

CITY OF TONKA BAY ITEM NO. 7A

Tonka Bay City Council Agenda Item Executive Summary

Title of Item: **VARIANCE REQUEST:** Application from Matthew and Melinda Pfohl requesting a variance to allow for the construction of a deck that will encroach into the required 8 foot side yard setback by 0.4 feet and into the required front yard setback by 1.1 feet on the property located at 165 Woodpecker Ridge Rd. – R-1B zoning, Shoreland Overlay – PID: 28-117-23-42-0014

Report Date: **08-10-15**

Meeting Date: **08-11-15**

60 Day Review deadline: **60 day period ends 8-29-15**

60-Day Extension Letter Sent: **N/A**

120-Day Review Deadline: **N/A**

Staff/Guest Reporting: Erin Perdu, AICP – City Planner
Justin Messner, PE – City Engineer

Summary: The Applicant is seeking to construct a deck onto the front and side (south) of the existing home on the property located at 165 Woodpecker Ridge Rd. The project, as proposed requires two variances.

In summary, the requested variances are as follows:

1. A **0.4 foot side setback variance** to allow the proposed deck to be constructed 7.6 feet from the side (south) property line;
2. A **1.1 foot front setback variance** to allow the proposed deck to be constructed 62.9 feet from the front property line;
3. A **variance for the expansion of a non-conforming structure** to allow the deck to be constructed on a home that sits 0.2 feet from the side (north) property line.

Staff believes that the applicant has met the Statutory and City Criteria for approving 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

To: City Council

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

Meeting Date: August 11, 2015

Applicants: Matthew and Melinda Pfohl

Owners: Matthew and Melinda Pfohl

Location: 165 Woodpecker Ridge Rd.

Zoning: R-1B

Introductory Information

Proposed Project: The Applicant is proposing to construct a new deck onto the front and side (south) sides of the existing home on the property. The deck would sit 62.9 feet from the front (lakeside) property line where 64 feet is required based on the average setback of the two neighboring principal structures. The deck would sit 7.6 feet from the side (south) property line where 8 feet are required.

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

1. A **0.4 foot side setback variance** to allow the proposed deck to be constructed 7.6 feet from the side (south) property line;
2. A **1.1 foot front setback variance** to allow the proposed deck to be constructed 62.9 feet from the front property line;
3. A **variance for the expansion of a non-conforming structure** to allow the deck to be constructed on a home that sits 0.2 feet from the side (north) property line.

Findings

Site Data: Lot Size – 9,158 square feet
Existing Use – Single Family Home
Existing Zoning – R-1B Shoreland
Property Identification Number (PID): 28-117-23-42-0014

Comp Plan Guidance:

- The comprehensive plan guides this lot for single family use. The corresponding zoning assigned to this property (R-1B) allows for single family homes.

Lot Area and Width:

- The lot area requirement in the R1-B Shoreland District is 15,000 square feet. Section 1011.01 Subd.2.n.1.a allows for single family use of lots that meet at least 60 percent of the lot area and frontage requirements of the zoning district. In this case, that equates to at least 9,000 sf. area. The lot of

record is 9,158 square feet.

- The lot width requirement in the R1-B Shoreland District is seventy-five (75) feet; 60% of that requirement is 45 feet. The lot of record is 50 feet wide.

Front-Yard Setback:

- The front-yard (lakeside) setback in the R1-B District for principal 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. In the case of this property, the average setback of the two riparian principal structures is approximately 64 feet.
- The Applicants are proposing a front-yard setback for the proposed deck of 62.9 feet.

Hardcover:

- The maximum hardcover permitted on this lot without any review is 25 percent; the proposed improvements indicate hardcover of 24.3%.

Application Review:

Applicable Code Definitions:

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

Deck. A horizontal, unenclosed platform with or without attached railings, seats, trellises, or other features, attached or functionally related to a principal use or site

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.

Non-Conforming Structure, Use or Lot - Legal. A lot, building, structure, premise, or use lawfully established prior to the adoption of this Ordinance or any amendment thereto which does not now conform with the applicable conditions or provisions of this Ordinance for the district in which the structure or use is located.

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:

1011.01, Non-Conforming Buildings, Structures, Uses and Lots, subdivision (2). **Legal Non-Conforming Lots, subsection 1 Vacant or Redeveloped Residential Lots.** A lot of record existing as of the effective date of this Ordinance in a residential district, which does not meet the requirements of this Ordinance as to area or width, may be utilized for single family detached dwelling purposes provided that in all residential districts, the measurements of such lot's area and frontage width are within sixty (60) percent of the requirements of the respective district, as established by this Ordinance.

1011.03 General Yard, Lot Area, and Building Regulations; subdivision (5), b. 2. Terraces, steps, decks, patios, uncovered porches, stoops or similar features provided they do not extend above the height of the average ground level more than nine (9) inches, or to a distance less than five (5) feet from a side yard and rear lot lines, or more than five (5) feet into a required front yard. No encroachment shall be permitted in existing or required drainage and utility easements. All decks, porches or stoops over (9) inches in height from the average ground level shall comply with all principal structure setbacks.

The proposed action will require the following variances:

- A **0.4 foot side setback variance** to allow the proposed deck to be constructed 7.6 feet from the side (south) property line;
- A **1.1 foot front setback variance** to allow the proposed deck to be constructed 62.9 feet from the front property line;
- A **variance for the expansion of a non-conforming structure** to allow the deck to be constructed on a home that sits 0.2 feet from the side (north) property line..

Variance Criteria Review:

Staff's analysis of the requested variances under the review criteria is as follows:

Statutory Criteria

- *The request is in harmony with the general purposes and intent of this ordinance. "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.**

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

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 the deck will not change the use and is consistent with the City's Comprehensive Plan in this manner. **Criteria met.**

- *The property in question meets the "practical difficulties" test.*
The property owners face the practical difficulty presented by the placement of the existing house on the narrow lakefront lot. Construction of a deck that is of a reasonable depth to be usable would require a variance. The property owner is proposing very minimal variances in this case.
- *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 to install a deck on the property. Construction of this type of deck is a reasonable use for a single family home and is one that is quite common on lakefront lots in the City. Applicants are proposing to use the property in a reasonable manner. **Criteria met.**
- *There are unique circumstances to the property not created by the landowner.*
The unique circumstances on this property are related to the narrowness of the lot, the configuration of the existing home (with a corner just a few inches from the northern property line), and the setback of the adjacent principal structures. **Criteria met.**
- *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 variance. The proposed deck fits into the character of the neighborhood in terms of size and location along the Lake Minnetonka shore. **Criteria met.**

City Tests:

- *Will the variance impair an adequate supply of light and air to adjacent property?*
No. The proposed deck will not impair an adequate supply of light and air from reaching adjacent property. **Criteria met.**
- *Will the variance unreasonably increase the congestion in the public street?*
No. The proposed deck will have no effect on congestion in the public street. **Criteria met.**
- *Will the variance increase the danger of fire or endanger the public safety?*
No. The continued 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.**

- *Will the variance unreasonably diminish or impair established property values within the neighborhood?*

The proposed deck is in character with the surrounding area and will have no impact on neighboring property values.

Engineering Reports:

The maximum hardcover permitted on this lot without any review is 25 percent; the proposed improvements indicate hardcover of 24.3%.

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 expires on 8-29-15.

Recommendation:

Staff recommends approval of the requested variance 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 the requested variance and conditional use permit 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 front and side setback variances and variance to expand an existing non-conforming structure to allow for the construction of a deck on the property located at 165 Woodpecker Ridge Rd. 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

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

locality.

- g. The continued use of the property as a single-family home is a reasonable use of the property. The proposed deck is a reasonable accessory use for a single-family lake front home.
 - h. The variance requests are in harmony with the general intent of the ordinance.
1. The Applicant shall obtain all necessary permits and approvals from the City of Tonka Bay and other applicable entities with jurisdiction prior to any construction. This includes, but shall not be limited to permits from the Minnehaha Creek Watershed District (MCWD) and the Lake Minnetonka Conservation District (LMCD).
 2. Erosion control measures shall be shown on the building permit plans and shall be subject to review and approval by the City Engineer.
 3. The City Engineer shall inspect the property at the property owner's expense during the construction process to ensure on-going compliance with all engineering requirements.
 4. Construction shall follow the survey and plans as submitted or as required to be updated by the City Engineer.
 5. Building of structures shall not occur within any existing or proposed easements on the property.
 6. The variance shall expire one year from the date of the resolution. City Council approval will be required for any subsequent extension.

blank

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

RECEIVED
JUL 01 2015
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 6.29.2015

SITE ADDRESS (or legal description) 165 Woodpecker Ridge Road
PID NUMBER 28-117-23-42-0014

NAME OF PROPERTY OWNER(S) Melinda Nelson Pfohl + Matthew James Pfohl
MAILING ADDRESS 165 Woodpecker Ridge Road Tonka Bay MN 55331
Street Address City State Zip

PHONE 612.209.6907 E-MAIL M.Pfohl@Comcast.net

NAME OF APPLICANT(S) (if different from above) Same

MAILING ADDRESS Same
Street Address City State Zip

PHONE Same E-MAIL Same

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

- M.D.P. MNPA. All property owners must sign as co-applicants.
- M.D.P. MNFB. 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.D.P. MNPC. Survey Requirements:

W.D.P. MNP

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.

W.D.P. MNP

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.



 Signature of Applicant



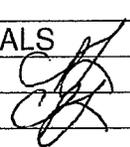
 Signature of Property Owner



 Signature of Applicant



 Signature of Property Owner

This Section Completed by Staff			
FEE	FOR	DATE PAID	STAFF INITIALS
\$150.00	Application Fee	7-1-15	
\$1,150.00	Escrow Fee*	7-1-15	



June 8, 2015

Hans Frees
Outdoor Escapes
2345 Daniels St.
Long Lake, MN 55356

Re: Deck Application, 165 Woodpecker Ridge Rd.

Dear Mr. Frees:

The City of Tonka Bay is in receipt of your building permit application for a deck at 165 Woodpecker Ridge Rd. The development team has reviewed your application and provides the following comments:

1. The existing house on the property is a non-conforming structure with regard to the side setback on the north side. The home sits only 0.2 feet from the side property line on the north. The proposed deck is considered an expansion of a non-conforming structure and will therefore require a variance.
2. The proposed project increases the impervious surface beyond the 25% threshold set in Section 1070.11 Subd.1.a. of the Tonka Bay Zoning Ordinance; therefore, "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 administrative approval." A site survey indicating contours will be required to identifying drainage patterns of storm water runoff. The plan should indicate if roof gutters are installed and the location where the downspouts discharge.
3. Section 1101.03 Subd. 5.d states that for riparian lots, no principal structure or addition shall be located closer to the ordinary high water mark than the greater of fifty feet or the average setback of the two adjacent riparian principal structures on either side of the proposed building site. In this case, the average front yard setback is 64'. Although it is difficult to accurately measure from the survey you provided, it appears that the steps off the deck will encroach into the front yard by about 36-48 inches. This can be confirmed with the site survey as required in #1 above. The proposed steps are not exempt from the front yard setback (per Section 1011.03 Subd. 5. b. 2) because they extend above the height of the average ground level more than 9 inches. If the steps do encroach into the setback a variance will be required.
4. In addition to the information mentioned above, we will require a floor area ratio calculation of existing and proposed floor area on the survey.

In summary, staff finds that the proposed plan will require variances prior to evaluation for a building permit. A site survey with the information required in Section 1004.03 Subd. 1.a.1 is required to accompany your variance application. More specifically, we will need following information on the survey to evaluate your request:

- Contours and drainage patterns of storm water runoff; locations roof gutters and downspouts

June 5, 2015
Page 2

- Location of the proposed deck and steps, with all setbacks (existing and proposed) clearly labeled.
- Floor area ratio calculation (using existing and proposed floor area)

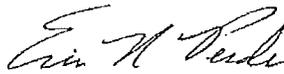
Please feel free to contact either of us with any questions you may have about this review.

Sincerely,

WSB & Associates, Inc.



Justin Messner, PE
City Engineer
651-286-8465
jmessner@wsbeng.com



Erin Perdu, AICP
City Planner
763-287-8316
eperdu@wsbeng.com

cc: Matt Pfahl, Property Owner
Lindy Crawford, City Administrator, City of Tonka Bay
Jim Penberthy, City Attorney, City of Tonka Bay



engineering • planning • environmental • construction

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

July 14, 2015

Melinda and Matthew Pfohl
248 Meadowbrook Road
Hopkins, MN 55343

Re: Variance Application for 165 Woodpecker Ridge Rd.
Tonka Bay, Minnesota
WSB Project No. 01987-460

Dear Mr. and Mrs. Pfohl,

On July 1, 2015 the City received a Variance Application for 165 Woodpecker Ridge Rd. I have reviewed for completeness the application to allow for the construction of a deck on the property located at 165 Woodpecker Ridge Rd. in Tonka Bay. I have determined that the application is complete.

Your application will be added to the August 11th, 2015 City Council meeting agenda. The meeting will include a public hearing on the proposed application.

Please feel free to contact me at 763-287-8316 or by email at eperdu@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 'Erin Perdu'.

Erin Perdu, AICP
City Planner

cc: Hans Frees, Outdoor Escapes (e-mail only)
Lindy Crawford, City Administrator (e-mail only)
James Penberthy, City Attorney (e-mail only)
Justin Messner, City Engineer (e-mail only)