

Tonka Bay City Council Agenda Item
Executive Summary

Title of Item: **VARIANCE REQUESTS:** Application from Michael and Holli Johander requesting a 20-foot variance from the rear-yard setback for the house and a 4,695-square foot variance from the minimum required lot area of 20,000 square feet to allow for the construction of a new home at 245 West Point Road – R-1A zoning – PID: 22-117-23-33-0016

Meeting Date: **7-10-12**

60 Day Review deadline: **60 day period ends 8-6-12.**

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

Summary: The applicant received a demolition permit to remove the previous home in July, 2006. The site was immediately restored with the appropriate backfilling and site grading. After six years as a vacant lot, the property owners wish to construct a new home on the lot. Construction of the new home, based on the plans submitted by the property owner, will require two variances. In summary, the requested variances are as follows:

1. A **4,695-square foot variance to the minimum required lot area** of 20,000 square feet.
2. A **20-foot variance** from the required 25-foot rear yard setback for the house.

Staff believes that the applicant has met the Statutory and City Criteria for approving the variances. Staff has provided findings of fact for approval for all variances on page 7.

City of Tonka Bay Planning Department
Variance Report

To: City Council

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

Meeting Date: July 10, 2012

Applicant: Michael and Holli Johander

Owner: Michael and Holli Johander

Location: 245 West Point Road

Zoning: R-1A

Introductory Information

Proposed Project: The applicant is seeking to build a new home at 245 West Point Road.

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

1. A **4,695-square foot variance to the minimum required lot area** of 20,000 square feet.
2. A **20-foot variance** from the required 25-foot rear yard setback for the house.

Findings

Site Data: Lot Size – 15,305 square feet
Existing Use – Single Family Home
Existing Zoning – R-1A
Property Identification Number (PID): 22-117-23-33-0016

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:

- The lot area requirement in the R-1A District is 20,000 square feet. The lot of record is 15,305 square feet.
- The lot is a nonconforming lot of record and is allowed to be used for its intended zoning under city ordinances.
- State Statutes require a variance for lot area on properties within the shoreland district that do not meet setback requirements or have impervious surface coverage that exceeds 25 percent.

- Rear-Yard:**
- The rear-yard setback in the R-1A District is 25 feet.
 - The applicant is proposing a five-foot setback from the rear-yard.
- Hardcover:**
- 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.
 - The applicants are proposing hardcover in the amount of 5,173 square feet. Based on a lot size of 15,305 square feet, the hardcover on the lot is 33.8 percent.
 - The applicant proposes to install a storm water retention system, thereby satisfy the requirement that excess storm water be managed on site so long as the system design is approved by the City.
 - An engineering report has been submitted by the developer and has been reviewed and approved by the City Engineer.

Application Review:

Applicable Code Definitions:

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 (of Record). A parcel of land, whether subdivided or otherwise legally described, as of the effective date of this Ordinance, or approved by the City as a lot subsequent to such date and which is occupied by or intended for occupancy by one (1) principal building, or principal use together with any accessory buildings and such open spaces as required by this Ordinance and having its principal frontage on a street, or a proposed street approved by the Council.

Lot Area. The total land area of a horizontal plane within the lot lines.

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 (3) c. Principal structures in the R-1A Zoning District shall be setback not less than twenty-five (25) feet from the rear-yard lot line.

1011.02 General Building and Performance Requirements; subdivision (4)

d. Modifications which serve to alter the average and typical natural grade of an individual lot more than two (2) feet shall require the review of the City Engineer and approval of the City Council.

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:

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.” Presuming a request meets the statutory criteria, city code also requires that the proposal will NOT impair an adequate supply of light and air to adjacent property, unreasonably increase the congestion in the public street, increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property values within the neighborhood.

The requested variances include:

1. A **4,695- square foot variance to the minimum required lot area** of 20,000 square feet.
2. A **20-foot variance** from the required 25-foot rear yard setback for the house.

Staff’s analysis of these requests 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 request: State Statutes require the Applicants to apply for a lot area variance due to the amount of impervious surface on the site (exceeds 25 percent) and due to the fact the rear-yard setback requirement is not met. Under City Code, it would be treated as a non-conforming lot and would be allowed for single family use as long as the lot’s area and frontage were within 60 percent of the respective district’s requirements. The lot meets at least 60 percent of the district’s (R-1A) requirements.

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.

Prior to 2006, there was an existing single-family home on the property. The Applicant proposes to use the property in the same manner as it was previously. In addition, the property owner will be required to treat water run-off from the site to prevent run-off from going directly into the lake. Staff finds that a single-family home in this location would not contribute to overcrowding and that the applicant's water run-off treatment plan will prevent polluting the lake. **Criteria met.**

Rear yard setback request – principal structure: The intent of the rear-yard setback is to provide an adequate buffer between homes and to provide for areas of recreation on properties. The proposed home is located on a riparian lot. On riparian lots, the front yard serves as the rear-yard. As such, the property has adequate space for recreational activities and there is no crowding of homes. **Criteria met.**

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

All variance requests: The Comprehensive Plan calls for this area of the City to be used for single family dwellings, and for the development to occur in an orderly fashion in a manner best for the community. **Provided all other variance criteria are met, staff finds the variance requests will meet this criteria.**

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

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

All variance requests: The property owner is seeking to construct a single family detached home which is a permitted use in the R-1A district. As the proposed use conforms to the allowed uses in the R-1A district, and a home had previously been on the site, staff finds the use reasonable. **Criteria met.**

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

Lot Area: The subject property is 15,305 square feet. City code allows for the use of the property as a single-family lot as long as 60 percent of the R-1A district's lot area is met. The property exceeds the 60 percent requirement, and as such, should be allowed to be used for a home. It should be noted that the property was a platted lot of record when the City increased lot requirements to 20,000 square feet. This was not a situation created by the current land owner. **Criteria met.**

Rear yard setback request: The Applicant is proposing a 5-foot rear yard setback instead of the required 25-foot setback. The lot in which the property owner is building on is narrow and long. It also slopes from the rear lot line towards the lake. Adjacent properties are also

longer lots with homes set back a distance of more than 50 feet from the ordinary high water level. These factors together reduce the building area where a home can be located.

Because adjacent homes are set back beyond 50 feet from the ordinary high water level, the applicants' home also needs to be set further back. This pushes any proposed home closer to the rear yard setback. Additionally, the slope of the property requires the home to be situated closer to the rear-yard to prevent drainage into the home.

The applicants did not create/plat the lot or alter its topography to create the slope that exists. Staff finds the circumstances unique to the property and not created by the landowner. **Criteria met.**

- c.) *The variance will maintain the essential character of the locality.*
All variance requests: The proposed new home will be consistent with other homes in the neighborhood and will maintain the character of the locality. **Staff finds the 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 home will meet the height and side yard setback requirements of the City Code. Granting all variances would in no way impair an adequate supply of light and air from reaching adjacent properties. **Criteria met.**

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

All variance requests: No. Although the property is currently vacant, the use of the property for a single family dwelling is not anticipated to unreasonably increase congestion in the public street. **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?*

The proposed construction of the home will 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.**

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

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

Engineering Reports: As noted previously, calculations for this property indicate that approximately 33.8 percent of the property is hardcover. This exceeds the 25 percent maximum and requires approval from the City Engineer and City Administrator. An engineering report has been submitted by the developer and has been reviewed and approved by the City Engineer. An agreement has been prepared between the property owner and the City of Tonka Bay for constructing and maintaining the proposed storm water retention system. Please note, both property owners' names will be on the final agreement. (Exhibit B - Agreement)

The City Code requires the City Engineer to review grading modifications which alter the natural grade of the lot more than two feet. The Code also requires approval of the City Council. The City Engineer has reviewed the proposed modifications and has indicated that the alterations should not result in water draining onto adjacent parcels or water negatively impacting the home site.

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 8-6-12. An extension letter may be sent to the applicant and the home owners. A final decision MUST be made prior to 10-4-12.

**Template Denial
Motion:
(Not Recommended)**

I move that we direct staff to prepare a resolution of denial for the requested variance(s) based on the following findings of fact:”

- (Provide findings to support conclusion)

**Template Approval
Motion:
(Recommended)**

“I move that we direct staff to prepare a resolution of approval for the requested lot size variance and rear-yard 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”.

- a. The proposed use as a single-family home is consistent with the comprehensive plan.
- b. Granting the variances will not impair an adequate supply of light and air to adjacent parcels. The height of the home does not exceed Code requirements and the side yard setbacks are met.
- c. Granting the variances will not unreasonably increase congestion in the public street. The proposed use is a single family home which will not generate traffic volumes that would 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. Constructing a new home on a vacant lot should increase property values in the neighborhood.
- f. Granting the variances will not alter the essential character of the locality. Constructing a home on a vacant lot will bring the property more into conformance with the neighborhood. A number of the homes on West Point Road in the neighborhood have rear yard setbacks that are less than what is currently required by City Code. The proposed home will fit in with other homes in the neighborhood.
- g. The proposed use as a single-family home is a reasonable use for the property. It is how the property is zoned and it is how the property has been used in the past.
- h. The topography of the site and the size of the parcel were not created by the current owners. These are circumstances unique to the property.

- i. The variance requests are in harmony with the general intent of the ordinance. The ordinance permits single-family homes that meet 60 percent of the district's requirements. Overcrowding of homes will not occur. The ordinance requires the property owner to treat water runoff due to the fact that there is more than 25 percent impervious surface on the lot.
- j. Grading on the site of more than two feet is not anticipated to result in drainage impacting adjacent parcels.

***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 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. A sump pump inspection must be completed by the City of Tonka Bay prior to C.O. being issued.
5. A water meter inspection must be completed by the City of Tonka Bay prior to C.O. being issued.
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. 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.
9. 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.
10. 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.
11. The variances shall expire one year from the date of the resolution. City Council approval will be required for any subsequent extension.