

# CITY OF TONKA BAY ITEM NO. 7A

## Tonka Bay City Council Agenda Item Executive Summary

*Title of Item:* **VARIANCE REQUEST:** Application from Richard and Amy Gammill requesting a variance from the required 15-foot flood plain buffer around all extended structures for the purpose of constructing an addition to the existing home at 62 Pleasant Avenue – R-1A zoning –PID: 28-117-23-31-0061

*Meeting Date:* **June 12, 2012**

*Staff/Guest* Jack Corkle, AICP, PTP – Interim City Planner  
*Reporting:* Justin Messner, PE – City Engineer

*Summary:* The applicant is seeking to construct an addition to the home at 62 Pleasant Avenue. All aspects of the proposed plan are conforming to code requirements with the exception of the flood plain buffer. Accordingly, the only variance request is as follows:

1. **A 6.83-foot variance from the required 15-foot flood plain buffer** around all extended structures.

In this case, the addition meets the required 8' side yard setback, but a portion of the required 15' buffer would fall onto adjacent property. The City Engineer has reviewed the proposed plans and found they will adequately protect the home and will not negatively impact the flood plain.

*Recommendation:* Staff is recommending approval of the requested flood plain buffer variance based on the findings of fact listed in the report (pg 6) subject to proposed conditions (pages 6 and 7).

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

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*To:* **City Council**

*From:* Jack Corkle, AICP, PTP – Interim City Planner  
Justin Messner, PE – City Engineer

*Meeting Date:* May 22<sup>nd</sup>, 2012

*Applicant:* Richard and Amy Gammill

*Owner:* Richard and Amy Gammill

*Location:* 62 Pleasant Avenue

*Zoning:* R-1A

**Introductory Information**

**Proposed Project:** The applicant is seeking to construct an addition to the existing home at 62 Pleasant Avenue.

**Variance Request(s):** The proposed action will require the following variance:  
1. A 6.83-foot variance from the required **15-foot flood plain buffer**.

**Pre-application Notes:** The homeowners completed a pre-application review and we were able to address hardcover, height, and floor area ratio questions prior to receiving this application. The applicant meets all requirements of the city's ordinances with the exception of the flood plain buffer.

**Findings**

**Site Data:** Lot Size – 33,225 square feet  
Existing Use – Single Family Home  
Existing Zoning – R-1A  
Property Identification Number (PID): 28-117-23-31-0061

**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.

**Building Height:**

- The proposed addition will not exceed the maximum height of 30 feet as measured from the average ground level. As such, a variance for building height is not necessary.

***Flood Plain Buffer:***

- RFPE = 933.5; fill within 15' of the proposed renovations must be at or above 932.5
- The applicant is conforming to this requirement on the subject property; however, there will be areas within 15 feet of the structure that fall on adjacent property, which cannot be corrected. By code, this will require a variance.

***Floor Area Ratio:***

- The maximum floor area ratio permitted by code in the R-1A district is 30 percent.
- Based on a lot size of 33,225 square feet, the maximum total floor area for a home and its associated accessory structures on this lot would be 9,967.5 square feet.  
(33,225 \* 30 percent = 9,967.5 square feet)
- According to the submitted documentation, the existing home, accessory structures and proposed addition will be less than 9,967 square feet. Therefore, the proposed addition is in conformance with the City Code.

***Hardcover Analysis:***

- The maximum hardcover permitted on this lot without any review is 25 percent; hardcover between 25 percent and 35 percent can be administratively approved by the City Engineer and City Administrator; and hardcover over 35 percent requires a CUP and/or a variance.
- The applicants are proposing hardcover in the amount of 8,090 square feet (24.3 percent) which would be in conformance with the code without additional review and approval.

***Application Review:***

***Applicable Code Definitions:***

**Addition.** Any physical enlargement of an existing structure.

**Dwelling.** A building or portion thereof, designated exclusively for residential occupancy, including one-family, two-family, and multiple family dwellings, but not including hotels, motels, boarding houses, or manufactured housing.

**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:** **Section 1040 (4.2) Standards for Flood Plain Permitted Uses.** Requires that the finished fill elevation around structures be no lower than one foot below the regulatory flood protection elevation and shall extend at such elevation at least 15' beyond the limits of the structure.

**Variance Criteria Review:** By state statute, there are three definitive criteria that all variances must address: consistency with the ordinance, consistency with the comprehensive plan, and the establishment of "practical difficulties."

Staff's analysis of the request 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.*

The flood plain buffer requirement is intended to ensure a property owner can access the structure in the event of a flood. In this case, due to the topography, the lot would always be accessible in the event of a flood. The need for a full 15' peripheral buffer is therefore unnecessary. Staff finds this **criteria is met.**

2. *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 plan also recognizes that redevelopment of existing homes is anticipated to continue in the future, and such improvements are encouraged. Staff finds the variance request **meets this criteria.**

3. *The property in question meets the "practical difficulties" test:*

- *The property owner proposes to use the property in a reasonable manner.*

The property owner is seeking to make improvements to the home by constructing an addition. The use of the property will remain the same. As the proposed use conforms to the allowed uses in the R-1A zoning district, the proposal is clearly reasonable. **Criteria met.**

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

The property owner does not own all property within 15' of the proposed addition, which conforms to all yard setbacks. It is not the property owner's fault that they do not have legal rights to change grade levels on adjacent private property. **Criteria met.**

- *The variance will maintain the essential character of the locality.*

The proposed addition will be in character with other homes within the neighborhood. It also meets all required setbacks. The proposed addition will fit exactly into the existing and expected character of the neighborhood. **Criteria met.**

***B. Criteria specific to floodplain variances:***

- 1.) *Will the variance result in increased flood levels or threats to public safety?*

Engineering has reviewed the proposed improvements and does not find reason to believe the proposed improvements would increase flood levels or any threat to public safety. **Criteria met.**

- 2.) *Is the variance the minimum necessary to afford relief?*

Yes, Any addition to the existing home structure on either side yard will approach the required side yard setbacks. **Criteria met.**

***C. City Tests:***

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

No. Granting the variance request will not diminish the amount of sunlight, nor prevent an adequate amount of air to reach the neighboring property.

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

No. The use of the property for a single family dwelling is not proposed to change as a result of the variance being requested. As such, the average number of daily trips expected from this property will not change. **Criteria met.**

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

No. The use of the property for a single family dwelling is not proposed to change as a result of the variance being requested. The possibility of fire will therefore not increase as a result of the variance request. **Criteria met.**

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

No. The proposed improvements to the home will undoubtedly increase the property value which in turn will support or boost the value of surrounding properties. Second, the intent of the 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.*

As engineering has determined the proposed plans will not impact either of the adjacent properties, staff does not foresee any way in which the requested variance will be in direct conflict with the above intent. **Criteria met.**

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

**Additional Information:**   The DNR hydrologist Jack Gleason was asked to comment on the application, and had no objections to the request.

### **Conclusion**

The following is a summary of the requested variance and staff's recommendations:

1. *A 6.83-foot variance from the required 15-foot flood plain buffer around all extended structures.*

**APPROVAL** based on the fact that the home will always be accessible in the event of a flood, and that the applicant doesn't own the land within 15 feet of the structure.

**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 ITEM and request additional information.

***Template Denial  
Motion:  
(not recommended)***

- The 60-day review period for this application expires on 7-4-12, but can be extended an additional 60 days if more time is needed.
- "I move that we direct staff to prepare a resolution of denial for the requested \_\_\_\_\_ variance based on the following findings of fact:"
- *(provide findings to support your conclusion)*

***Template Approval  
Motion:  
(RECOMMENDED)***

"I move that we direct staff to prepare a resolution of approval for the requested 8.63-foot floodplain buffer variance 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."

***Findings of Fact:***

1. The proposed addition to the home will be conforming to the anticipated use of the property and will meet all required setbacks, and therefore will fit the character of the existing neighborhood;
2. Topography in the area provides that the home will always be accessible in the event of a flood;
3. The landowner does not own all property within 15' of the proposed addition.
4. Engineering has reviewed the proposed improvements and does not find reason to believe the proposed improvements would increase flood levels or represent a threat to public safety.

***Recommended  
Conditions:***

1. The applicant shall obtain all necessary permits and approvals from the City and other applicable entities with jurisdiction prior to any construction.
2. The MCWD shall review and approve the final grading plans prior to any work being authorized (which may require an erosion control permit). Proof of MCWD approval shall be provided to the city prior to a building permit being authorized.
3. Construction shall follow the survey and plans as submitted or as

required to be updated by the City Engineer.

4. Building of structures shall not occur within any existing or proposed easements on the property.
5. The variance shall expire one year from the date of resolution; City Council approval will be required for any subsequent extension.