CITY OF TONKA BAY
ITEM NO. 7A

Tonka Bay City Council Agenda Item
Executive Summary

Title of Item: **VARIANCE REQUESTS:** Application from Chris and Alison Schmidt requesting a variance from both side setbacks, a variance to allow an air conditioning unit within the side yard setback, a variance from the rear yard setback, a variance from the front yard setback, a variance from the 15 foot floodplain buffer, a variance from the minimum lot size, a conditional use permit to exceed the amount of allowable impervious surface and a conditional use permit to exceed the allowable floor area ratio to allow for the construction of a new home at 45 West Point Avenue – R-1A zoning – PID: 22-117-23-32-0016

Meeting Date: **11-27-12**

60 Day Review deadline: **60 day period ends 12-22-12**

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

Summary: The applicants wish to tear down and rebuild their existing single-family home. The applicants site numerous reasons including structural problems, mold, and a growing family size as reasons for the proposed project. Construction of the new home, based on the plans submitted by the property owners, will require seven variances and two conditional use permits. In summary, the requested variances and conditional use permits are as follows:

1. A **5-foot variance** from the required side yard setback along the north property line.
2. A **0.83-foot variance** from the required side yard setback along the south property line.
3. A **3.5-foot variance** to allow an air conditioning unit within the required side yard setback along the north property line.
4. A **14.5-foot variance** from the required rear yard setback.
5. A **12-foot variance** from the required front yard setback.
6. A **variance** from the required 15 foot floodplain buffer.
7. A **7,237- square foot** variance to the required minimum lot size in the R-1A zoning district.
8. A **conditional use permit** to authorize an **18.4% increase** to the allowed impervious surface totaling 43.2%.
9. A **conditional use permit** to authorize a **13.2% increase** to the allowed floor area ratio totaling 43.4%.

Staff believes that the applicant has met the Statutory and City Criteria for approving all variances and conditional use permits. Staff has provided a template approval motion on page 13 as well as findings of fact for approval for all variances and conditional use permits.

City of Tonka Bay Planning Department
Variance Report

To: **City Council**

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

Meeting Date: **November 27, 2012**

Applicant: Chris and Alison Schmidt

Owner: Chris and Alison Schmidt

Location: **45 West Point Avenue**

Zoning: **R-1A**

Introductory Information

Proposed Project: The applicant is seeking to tear down the existing home and build a new home at 45 West Point Avenue.

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

1. A **5-foot variance** from the required side yard setback along the north property line.
2. A **0.83-foot variance** from the required side yard setback along the south property line.
3. A **3.5-foot variance** to allow an air conditioning unit within the required side yard setback along the north property line.
4. A **14.5-foot variance** from the required rear yard setback.
5. A **12-foot variance** from the required front yard setback.
6. A **variance** from the required 15 foot floodplain buffer.
7. A **7,237-square foot** variance to the required minimum lot size in the R-1A zoning district.

CUP Request(s): The proposed action will require the following conditional use permits:

1. An **18.4% increase** to the allowed impervious surface.
2. A **13.2% increase** to the allowed floor area ratio (FAR)

Findings

Site Data:	Lot Size – 12,763 square feet Existing Use – Single Family Home Existing Zoning – R-1A Property Identification Number (PID): 22-117-23-32-0016
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.
Side Yard:	▪ The required side yard setback in the R-1A District is 8 feet for interior lots. ▪ The applicant is proposing a 3-foot setback from the north side lot line and a 7.17-foot setback from the south side lot line. ▪ A 5-foot side yard variance will be necessary from the north property line. ▪ A 0.83-foot side yard variance will be necessary from the south property line.
AC Unit:	▪ Mechanical equipment such as air conditioning units are required to meet principal structure setbacks. ▪ The side yard setback in the R-1A district is 8 feet for interior lots. ▪ The applicant is proposing the AC unit 4.5-feet from the side yard. ▪ A 3.5-foot side yard variance will be necessary.
Rear Yard:	▪ The required rear yard setback in the R-1A district is 25 feet. ▪ The applicant is proposing a 10.5-foot setback from the rear yard. ▪ A 14.5-foot variance will be necessary.
Front Yard:	▪ The required front yard setback in the R-1A district is the greater of 50 feet or the average setback of the two adjacent principal structures. ▪ The two adjacent principal structures are set back 70.83 feet and 67.58 feet, which results in an average setback of 69.2 feet. ▪ The applicant is proposing a 57.25-foot setback from the OHW level to the proposed terrace and 62.73 feet from the OHW level to the home. ▪ A 12-foot front yard variance will be necessary.
Floodplain Buffer:	▪ RFPE = 933.5; fill within 15' of the proposed renovations must be at or above 932.5. ▪ There are areas within 15' of the home that are below the RFPE. In addition, 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.
Lot Area:	▪ The lot area requirement in the R-1A District is 20,000 square feet. The lot of record is 12,763 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.

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 a shoreland impact plan is submitted and conditional use permit is approved. ▪ The applicants are proposing hardcover in the amount of 5,533 square feet, which is 43.4 percent of the lot. ▪ The applicant proposes to install a series of storm water treatment systems, thereby satisfy the requirement that storm water runoff be treated on site so long as the system design is approved by the City. ▪ A Shoreland Impact Plan has been submitted by the developer and has been reviewed and approved by the City Engineer. ▪ A conditional use permit will be required.
Floor Area Ratio:	▪ The allowed FAR in the R-1A zoning district is 0.30. ▪ Based on a lot size of 12,763 sq. ft. the maximum floor area of the home will be 3,828.9 square feet. ▪ The applicants are proposing floor area in the amount of 5,510 which equates to an FAR of 43.2 percent. ▪ 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. **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 (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.

Regulatory Flood Protection Elevation. The regulatory flood protection elevation shall be an elevation no lower than two feet above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway. For purposes of this paragraph "regional flood" means the same as the 100-year floodplain elevation for Lake Minnetonka which is 931.5' (NGVD 1929).

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) b. Principal structures in the R-1A Zoning District shall be setback not less than eight (8) feet from the side-yard lot line.

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.

1011.03 General Yard, Lot Area and Building Regulations; subdivision (5) d. For riparian lots, no principal structure or building addition shall be located closer to the ordinary high water mark than the greater of fifty (50) feet, or the average setback of the two adjacent riparian principal structures on either side of a proposed building site. In all circumstances the setback shall be established by measuring the distance from the ordinary high water level to the part of the said principal structure that is closest to the lake.

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.

1040 Section 4.0 Permitted Uses and Standards; subdivision (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 protection elevation and shall extend at such elevation at least 15' beyond the limits of the structure constructed thereon. All buildings within the floodplain shall have the lowest door or window opening at an elevation of at least 933.5' (NGVD 1929).

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.

1017.07 Lot Coverage and Height; subdivision (1). The maximum floor area ratio (FAR) shall be 0.30 or as allowed by conditional use permit with the conditions specified in Section 1003.01 Subd. 8 of this Ordinance.

1011.04 Accessory Buildings, Structures, Uses and Equipment; subdivision (1) I. Accessory buildings, uses or equipment such as air conditioning cooling structures or condensers, satellite dishes and fish houses shall be located only within the principal structure setback requirements and shall be screened from view in accordance with Section 1011.05 of this Ordinance.

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 **5-foot variance** from the required side yard setback along the north property line.

2. A **0.83-foot variance** from the required side yard setback along the

south property line.

3. A **3.5-foot variance** to allow an air conditioning unit within the required side yard setback along the north property line.

4. A **14.5-foot variance** from the required rear yard setback.

5. A **12-foot variance** from the required front yard setback.

6. A **variance** from the required 15 foot floodplain buffer.

7. A **7,237-square foot** variance to the required minimum lot size in the R-1A zoning district.

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.*

   Side yard: The intent of the side yard setback requirement is to prevent overcrowding and to prevent the blocking of light and air from reaching adjacent properties. Although the subject lot meets the minimum width required for lots in the R-1A zoning district, the lot does not meet the required lot area and is considered a legal non-conforming lot. In the case of an applicant not meeting the side yard setback, staff would normally look for alternatives to build in other directions. However, the proposed home does not meet the setbacks for any of the lot lines, including the lake side, leaving no other areas to build which would not require a variance. In addition the existing home and garage encroach on the required side yard setback on both side property lines. The proposed home would actually decrease the encroachment on both side yards from what exists today. Given that the home to the north is 24.8 feet from the side lot line, staff finds that the home in its proposed location would not be detrimental to the neighboring property. On the south side of the property, only a 0.83 foot variance is required for the home. The existing detached garage, which does not meet the required setback along the south property line, would also be removed and reduce the impact to the neighboring property. **Criteria met.**

   Air Conditioning Unit: The intent of the ordinance is to prevent mechanical equipment from becoming a nuisance to adjacent property owners. The code requires that air conditioning units be located at least 8 feet from the side lot line. The applicant has proposed to locate the air conditioning unit 4.5 feet from the side property line. The proposed location presents the most logical location to place the air conditioning unit for the applicant. The unit will be required to be screened and should not result in any adverse effects to the neighboring property owner. **Criteria met.**

Rear yard: For riparian lots, the rear yard is that opposite of the lake side. The intent of the ordinance is to keep structures a reasonable distance from the street. The applicants have proposed to locate the attached garage 10.5 feet from the rear lot line. The code requires that principal structures in the R-1A zoning district be at least 25 feet from the rear lot line. The applicants currently have a detached garage that is only 14.7 feet from the rear lot line; however, it is considered an accessory structure and accessory structures are allowed to be 8 feet from the rear lot line. The applicants wish to have an attached garage and have oriented it in such a way that that they will not have to back out directly into the street as they do currently which should improve the visibility and safety of automobile movements.

In addition, the large lakeshore setbacks of the two adjacent homes forces the applicants to have their home setback farther from the lake, pushing the proposed home farther into the rear yard setback. Given the circumstances, staff finds the **criteria met.**

Front yard: For riparian lots, the lake side is considered the front yard. The intent of the shoreland ordinance is to reduce the effects of overcrowding, to prevent pollution of waters, to minimize flooding, to maintain property values and to maintain the natural characteristics of the shoreland. The applicants have proposed to locate the home 57.25 feet from the OHW Level. The code requires the larger of 50 feet or the average setback of the two adjacent structures. The two adjacent structures are setback 70.83 feet and 67.58 feet, which results in an average setback of 69.2 feet. Staff finds this to be larger than what is commonly required by code, and is not caused by the property owner. Although the proposed terrace is only 57.25 feet from the OHW level, this should not diminish site lines from neighboring properties, as the terrace will not be covered beyond the 69.2 foot setback. The corner of the home is actually setback five feet farther at 62.73 feet. Staff finds this to be a reasonable setback given that the home also does not meet the rear yard setback requirement and cannot be pushed farther back. **Criteria met.**

Floodplain buffer: The flood plain buffer requirement is intended to ensure a property owner can access the structure in the event of a flood. There are portions of the required 15' buffer that would fall below the required RFPE, as well as portions that would fall on adjacent property. The proposed home's low floor will be at the RFPE, and all portions of the home are above the flood plain elevation. While the proposed buffer is smaller than is generally required by code, the home should still be accessible in the event of a flood. The City Engineer has reviewed the proposed plans and found they will adequately protect the home and will not negatively impact the floodplain. **Criteria met.**

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 that front, rear and side-yard setback requirements are 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.

There is an existing single-family home on the property. The Applicant proposes to use the property in the same manner as it is currently. 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 storm water run-off treatment plan will prevent polluting the lake. **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.*

   All setback requests: The applicants' ability to meet all setback requirements is challenged by the fact that the size of the lot is 7,237 square feet smaller than what is required. Because the adjacent homes are setback more than 50 feet from the lake, the applicants must also have their home set farther back. This pushes the proposed home closer to the rear yard setback which reduces the building area where a home can be located. The size of the lot and the setbacks of the adjacent homes are not the fault of the property owner. **Criteria met.**

   AC Unit: Staff believes that the AC unit should be located in the side yard. Given that the home does not meet any of the setback requirements, the proposed location is the most reasonable and takes

advantage of screening from the home. The AC unit will be screened from view of the adjacent property and should not result as a nuisance to the neighboring property owner.

Floodplain buffer: The low elevation of the property presents a hardship that is not the fault of the property owner. The result is that areas within 15' of the proposed home do not meet the RFPE. The applicants have submitted a shoreland impact plan that addresses storm water issues on the site which has been approved by the City Engineer. **Criteria met.**

Lot Area: The subject property is 12,763 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.**

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. **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 height of the proposed home will be five feet below the maximum allowed by the City Code. The home on the adjacent property to the north is at least 24.79 feet from the side property line and should not be negatively impacted in terms of light and air from the proposed home. Although the home will be moving closer to the south side property line, it will only encroach the required setback by 0.83 feet. In addition, the existing garage, which encroaches the required side yard setback along the south property line will also be removed. 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. The current use of the property is for a single family home which will not change as a result of granting the variances. **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.**

CUP Reviews: The requested conditional use permits with this application are:

1. An **18.4% increase** to the allowed impervious surface.
2. A **13.2% increase** to the allowed floor area ratio (FAR)

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.*

Both requests: The Comprehensive Plan guides this area for low density single family residential development between 0 and 2.9 units per acre. The plan recognizes that "housing conditions have improved and are likely to continue to improve during the next 20 years as deteriorating and obsolete units are replaced with new units." Specific to *housing redevelopment,* the Comprehensive Plan states that the City should continue to provide a smooth transition from cottage/obsolete housing on some lots (usually small lots) to new housing." The stated housing goal is: "Housing Quality and Preservation: Retain the highly valued neighborhood qualities and preserve the City's housing." One of the corresponding policies for that goal is to "support housing rehabilitation, remodeling, and some new construction through redevelopment."

In summary, all language relating to housing shows an expectation that existing homes will continue to be replaced or rehabilitated throughout Tonka Bay in the coming years. The City's role in this transition is to ensure that such change occurs smoothly and in a manner that protects the existing neighborhood qualities (examined below). **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.*

Both requests: Numerous homes in Tonka Bay were constructed prior to the adoption of the FAR and impervious surface requirement and are legally non-conforming. Part of the reason the home does not meet the FAR requirement is because the lot does not meet the minimum lot area requirement, which places a hardship on the property owner. The size of the home is not out of scale with the neighborhood or other homes in Tonka Bay. The amount of impervious surface found on the property is also not uncommon. In the future, staff believes that other residents will make similar request to improve their homes. **Criteria met.**

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

Both requests: This requirement relates more to "use" requests vs. a CUP requesting a deviation from the Code. **Staff does not believe this criteria applies in this case.**

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

Both requests: 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 were constructed prior to the FAR requirement and are legally non-conforming. The size of the proposed home is not out of scale with the neighborhood or other homes in Tonka Bay. In addition, the amount of impervious surface is decreasing from what exists today, which will increase green space and contribute to the

character of the area. **Criteria met.**

5. *The demonstrated need for such use*

   The applicants have stated that the existing home is no longer able to accommodate the size of their family. The applicants' family has grown from three to six since the home was purchased. In addition, the home has several structural deficiencies, including poor siding, water issues, mold and poor insulation. Rather than fix everything wrong with the home, the applicants have decided that rebuilding is the more logical approach to achieve the home they desire while staying in Tonka Bay. **Criteria met**

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

   The proposed construction of the home will increase the property value, which in turn will support or boost the value of neighboring properties. **Criteria met.**

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

   The existing home is currently utilizing city services and the FAR change will not impact the City's service capacity. In addition, because the amount of impervious surface decreases with the proposed project, there will be less storm water runoff. **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 43.4 percent of the property is hardcover. This exceeds the 25 percent maximum and requires approval from the City Engineer and City Administrator. A Shoreland Impact Plan 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 treatment system. (Exhibit A - Agreement)

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 12-22-12. An extension letter may be sent to the applicant and the home owners. A final decision MUST be made prior to 2-20-12.

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

Template Denial Motion: (Not Recommended) "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:"

- (Provide findings to support conclusion)

Template Approval Motion: (Recommended) "I move that we direct staff to prepare a resolution of approval for the requested variances to the side, rear and front yard setbacks, the setback for the air conditioning unit, the floodplain buffer, and for the lot size, as well as the requested conditional use permits to exceed the allowable amount of impervious surface and floor area ratio 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.
c. Granting the variances will not increase congestion in the public street. The use of the property as a single family 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. Constructing a new home on the lot should increase property values in the neighborhood.
f. Granting the variances will not alter the essential character of the locality. A number of the homes on West Point Avenue in the neighborhood have front, rear and side 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 is currently used.
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. Overhangs or eaves shall not project more than two (2) feet into a required yards. The Plans must be modified accordingly prior to issuance of a building permit. Construction shall follow the survey and plans as modified or as otherwise 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.