

**CITY OF TONKA BAY  
ITEM NO. 7A**

Tonka Bay City Council Agenda  
Executive Summary

*Title of Item:* **VARIANCE REQUESTS:** Application from Ike Daughenbaugh of Heritage Builders, Inc. on behalf of Michael Schultz requesting a variance from the required 20,000 square feet lot size requirement and a variance from the side yard setback for a second story home addition at 4330 Manitou Road – R1A zoning – PID: 21.117.23.42.0026.

*Meeting Date:* **02-11-14**

*60 Day Review  
deadline:* **60 day period ends 02-28-14**

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

*Summary:* The applicant is seeking to construct a 639 square foot, second story addition to an existing principal structure. In summary, the requested variances are as follows:

1. A **variance of 1,734 square feet from the required 20,000 square foot lot size.**
2. A **5.7-foot variance** from the required 12-foot interior side yard setback for the addition of a second story with a 2-foot roof overhang located 6.3 feet from the interior side property line.

*Decision Points:* Staff has provided template approval and denial motions on page 7. Staff has indicated findings of fact for approval for all variances. If the variances Staff has indicated meet the variance criteria are to be denied, findings of fact for denial will need to be determined at the Public Hearing.

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

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*To:* **City Council**

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

*Meeting Date:* **February 11, 2014**

*Applicant:* Ike Daughenbaugh

*Owner:* Michael Schultz

*Location:* **4330 Manitou Road**

*Zoning:* **R-1A**

**Introductory Information**

*Proposed Project:* The applicant is seeking to construct a second story addition to an existing primary structure.

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

1. A **variance of 1,734 square feet from the required 20,000 square foot lot size.**
2. A **5.7-foot variance** from the required 12-foot interior side yard setback for the addition of a second story with a 2-foot roof overhang located 6.3 feet from the interior side property line.

**Findings**

*Site Data:* Lot Size – 18,266 square feet  
Existing Use – Single Family  
Existing Zoning – R-1A  
Property Identification Number (PID): 21.117.23.42.0026

*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 Setback Analysis:*

- The existing home is considered a lawful non-conforming, non-income producing residential unit, which if expanded to include a second story must be constructed with a minimum side yard setback 1-1/2 times greater than the required setback of the district. As such, a 12-foot interior side yard setback is required.
- The building wall of the existing home currently is, and the proposed second story addition will be, 8.5-feet from the side property line.
- Eaves of a home are a permitted encroachment on yard setback requirements provided they do not extend more than two (2) feet into a required yard, which is what the Applicant is proposing for the second story addition.

***Building Height:***

- Since the home is located within the required yard, a 5.7-foot variance is required to allow the home to be constructed with a 2-foot roof overhang that will be located 6.3-feet from the interior side property line.
- Section 1002.02, Subd. 1, B defines Building Height, Principal Buildings as “the height of principal buildings measured from the average ground level prior to construction to the top cornice line of a flat and mansard roof, to the uppermost point on a shed, round or other arch-type roof, or to the average height of the highest gable of a pitched or hipped roof.”
- Principal buildings are limited to a maximum height of two and one-half (2 ½) stories or thirty (30) feet.
- The proposed building height of the second story addition is 24’6”+/- which complies with Section 1017.07, Subd. 3.
- Furthermore, the top peak of any portion of roof shall not exceed the allowable building height by more than five (5) feet without a conditional use permit. The top of peak proposed for the second story addition is 29’10”.
- A variance is not needed, nor is a conditional use permit.

***Floor Area Ratio:***

- The allowed FAR in the R-1A zoning district is 0.30
- Based on a lot size of 18,266 square feet, the maximum floor area for a home on this lot is 5,479.8 square feet.
- According to the submitted plan sets, the proposed area of the home will be 2,077 square feet. This calculation includes the existing structure and all proposed additions.
- Based on the information provided, the proposed home would have a FAR of 0.114 (2,077 / 18,266 = 0.114). A variance is not needed.

***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 4,863 square feet. Based on a lot size of 18,266 square feet, the hardcover on the lot is 26.6 percent.
- The City Engineer and City Administrator have reviewed the plans and have administratively approved the hardcover.

***Application Review:***

***Applicable Code  
Definitions:***

**Building Line.** A line parallel to the street right-of-way, or the ordinary high water level at any story level of a building and representing the minimum distance which all or any part of the building is set back from said right-of-way.

**Building Height, Principal Buildings.** The height of principal buildings measured from the average ground level prior to construction to the top cornice line of a flat and mansard roof, to the uppermost point on a shed, round or other

arch-type roof, or to the average height of the highest gable of a pitched or hipped roof.

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

**Floor Area, Gross.** The sum of the gross horizontal areas of all floors of the building or portion thereof devoted to a particular use, including accessory storage areas located within selling or working space such as activities, to the production or processing of goods, or to business or professional offices. However, the floor area shall not include basement or cellar floor area other than area devoted to retailing activities, the production or processing of goods, or to business or professional offices. The floor area of a residence shall not include the cellar area.

**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.

**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 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 Subdivision (2)(e).** Lawful non-conforming, non-income producing residential units may be expanded provided that such expansion meets all setback requirements and if the expansion includes the construction of a second story, the second story construction shall have a minimum setback of one and on-half (1-1/2) times greater than the required side yard or street yard setback on lakeshore lots, or rear yard setback on non-lakeshore lots for that district.

**1011.03 General Yard, Lot Area and Building Regulations. Subdivision 5. b.1.**

b. The following shall not be considered as encroachments on yard setback

requirements:

1. Chimneys, flues, leaders, sills, pilasters, lintels, ornamental features, cornices, eaves, gutters, and the like, provided they do not project more than two (2) feet into a required yard.

**1017.06 Lot area and setback requirements. Subdivision 1.** Lot Area. Not less than twenty thousand (20,000) square feet.

**1017.06 Subdivision (3)(b)(1)** Side yards setbacks of interior lots not less than eight (8) feet.

*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 **variance of 1,734 square feet from the required 20,000 square foot lot size.**
2. A **5.7-foot variance** from the required 12-foot interior side yard setback for the addition of a second story with a 2-foot roof overhang located 6.3 feet from the interior side property line.

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.*

Required Lot Size: 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 side-yard setback requirement is not met. Under the 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 home on the property. The Applicant proposes to use the property in the same manner as it was previously (as a single-family home). Staff finds that a second story addition to the existing home will not contribute to overcrowding, nor will it increase the amount of impervious surface on the lot and therefore will not further contribute to polluting the lake. **Criteria met.**

Interior lot side yard setback request for building – principal structure:

The side yard setback requirement is set forth to ensure proper spacing between structures. The existing home is located 8.5-feet from the interior side property line with a roof overhang located 5.9-feet from the property line. The proposed second story addition will be constructed directly above the existing home and will not encroach further into the side yard. If the existing home was to be completely removed, and a new home constructed in its place, the new home would be required to meet an 8-foot side yard setback (as opposed to a 12-foot setback). While the existing home is considered nonconforming due to its proximity to the side property line, the proposed second story addition will be constructed on a portion of the home that is further from the property line than if constructed onto other areas of the home, and is in keeping with the nature of the neighborhood and thus the intent of the ordinance. **Criteria met.**

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

Both 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.*

Both variance request: The Applicant is seeking to construct an addition to the existing single-family home which is a permitted use in the R-1A district. As the proposed use conforms to the allowed uses in the R1-A district, and a home has existing on the site for many years, staff finds the use reasonable. **Criteria met.**

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

Required Lot Size: The existing lot is 18,266 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 the minimum lot standards to 20,000 square feet. This was not a situation created by the current land

owner. **Criteria met.**

Interior lot side yard setback – principal structure:

The existing home was constructed on the site in a manner that does not meet the current setback requirements outlined in the City Code, and is generally located along the interior side property line. As a result, the existing home is considered a non-conforming structure, in which City Code requires the addition to have a greater setback. The proposed second story expansion is located in a manner that allows for the greatest side yard setback possible given the existing layout of the home. The lot is unique in that the existing home is located much closer to the ordinary high water level (OHWL) of Lake Minnetonka than the surrounding properties. Furthermore the lot itself is not a perfect rectangular shape as the property line runs in a diagonal manner and is not parallel with the existing home. Virtually any expansion of the existing structure would require a variance due to proximity to the property lines/setback limitations. **Criteria met.**

c) *The variance will maintain the essential character of the locality.*

Both variance requests: The proposed second story addition will be located 8.5-feet from the side property line (6.3-feet from the roof overhang) and will be located in the rear yard (street side) as opposed to the front yard (lake side) for which views of the lake will be preserved for neighboring properties. The proposed second story addition 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?*

Both variance requests: No. The proposed home will meet the height requirements of the City Code. Additionally, if the existing home was removed and a new home constructed in its place the proposed second story addition would exceed the minimum side yard setback requirement. Granting the variances would not 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?*

Both variance requests: No. The use of the property for a single-family dwelling is not proposed to change as a result of the variances being requested. As such, the average number of daily trips expected from this type of property will not change, nor will it unreasonably increase congestion in the public street. **Criteria met.**

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

Both variance requests: No. The use of the property as a single-family dwelling is not proposed to change as a result of the requested variances. It is not anticipated to increase the risk or endanger the public safety.

**Criteria met.**

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

Both variance requests: The proposed second story addition will increase the property value, which in turn will support or boost the value of nearby properties. 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:**

- A neighbor has raised a concern requesting that the Council to be mindful of how older homes are treated as opposed to newly constructed home.

**Additional Information:**

- None.

**Engineering Report:**

As noted previously, calculations for this property indicate that approximately 26.6 percent of the property is hardcover. This exceeds the 25 percent maximum and requires approval from the City Engineer and City Administrator. The City Engineer and City Administrator have reviewed the Applicant's plans and have approved the 1.6% increase in hardcover.

**Conclusion**

**Council Options:**

The City Council has the following options:

- A) DIRECT STAFF TO PREPARE A RESOLUTION APPROVING ALL OF OR SOME OF THE REQUESTS (based on the applicant's submittals and findings of fact).
- B) DIRECT STAFF TO PREPARE A RESOLUTION DENYING ALL THE REQUESTS OR SOME OF 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 02-28-14. An extension letter has not been sent to the applicant and the home owners.

**Template Denial**

"I move that we direct staff to prepare a resolution of denial of the variance

**Motion:**  
**(not recommended)**

requests based on the following findings of fact:"  
1. Provide findings to support conclusion

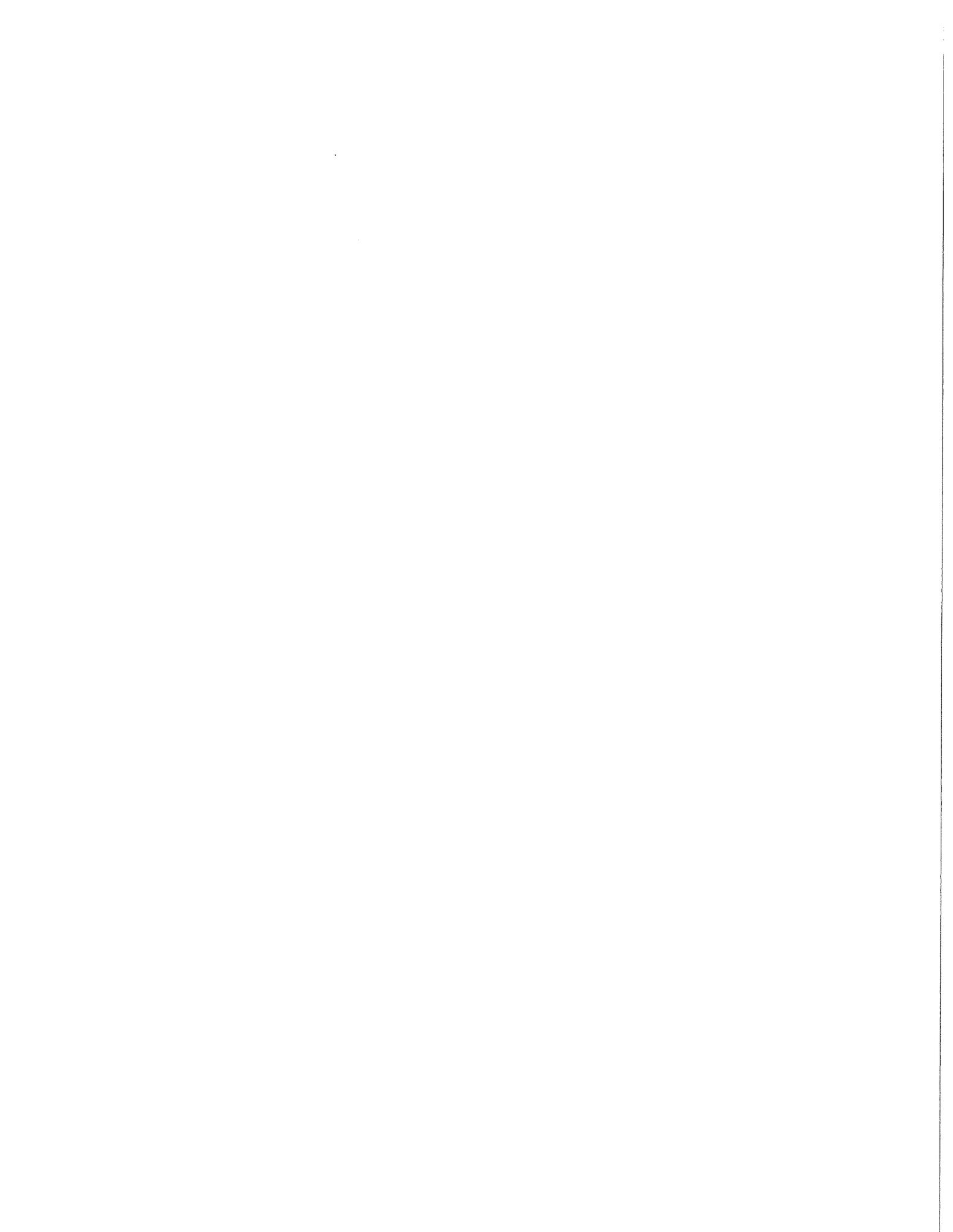
**Template Approval**  
**Motion:**  
**RECOMMENDED**

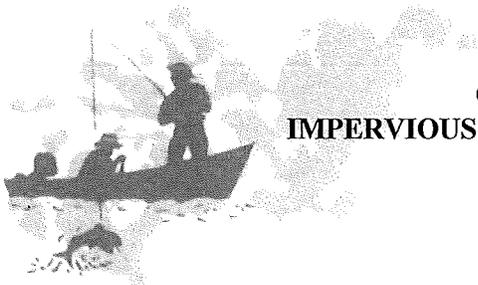
"I move that we direct staff to prepare a resolution of approval for the requested minimum lot size variance and a side yard setback variance for the second story addition based on the findings of fact listed in the report. Furthermore, the approval shall include the conditions listed within the staff report as may have been amended here tonight".

- a. The proposed use as a single-family home is consistent with the Comprehensive Plan.
- b. The proposed use as a single-family home is a reasonable use for the property, it is how the property is zoned and it how the property is currently being used.
- c. The existing location of the home was not created by the property owners, and is a circumstance unique to the property.
- d. The granting of the variance requests are in harmony with the general intent of the ordinance.
- e. Granting the variances will not impair an adequate supply of light and air to adjacent properties.
- f. 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.
- g. Granting the variances will not diminish or impair established property values in the neighborhood.
- h. The proposed second story addition will fit into the existing character of the neighborhood and will be completed in such a manner as to minimize impacts from property lines and adjacent properties.
- i. Engineering has reviewed the proposed improvements and does not find reason to believe the proposed improvements would pose a threat to public safety or cause drainage issues.

**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.
2. Construction shall follow the survey and plans as submitted or as required to be updated by the City.
3. Silt fencing shall be shown on the building permit plans and shall be subject to review and approval by the City Engineer.
4. The variances shall expire one year from the date of the resolution. City Council approval will be required for any subsequent extension.





**CITY OF TONKA BAY  
IMPERVIOUS SURFACE COVERAGE APPROVAL**

Property Address: 4330 Manitou Road  
Tonka Bay, MN 55331

Applicant: Ike Daughenbaugh

Property Owner: Michael Schultz

In Accordance with Sections 1011.02 Subd. 4.a. and 1070.11 Subd. 1a.1. of the City of Tonka Bay Zoning Ordinance, the City of Tonka Bay hereby approves the proposed impervious surface coverage based on the conditions described herein.

***Site Data:***

Lot Size - 18,266 square feet  
Proposed Hardcover - 4,863 square feet

The proposed improvements included a second story addition to the existing principal structure and do not alter existing grades or impervious surface coverage. Calculations for this property indicate that approximately 26.6 % of the property is impervious surface. This exceeds the 25 % maximum impervious surface coverage by 1.6 %.

***Proposed Conditions:***

Discharge to Public Waters - The existing grades and extensive landscaping as shown on the November 4, 2013 survey prepared by Egan, Field & Nowak, Inc. currently prevent storm water runoff from directly discharging to public waters.

Storm Water Treatment - The proposed gutter downspout locations and direction of flow indicated by Heritage Builders, Inc. on the attached plan utilizes the existing landscaping and green space to effectively treat storm water runoff through surface filtration as well as promote infiltration.

Approved: Joseph Kohlmann  
Joseph Kohlmann  
City Administrator

Approved: Justin Messner  
Justin Messner, P.E.  
City Engineer

Date: 2/6/14

Date: February 5, 2014