement must be executed prior to approval of the building permit. Please contact the City Engineer to complete the agreement.
- A conditional use permit will be required.

**Application Review:**

**Applicable Code Definitions:**

**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, modifications, 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.

**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.

**Applicable Codes:**

**1070.11 Impervious Surface Coverage; subdivision (1) 2.** Where appropriate and where structures and practices are in place for the treatment of storm water, impervious surface coverage of between thirty-six (36) percent to forty-five (45) percent may be allowed provided a shoreland impact plan/conditional use permit is submitted and approved as provided for in Section 1070.16 of this Ordinance.

**CUP Reviews:**

The requested conditional use permit with this application is:

1. A **15.6% increase** over the allowed 25% impervious surface coverage.

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. One of the housing

policies stated in the plan is to “support housing rehabilitation, remodeling, and some new construction through redevelopment.” Staff believes the proposed project will be an improvement to the property. **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 pool, patio, outdoor kitchen and bar area, and sidewalk improvements are all consistent with this land use and are common among other homes in the neighborhood. **Criteria met.**

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

Staff has reviewed the proposed plans and finds that all performance standards are met with the exception of impervious surface. If the Council approves a CUP for the property owners to exceed the amount of permitted impervious, then all performance standards will be met. **Criteria met.**

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

The proposed conditional uses will not have any negative impact on the character of the surrounding area. There are numerous homes in Tonka Bay that have pools and patios in the rear yard. In addition, some significant trees exist in the rear yard and a privacy fence will be constructed for screening. **Criteria met.**

5. *The demonstrated need for such use*

The property owners wish to construct a pool, patio, and outdoor kitchen and bar area to be able to better enjoy the rear yard of the property. Given that the improvements are all permitted accessory uses, staff finds the request reasonable. **Criteria met**

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

The proposed improvements will not have any negative impact to adjacent property values and will enhance the appearance of the rear yard for the subject property. The rear yard will be screened from adjacent properties by a privacy fence and existing trees. **Criteria met.**

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

The proposed project should not have any impact on public utilities.

Prior to construction, a Shoreland Impact Plan must be submitted by the applicant, and approved by the City Engineer, which should address how the property owners will mitigate the storm water impacts of the increase in impervious surface. **Criteria met.**

**Resident Concerns:**     ▪ Staff is not aware of any concerns raised to date.

**Engineering Reports:**   As noted previously, calculations for this property indicate that approximately 40.6 percent of the property is proposed as hardcover. This exceeds the 25 percent maximum and requires approval from the City Engineer and City Administrator. A Shoreland Impact Plan and Stormwater Facilities Maintenance Agreement must be submitted by the applicant and approved by the City Engineer prior to beginning construction. The plan shall address how the property owners will offset the storm water impacts of the additional impervious surface.

**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 6-7-13. An extension letter may be sent to the applicant and the home owners. A final decision MUST be made prior to 8-6-13.

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

**Template Denial Motion:**   “I move that we direct staff to prepare a resolution of denial for the requested variance(s) and conditional use permit(s) based on the following findings of fact:”  
*(Not Recommended)*

- (Provide findings to support conclusion)

**Template Approval Motion:**   “I move that we direct staff to prepare a resolution of approval for the requested conditional use permit to exceed the allowable amount of impervious surface 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”  
*(Recommended)*

- a. The use of the property will remain as a single-family home,

which is consistent with the comprehensive plan.

- b. The proposal is consistent with existing and future land use in the area.
- c. If the Council approves a conditional use permit for impervious surface, all performance standards will be met with the proposed project.
- d. Approval of the requested conditional use permit will not result in any negative impact on the character of the surrounding area. There are numerous homes in Tonka Bay that have pools and patios in the rear yard. In addition, some significant trees exist in the rear yard and a privacy fence will be constructed for screening.
- e. The property owners wish to construct a pool, patio, and outdoor kitchen and bar area to be able to better enjoy the rear yard of the property. Given that the improvements are all permitted accessory uses, staff finds the request reasonable.
- f. The proposed improvements will not have any negative impact to adjacent property values and will enhance the appearance of the rear yard for the subject property.
- g. The proposed project should not have any impact on public utilities.

***Recommended  
Conditions:***

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 a fence permit, and 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 shall be provided to the city prior to a building permit being authorized.
3. Silt fencing shall be shown on the building permit plans and shall be subject to review and approval by the City Engineer.
4. Construction shall follow the survey and plans as modified or as otherwise required to be updated by the City Engineer.
5. Building of structures shall not occur within any existing or proposed easements on the property.
6. The outdoor swimming pool shall be completely enclosed by a security fence or wall in compliance with Section 1011.05, Subd. 1(E) 1-5 of the Zoning Ordinance.
7. Per the Stormwater Facilities Maintenance Agreement and Restrictive Covenant, the applicant shall:
  - a) Agree to construct and maintain a stormwater collection and

detention system on his/her property as shown on the Detention System Drawing.

- b) Maintain and preserve the detention system until such time as the City, its successors or assigns, agree that the system should be altered in some manner or eliminated.
  - c) Not to dismantle, revise, alter or remove part of the system except as necessary for maintenance, repair or replacement.
  - d) Provide the City the right to ingress and egress over portions of the property in order to access the detention system for inspection and to reasonably monitor the system for performance, operational flows or defects.
  - e) Be responsible for inspecting and maintaining the detention system, on an annual basis. The property owner will provide a letter to the City Engineer by September 1st of each year, stating that inspection and maintenance have been completed.
  - f) Assume all responsibility for the cost of any maintenance and for repairs to the detention system. Such responsibility shall include reimbursement to the City within 30 days after the City mails an invoice to the Owner for any work performed by the City. Overdue payments will require payment of interest by the Owner at the current legal rate as liquidated damages.
  - g) Obtain written approval from the City Engineer prior to performing any alterations or modifications to the detention system.
8. The City Engineer will verify and approve ingress and egress areas for City access to the stormwater treatment system prior to issuing a building permit.
9. 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.

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CITY OF TONKA BAY  
CONDITIONAL USE PERMIT APPLICATION  
Phone: (952) 474-7994 Fax: (952) 474-6538  
www.cityoftonkabay.net

RECEIVED

MAR 22 2013

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 3/21/13

SITE ADDRESS (or legal description) LOT 6 BLOCK 3 CLAY CLEFFE HENNINGSON COUNTY  
PID NUMBER 20 CLAY CLEFFE MINNESOTA

NAME OF PROPERTY OWNER(S) FRITZ & LORENA BURGESS

MAILING ADDRESS 20 CLAY CLEFFE DR. TONKA BAY MN 55331  
Street Address City State Zip

PHONE 612-751-1100 E-mail address fritzburgess1@earthlink.net

NAME OF APPLICANT(S) (if different from above) SIGNATURE POOLS LTD  
MIKE RANDALL

MAILING ADDRESS 339 3rd ST EXCELSIOR MN 55331  
Street Address City State Zip

PHONE 952-474-0702 E-mail address mike@signaturepools1td.com

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

- M.A. A. All property owners must sign as co-applicants.  
M.A. 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.  
M.A. 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. Shoreland impact plan (see following page)

5. Landscape plan and grading and drainage plan (current and proposed)
6. Payment

### **Additional Information**

1. The request shall be considered as being officially submitted and the application timeline commences when all the information requirements are in compliance.
2. The request for conditional use permits 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.
3. 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.
4. 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 conditional use permits so that the Commissioner will receive at least ten (10) days notice of the hearing.
5. A variance of the Ordinance shall be by four-fifths (4/5) vote of the entire City Council.
6. If approved, the conditional use permit 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.
7. Prior to approving an application for a conditional use permit, the City will 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.

## **1070.16 SHORELAND IMPACT PLAN/CONDITIONAL USE PERMIT**

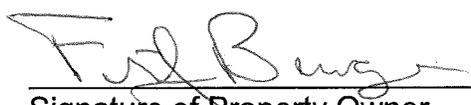
**Subd. 1. Shoreland Impact Plan.** Except for situations listed below, landowners or developers desiring to develop land or construct any dwelling or any other artificial obstruction on land located within the Shoreland District within the City of Tonka Bay shall first submit a conditional use permit application as regulated by Section 1003 of the Zoning Ordinance and a plan of development, hereinafter referred to as "Shoreland Impact Plan", which shall set forth proposed provisions for sediment control, water management, maintenance of landscaped features, and any additional matters intended to set forth proposed changes requested by the applicant and affirmatively disclose what, if any, change will be made in the natural conditions of the earth, including loss of change of earth ground cover, destruction of trees, grade courses and marshes. The plan shall minimize tree removal, ground cover change, loss of natural vegetation, and grade changes as much as possible, and shall affirmatively provide for the relocation or replanting of as many trees as possible which are proposed to be removed. The purpose of the Shoreland Impact Plan shall be to eliminate potential pollution, erosion and siltation.

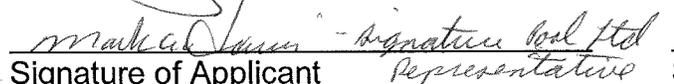
**Subd. 2. Feasibility.** Where strict conformity with provisions of this section is not possible, the requirements specified herein may be exceeded subject to a conditional use permit and shoreland impact plan set forth in this section and with approval by the Minnehaha Creek Watershed District and the City Engineer where applicable.

**Subd. 3. Conditions.** All conditional use permits for consideration under this section shall be subject to the following conditions:

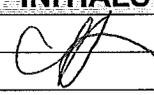
- a. The projects shall be analyzed to determine the impact of impervious surfaces, storm water runoff, floodplain, and water quality implications. Only those projects shall be allowed where the adverse impacts have been mitigated through approved means to the extent possible.
- b. Storm water treatment measures including, but not limited to, sediment basins (debris basins), de-silting basins or silt traps, installation of debris guards, and microsilt basins on storm water inlets, oil skimming devices, etc. shall be required subject to the review of the City Engineer and Minnehaha Creek Watershed District on projects where applicable.
- c. Projects shall be analyzed by the City in terms of provisions for maintenance and enhancement of landscape features, change in the natural condition of the soil, removal of trees, grade courses and marshes. The land shall also minimize tree removal, ground cover change, loss of natural vegetation, and grade changes as much as possible. It shall further provide for the relocation or replanting as many trees as possible which are proposed to be removed.
- d. Projects shall be analyzed by the City in terms of the appearance of the structure when viewed from the lake's surface. Building materials, and color shall be analyzed to determine which facade and roof materials minimize the appearance and blend the structure into the shoreland and vegetation.
- e. Lot coverage on a project basis shall be restricted to the provisions for maximum impervious surface coverage as provided for in this Ordinance.
- f. Residential densities on a project basis shall not be allowed to exceed the maximum allowed density of the base zoning districts for which the project was proposed.
- g. All projects shall be in conformance with the Shoreland Management Plan, Comprehensive Plan, and Zoning and Subdivision Ordinances of the City of Tonka Bay.
- h. All projects shall be subject to review by the Minnehaha Creek Watershed District and the City Engineer.

  
 \_\_\_\_\_  
 Signature of Applicant

  
 \_\_\_\_\_  
 Signature of Property Owner

  
 \_\_\_\_\_  
 Signature of Applicant Representative  
 Mark Hauri 651-503-6585

\_\_\_\_\_  
 Signature of Property Owner

This Section Completed by Staff			
FEE	FOR	DATE PAID	STAFF INITIALS
\$ 150.00	Application Fee	3-22-13	
\$1,150.00	Escrow Fee*	3-22-13	