

Tonka Bay City Council Agenda Item  
Executive Summary

*Title of Item:* **VARIANCE REQUEST:** Application from Dan Murphy on behalf of the property owners Dirk & Wendy McMahon requesting a variance to exceed the maximum area of 1,000 sq. ft. for an accessory structure on the property located at 60 Wildhurst Road – R-1A zoning, Shoreland Overlay – PID: 28-117-23-24-0044

**CONDITIONAL USE PERMIT REQUEST:** Application from Dan Murphy on behalf of the property owners Dirk & Wendy McMahon requesting a conditional use permit to exceed the maximum height of 15 ft. for an accessory structure on the property located at 60 Wildhurst Road – R-1A zoning, Shoreland Overlay – PID: 28-117-23-24-0044

*Report Date:* **10-30-15**

*Meeting Date:* **11-10-15**

*60 Day Review deadline:* **60 day period ends 12-21-15**

*60-Day Extension Letter Sent:* **N/A**

*120-Day Review Deadline:* **N/A**

*Staff/Guest Reporting:* Erin Perdu, AICP – City Planner  
Justin Messner, PE – City Engineer

*Summary:* The Applicant is seeking to demolish the existing garage and construct a new garage on the property located at 60 Wildhurst Road. In summary, the requested variance and conditional use permit are as follows:

1. **A 218 sf. variance from the maximum area for an accessory structure** within the R-1A District.
2. **A conditional use permit to exceed the maximum height of 15 ft. for an accessory structure** within the R-1A District.

Staff believes that the Applicant has met the Statutory and City Criteria for approving of the requested conditional use permit but has not met all of the required variance criteria. Staff has provided a template approval motion for the CUP and denial motion for the variance as shown on Page 8 as well as findings of fact.

City of Tonka Bay Planning Department  
**Variance & Conditional Use Permit Report**

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*To:* **City Council**

*From:* Erin Perdu, AICP – City Planner  
Justin Messner, PE – City Engineer

*Meeting Date:* **November 10, 2015**

*Applicant:* Dan Murphy

*Owners:* Dirk & Wendy McMahon

*Location:* **60 Wildhurst Road**

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

**Introductory Information**

*Proposed Project:* The Applicants are proposing to demolish the existing detached garage on the property and construct a new garage. The proposed garage is 1,218 sq. ft. and 21'4" in height.

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

1. **A 218 sf. variance from the maximum area for an accessory structure** within the R-1A District for constructing a 1,218 sf. garage when 1,000 sf. is the maximum permitted.

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

- **A conditional use permit** for a garage 21'4" in height when 15 feet is the maximum permitted.

**Findings**

*Site Data:* Lot Size – 60,600 square feet  
Existing Use – Single Family Home  
Existing Zoning – R-1A Shoreland  
Property Identification Number (PID): 28-117-23-24-0044

*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 and Width:*

- The lot area requirement in the R-1A Shoreland District is 20,000 square feet. The lot of record is 60,600 square feet and is therefore a conforming lot.
- The lot width requirement in the R-1A District is 75 feet. The lot of record is 149 feet wide at the street and narrows slightly moving towards the rear of the lot. Lot width is measured at the required front building setback (50 feet

from the OHWL). The exact lot width has not been provided at that point; however, based on the scaled survey provided the lot width is approximately 140 feet and therefore exceeds the minimum required width.

**Front-Yard Setback:**

- The front-yard (lakeside) setback in the R-1A District for accessory structures is 50 feet.
- The proposed garage is located in the rear yard and is over 150 feet from the OHWL which meets the ordinance requirement.

**Side Yard Setback:**

- The side yard setback in the R-1A District is 8 feet.
- The proposed garage is located 14 feet from the north side lot line which meets the ordinance requirement.

**Rear Yard Setback:**

- The rear-yard setback (street side) in the R-1A District for accessory structures is 8 feet.
- On lakefront homes, the rear yard is considered the opposite side of the front which is the lake side.
- The Applicant is proposing a 148 foot rear yard setback which meets the ordinance requirement.

**Height:**

- The maximum height limit within the R-1A District for accessory structures is 15 feet.
- The height of accessory buildings is measured from the top of the finished ground floor elevation to the top cornice line of a flat and mansard roof, and to the uppermost part on a shed, pitched, hipped, round or other arch-type roof.
- The height of the proposed garage is 21'4".
- A conditional use permit is required for accessory buildings that exceed the height standards.

**Floor Area Ratio:**

- The maximum floor area ratio (FAR) permitted by code in the R-1A District is 0.30.
- The existing home, proposed garage and boathouse will include 7,741 sf of space for a FAR of 0.13.

**Hardcover:**

- The maximum hardcover permitted on this lot without any review is 25 percent; the proposed improvements indicate hardcover of 19.4%. A revised hardcover sheet was provided by the applicant that indicated 20.17% hardcover due to the garage being 1,604 sq. ft.; however, this is believed to be mistaken for FAR as all plan sheets indicate the garage has a building footprint of 1,218 sq. ft.

**Application Review:**

**Applicable Code Definitions:**

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

**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, modification, 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 Area.** The total land area of a horizontal plane within the lot lines.

**Lot, Width.** The shortest horizontal distance between the side lot lines measured at right angles to the lot depth at the minimum required building setback line. If no setback line is established, the distance between the side lot lines measured along the public right-of-way.

**Regulatory Flood Protection Elevation (RFPE).** 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).

**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:* **1011.04 Accessory Buildings, Structures, Uses and Equipment; subdivision (1), f.**

No accessory building for single family dwellings shall exceed one thousand (1,000) square feet of floor area, except by variance as provided for in Section 1004 of this Ordinance.

**1011.04 Accessory Buildings, Structures, Uses and Equipment; subdivision (1), c.**

No accessory building shall exceed the allowable building height except to match roof pitch or style of the principal structure. If the height standards are exceeded, a conditional use permit, according to the provisions of Section 1003 and Section 1011.04.5 of this Ordinance, shall be required.

**1017.07 R-1A, Lot Coverage and Height;**

Subd. 4. Accessory Building Height. Accessory buildings shall be limited to a maximum height of fifteen (15) feet.

**Variance Criteria  
Review:**

The proposed action will require the following variance:

- **A 218 sf. variance from the maximum area for an accessory structure** within the R-1A District for constructing a 1,218 sf. garage when 1,000 sf. is the maximum permitted.

Staff's analysis of the requested variance 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.* "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"

The requested variance appears to be consistent with the stated purpose and intent of the ordinance. The proposed garage will be consistent with the orderly and compatible development of the area. **Criteria met.**

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

The Comprehensive Plan calls for this area of the City to be used for single family dwellings, and for the development to occur in an orderly fashion in a manner best for the community. A detached garage is a common accessory structure to a single family home. The requested variance will not change the use of the property 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.*

The property owner wishes to construct a detached garage for the purposes of parking vehicles and improving the aesthetics from the

existing detached garage. The proposed garage will also contain storage and livable space, as well as bathroom facilities. The Applicant states in the narrative that “the ultimate use of the new garage will be a ski-tuning, ski workshop, and all around ski room”. The Applicant states that the current garage is used for this purpose. The proposed garage would be smaller than the existing detached garage. Staff finds the proposed use of the property to be reasonable for a single family home. **Criteria met.**

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

The Applicant has indicated in the narrative that there is limited usable space within the principal structure for the stated purpose of the garage. The property owner is choosing an architecturally compatible alternative to create space for the desired use within a detached accessory structure rather than adding onto the principal structure. However, there are no unique circumstances on the property that necessitate a garage of this size to accommodate the proposed use. An alternative exists to reduce the size of the proposed garage to stay within the maximum size requirement. **Criteria not met.**

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

The essential character of the locality will not be negatively impacted as a result of approval of the requested variances. The proposed garage is smaller than the existing detached garage on the property and will be architecturally designed to match the principal structure. **Criteria met.**

**B. City Tests:**

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

No. The Applicant is proposing an increased setback from the north side property line due to the size and height of the garage. The proposed setback from the north side property line is 14 feet when 8 feet is required. Staff believes the proposed garage should not impair an adequate supply of light and air from reaching adjacent property. **Criteria met.**

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

No. The proposed garage will have no effect on congestion in the public street. **Criteria met.**

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

No. The proposed garage 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?*

An objective of the property owner in constructing the new garage is to improve the appearance of the garage and to have the garage match the architectural style of the principal structure. The proposed garage should be an improvement to the property and have a positive impact on property values. **Criteria met.**

**Engineering Reports:** No additional comments.

**Other Comments:** The applicants are proposing to install a full bathroom within the accessory building. Section 1011.02, Subd. 2, a. states that “No garage, tent, accessory building, travel trailer or motor home shall at any time be used as living quarters, temporarily or permanently”. This requirement has been communicated to the owners.

Staff recommends that a restrictive covenant document be recorded with the County Recorder and that a condition to this effect be included in the CUP approval.

For additional consideration with regard to the CUP request, staff offers the following:

- “Garage, Private” is defined as: “An accessory building or accessory portion of the principal building which is intended for and used to store the private passenger vehicles and non-commercial trucks not exceeding twelve thousand (12,000) pounds gross weight, of the family or families resident upon the premises, and in which no business or industry is carried on unless specifically authorized by this Ordinance.
- “Dwelling Unit” is defined as: “A building or portion thereof, designated exclusively for residential occupancy, including one-family, two-family, and multiple family dwellings, but not including hotels, motels, boarding houses, or manufactured housing”
- “Occupancy” is defined as: “The purpose for which a building is used or intended to be used. The term shall also include the building or room housing such use. Change of occupancy is not intended to include change of tenants or proprietors.”
- “Use” is defined as: “The purpose or activity for which the land or building thereon is designated, arranged, or intended or for which it is occupied, utilized or maintained, and shall include the performance of such activity as defined by the performance standards of this Ordinance”
- Has the landowner established a need with the proposed structure?
- Is the proposed structure a garage, per the definition above? Or is it a dwelling unit? Or some combination of the two?

**CUP Review:**

The proposed action will require the following conditional use permit:

- A **conditional use permit** for a garage 21'4" in height when 15 feet is the maximum permitted for an accessory structure.

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.*

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.**

2. *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 detached garage is compatible with the single family use of the property. **Criteria met.**

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

The Applicant is requesting a variance because the proposed garage exceeds the maximum of 1,000 square feet for an accessory structure. The proposed garage conforms to all other performance standards. **Criteria met.**

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

The requested conditional use permit for height will allow for the roof pitch of the garage to match that of the principal structure. The proposed garage should be more aesthetically compatible with the existing home and thus have a positive impact on the character of the area. **Criteria met.**

5. *The demonstrated need for such use*

The need for the conditional use permit to allow the garage to exceed 15 feet in height is so that the roof pitch of the garage can match that of the principal structure. Without the variance, the structure would not be as architecturally compatible with the home. **Criteria met.**

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

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| <p><b>Resident Concerns:</b></p> <p><b>Other Comments:</b></p>   | <p>The proposed garage should result in an improvement to the property and not result in depreciation to the area. <b>Criteria met.</b></p> <p>7. <i>The proposed use can be accommodated with existing public services and will not overburden the City's service capacity.</i></p> <p>The proposed garage should not have any impact on public utilities. <b>Criteria met.</b></p> <p>None to date.</p> <p>For additional consideration with regard to the variance request, staff offers the following:</p> <ul style="list-style-type: none"> <li>• Is the additional height a necessary trade-off with architectural compatibility with the home? Or can the aesthetics issue be resolved without a height increase?</li> <li>• Is the vaulted ceiling in the living area necessary?</li> </ul>   |
| <p><b>Conclusion</b></p>   |  |
| <p><b>Council Options:</b></p>   | <p>The City Council has the following options:</p> <ul style="list-style-type: none"> <li>A) DIRECT STAFF TO PREPARE A RESOLUTION APPROVING THE REQUESTS (based on the applicant's submittals and findings of fact).</li> <li>B) DIRECT STAFF TO PREPARE A RESOLUTION DENYING THE REQUESTS (based on the applicant's submittals and findings of fact).</li> <li>C) TABLE THE ITEMS and request additional information.</li> </ul> <p>The 60-day review period for this application expires on 12-21-15.</p>  |
| <p><b>Recommendation:</b></p> <p><b>Template Denial Motion for Accessory Structure Area Variance and Approval for Conditional Use Permit for Accessory Structure Height:</b></p> | <p>Staff recommends approval of the requested conditional use permit and denial of the requested based on the findings detailed in the report variance as outlined in the template motion below.</p> <p>"I move that we direct staff to prepare a resolution of denial for the requested variance to allow for an accessory structure exceeding 1,000 square feet of area and approval of the requested conditional use permit for an accessory structure exceeding 15 feet in height on the property located at 60 Wildhurst Road based on the findings of fact listed in the report. Furthermore, the conditional use approval shall include the conditions listed within the staff report as may have been amended here tonight".</p> <ul style="list-style-type: none"> <li>a. The proposed use of the property as a single-family home will not change and is consistent with the City's Comprehensive Plan.</li> <li>b. Granting the requested Conditional Use Permit will not impair an adequate supply of light and air to adjacent parcels.</li> <li>c. Granting the Conditional Use Permit will not increase congestion in the public street. The use of the property as a single family home will stay the same and not increase congestion.</li> <li>d. Granting the variance will not diminish or impair established</li> </ul> |

property values in the neighborhood.

- e. Granting the Conditional Use Permit will not alter the essential character of the locality.
- f. The proposed detached garage is a reasonable use of the property.
- g. The variance request is in harmony with the general intent of the ordinance.
- h. There are no unique circumstances on the property which justify the requested area variance for the accessory structure.

***Template Approval  
Motion for Accessory  
Structure Area  
Variance and  
Conditional Use  
Permit for Accessory  
Structure Height:***

“I move that we direct staff to prepare a resolution of approval for the requested variance and conditional use permit based on the following findings of fact:”

- a. (Provide findings to support conclusion)

***Template Denial  
Motion for Accessory  
Structure Area  
Variance and  
Conditional Use  
Permit for Accessory  
Structure Height:***

“I move that we direct staff to prepare a resolution of denial for the requested variance and conditional use permit based on the following findings of fact:”

- b. (Provide findings to support conclusion)

***Recommended  
Conditions (if  
approved Conditional  
Use Permit):***

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 (if needed) shall be provided to the city prior to a building permit being authorized.
3. Erosion control measures shall be shown on the building permit plans and shall be subject to review and approval by the City Engineer.
4. 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.
5. Construction shall follow the survey and plans as submitted or as required to be updated by the City Engineer.
6. Building of structures shall not occur within any existing or proposed easements on the property.
7. The variance and Conditional Use Permit shall expire one year from the date of the resolution. City Council approval will be required for any subsequent extension.
8. A restrictive covenant shall be recorded with the County Recorder

indicating that the detached garage shall not, at any time, be used as living quarters, temporarily or permanently.