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ITEM 7B

CITY OF TONKA BAY MEMORANDUM

To:	*City Council Members* *Lindy Crawford, City Administrator*
From:	*Erin Perdu, AICP, City Planner* *Justin Messner, City Engineer*
Date:	*September 7, 2016* *City Council Regular Meeting for September 13, 2016*
WSB Project No.	*01987-670*
Request:	***Request for approval of variances from the required minimum lot size, minimum lot width, minimum rear yard setback, a conditional use permit to allow for excess floor area ratio, and a shoreland impact plan/conditional use permit to allow for excess impervious surface covered in order to construct a new single family home at 35 West Point Avenue – R-1A zoning, Shoreland Overlay – PID: 22-117-23-32-0017***

RECOMMENDATION

Staff recommends approval of lot width and area variances, denial of the rear setback variance and approval of *reduced* Conditional Use Permits for excess impervious coverage and FAR. Staff has provided a template motion on Page 6 as well as findings of fact.

GENERAL INFORMATION

Applicant:	Ann Jennings
Owners:	Ann Jennings
Location:	35 West Point Avenue
Existing Land Use /	Single-family Residential; zoned R-1A with a Shoreland Zoning: Overlay
Surrounding Land Use / Zoning:	North: Single-family; zoned R-1A, Shoreland Overlay West: Single-family; zoned R-1A, Shoreland Overlay South: Single-family; zoned R-1A, Shoreland Overlay East: Lake Minnetonka
Comprehensive Plan:	The Tonka Bay 2009-2030 Comprehensive Plan guides this lot for Single-family Residential use.

Deadline for Agency Action:	Application Date:	8/23/16
	60 Days:	10/22/16
	Extension Letter Mailed:	N/A
	120 Days:	12/21/16

CONSIDERATIONS RELATING TO THE REQUEST

1. **Overview.** The Applicants are requesting several variances and conditional use permits in order to replace the existing home on the lot with a new one.
    - Variance from the required minimum lot size; 12,961 square feet proposed where 20,000 square feet is required.
    - Variance from the required minimum lot width; 63 feet at building line is proposed where 75 feet is required.
    - Variance from the required minimum rear yard setback; 16 feet is proposed where 25 feet is required.
    - Shoreland Impact Plan and Conditional Use Permit to allow for excess impervious surface coverage; 44.8% is proposed where 25% is allowed. It should be noted that the existing hardcover on the lot is 48.1%, so the proposed hardcover is less than what currently exists.
    - Conditional Use Permit for excess Floor Area Ratio; 42.5% is proposed where 30% is allowed.

2. **Ordinance Authority.**

    1011.03 Riparian Lots; subdivision 5, d. states that 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.

    1017.06 Lot Area and Setback Requirements (in the R-1A District); subdivision 1 requires lot area be at least 20,000 square feet.

    1017.06 Lot Area and Setback Requirements (in the R-1A District); subdivision 2 requires lot width be at least 75 feet.

    1017.06 Lot Area and Setback Requirements (in the R-1A District); subdivision 3 requires an eight (8) foot side yard setback and a 25 foot rear yard setback for principal structures.

    1017.07 Flor Area Ratio; subdivision 1 allows for floor area ratio (FAR) to exceed 30% by approval of a Conditional Use Permit.

    1070.11 Impervious Surface Coverage (in the Shoreland District); subdivision 1, 2. allows for impervious surface coverage of 36 to 45 percent if a shoreland impact plan/conditional use permit is approved.

3. **Variance Review Criteria**

    <u>Statutory Criteria</u>

    1. *The request is in harmony with the general purpose and intent of this Ordinance.*
       Lot Area & Width Requests:
       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. In this instance the lot was originally platted narrower and smaller than the current ordinance requirements.

There is currently a single-family home on the property. The proposed new home is larger, but will allow the applicant to have a more modern, updated home similar in footprint to other homes in the neighborhood. Staff finds that the proposed single-family home would not contribute to overcrowding and therefore is in harmony with the general purposes and intent of the ordinance. **Criteria met.**

Setback Requests:
The intent of the setback requirements is to provide an adequate buffer between homes and to provide for areas of recreation/open space and stormwater drainage areas on properties. Allowing for a new home to be constructed will not go against the general purpose and intent of the setback requirements. **Criteria met.**

2. *The variance is consistent with the comprehensive plan.*
   All 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. Allowing for an updated single family home to be constructed on this site will not change the use and is consistent with the City's Comprehensive Plan in this manner. **Criteria met.**

3. *The property in question meets the "practical difficulties" test:*
   a) *The property owner proposes to use the property in a reasonable manner.*
      Rear Setback Request:
      The need for the rear setback variance arises due to a three-car garage being proposed. A two-car garage is what the ordinance requires and is more reasonable. The request for a rear setback variance to allow for a three-car garage is beyond a reasonable use. Staff recommends the applicants replace the proposed three-car garage with a two-car garage to eliminate the need for a rear setback variance, as such use is reasonable under the ordinance. **Criteria not met.**

      All Other Requests:
      The property owners are proposing to continue to use the property for a single family home as permitted in the R1-A zoning district. An updated single-family home, with a two-car garage, is a reasonable use. **Criteria met.**

   b) *There are unique circumstances to the property not created by the landowner.*
      Rear Setback Request:
      The need for the rear setback variance arises due to a three-car garage being proposed. There are no unique circumstances related to the property in relation to the rear setback. In fact, the only need for the variance is created by the Applicant's desire for a three-car garage rather than the two-car garage required by ordinance. **Criteria not met.**

      All Other Requests:
      The unique circumstances on this property are largely related to the extremely small size and narrowness of this lot that pre-dated the adoption of lot area and width standards. Constructing a modern, updated single family home on the property is extremely difficult without the need for variances. **Criteria met.**

c) *The variance will maintain the essential character of the locality.*
All Requests:
The essential character of the locality will not be negatively impacted as a result of approval of the requested variances. The proposed new home fits into the character of the area, as other dated homes in the area have been replaced with new ones. **Criteria met.**

City Tests

1. *Will the variance impair an adequate supply of light and air to adjacent property?*
Granting of the requested variances will not impair an adequate supply of light and air to adjacent property. **Criteria met.**

2. *Will the variance unreasonably increase the congestion in the public street?*
Granting of the requested variances will have no impact on congestion in the public street. **Criteria met.**

3. *Will the variance increase the danger of fire or endanger the public safety?*
Granting of the requested variances will not increase the danger of fire or endanger public safety. **Criteria met.**

4. *Will the variance unreasonably diminish or impair established property values within the neighborhood or in any way be contrary to the intent of the zoning ordinance?*
Granting of the requested variances should not have any impact on property values within the neighborhood. Staff does not find the requested variance to be contrary to the intent of the zoning ordinance. **Criteria met.**

4. CUP Review Criteria: Excess Floor Area Ratio

a. *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.* The Comprehensive Plan guides this area for low density single family residential development. Approving the request will not change the current use of the property as a single family home. **Criteria met.**

b. *The proposed site is or will be compatible with present and future land uses of the area.* The existing and future land use for the property is for single family residential. The proposed CUP does not change the land use and are consistent with the use of the surrounding neighborhood. **Criteria met.**

c. *The proposed use conforms to all performance standards contained herein* .The floor area ratio could be decreased slightly if the proposed three-car garage were changed to a two-car garage. It would not eliminate the need for a CUP, but would reduce the excess floor area ratio request. The current request is 42.45%. With a two-car garage instead of three, the request would be 40.60%. (Calculations based on reducing the length of the proposed three-car garage by ten feet). With the recommended change to the garage, the proposal meets the performance standards in the ordinance. **Criteria met.**

d. *The impact on character of the surrounding area.* The FAR requirements are intended to ensure that the scale of buildings constructed is appropriate in relation to the size of the lot and the surrounding area. In this case, the lot on which the single family home is to be constructed is small while the size of the proposed new home is relatively similar to neighboring structures. **Criteria met.**

e. *The demonstrated need for such use.* The proposed new home will replace the current dated one on the lot and will allow the property owners more functional use of the property. **Criteria met.**

f. *The proposed use will not tend to or actually depreciate the area in which it is proposed.* The proposed new home is in character with the neighborhood. Staff does not anticipate any negative impacts on surrounding property values. **Criteria met.**

g. *The proposed use can be accommodated with existing public services and will not overburden the City's service capacity.* The proposed CUP will have no impact on existing public services. **Criteria met.**

5. CUP Review Criteria: Excess Impervious Surface Coverage

a. *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.* The Comprehensive Plan guides this area for low density single family residential development. Approving the request will not change the current use of the property as a single family home. **Provided Council finds the other CUP criteria are met, staff finds the request is consistent with the goals and policies of the Comprehensive Plan.**

b. *The proposed site is or will be compatible with present and future land uses of the area.* The existing and future land use for the property is for single family residential. The proposed new home does not change the land use and is consistent with the use of the surrounding neighborhood. **Criteria met.**

c. *The proposed use conforms to all performance standards contained herein.* Some of the impervious surface coverage could be reduced by replacing the three-car garage with a two-car garage. It would not eliminate the need for a conditional use permit, but would require less excess impervious surface coverage. The current request is 44.80% impervious surface coverage. With a two-car garage, the request would be 42.94%. (Calculations based on reducing the length of the proposed three-car garage by ten feet). With the recommended change to the garage, the proposal meets the performance standards in the ordinance. **Criteria met.**

d. *The impact on character of the surrounding area.* The proposed conditional use will not have any negative impact on the character of the surrounding area. **Criteria met.**

e. *The demonstrated need for such use.* The proposed new home is relatively modest in size and increases the living space of the home to be more in character with similar properties. **Criteria met.**

f. *The proposed use will not tend to or actually depreciate the area in which it is proposed.* The proposed new home is in character with the neighborhood. Staff does not anticipate any negative impacts on surrounding property values. **Criteria met.**

g. *The proposed use can be accommodated with existing public services and will not overburden the City's service capacity.* The proposed CUP will have no impact on existing public services. **Criteria met.**

6. **Resident Concerns.** None to date.

7. **Engineering Considerations:**
The intent of the stormwater treatment requirements is to encourage the use of Best Management Practices (BMPs) which are structural, vegetative, or managerial practices designed to treat, prevent, or reduce degradation of water quality due to stormwater runoff. BMPs should reflect and incorporate existing grade, natural features, wetlands, and watercourses on the site, to the maximum extent feasible. The City Engineer has reviewed the proposed BMPs. Approval of the requested variance/CUP as designed will reduce the volume of stormwater runoff, enhance the water quality of stormwater runoff, reduce soil erosion, maintain and improve wildlife habitat, and contribute to the aesthetic values of the project***. A Stormwater Facility Maintenance Agreement will be required by the property owner to ensure the proposed BMPs are constructed and maintained into perpetuity of the proposed use prior to issuance of the building permit*****.**

POTENTIAL ACTION

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.

The 60-day review period for this application expires on October 22, 2016. If the Council fails to preliminarily approve or disapprove the request within the review period, the application is deemed preliminarily approved.

RECOMMENDATION
Based on the findings of fact in this report, staff recommends the following:

- Approval of a variance from the required minimum lot size; 12,961 square feet proposed where 20,000 square feet is required.
- Approval of a variance from the required minimum lot width; 63 feet at building line is proposed where 75 feet is required.
- Approval of a CUP for excess floor area ratio, reduced from the original request of 42.5% to 40.60%.
- Approval of a CUP for excess impervious coverage, reduced from the original request of 44.8% to 42.94%.
- Denial of the rear setback variance request.

The recommended actions are outlined in the template motion below.

"I move that we direct staff to prepare a resolution of approval for the requested lot size and width variances, a resolution of approval of a reduced Conditional Use Permit for 40.6% floor area ratio, a resolution of approval of a reduced Conditional Use Permit for 42.94% impervious surface coverage, and

a resolution of denial of the requested variance from the required 25 foot rear yard setback to allow for the construction of a new single-family home with attached two-car garage for property located at 35 West Point Ave. based on the findings of fact listed in the report. The plans dated August 9, 2016, attached to this report, shall be modified to depict a two-car rather than a three-car garage."

a. The variances are in harmony with the general purpose and intent of the Ordinance.
b. The proposed use of the property as a single-family home is consistent with the City's Comprehensive Plan.
c. The property owner's proposed three-car garage **is not** a reasonable use of the property to justify a rear setback variance. A two-car garage, which is required of all single family homes in the City, could be constructed within the required setbacks.
d. Unique circumstances on the property including lot size and width were not created by the landowner.
e. The lot depth is **not** a unique circumstance to the property that requires a rear setback variance to accommodate a reasonably sized garage on the property. The variance request is necessitated solely by the Applicant's desire to have a larger garage than is required.
f. The variances and Conditional Use Permits will not alter the essential character of the locality.
g. Granting the requested variances and Conditional Use Permits will not impair an adequate supply of light and air to adjacent parcels.
h. Granting the variances and Conditional Use Permits will not unreasonably increase congestion in the public street.
i. Granting the variances and Conditional Use Permits will not diminish or impair established property values in the neighborhood.

Recommended Conditions for All Requests:

1. The plans dated August 9, 2016 shall be revised to include a two-car rather than a three-car garage which conforms to the required rear yard setback.
2. 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).
3. Building of structures shall not occur within any existing or proposed easements on the property.

Recommended Conditions for Conditional Use Permits:

4. The floor area ratio on the site will not exceed 40.6%
5. The impervious surface coverage on the site will not exceed 42.94%
6. A Stormwater Facility Maintenance Agreement is required by the property owner to ensure the proposed BMPs are constructed and maintained into perpetuity of the proposed use. This agreement shall be submitted and approved by the City Engineer and City Attorney prior to issuance of the building permit.