

Tonka Bay City Council Agenda Item  
Executive Summary

*Title of Item:* **VARIANCE REQUESTS:** Application from Wendell Peterson for variances from the required side yard and front yard (lake side) setbacks and minimum required lot area in order to reconstruct and slightly enlarge an existing deck structure on the lake side of the existing home within the shoreland area– R-1A zoning –PID: 27-117-23-33-0018

*Report Date:* **01-07-15**

*Meeting Date:* **01-13-15**

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

*Summary:* The Applicant is seeking to replace and slightly expand the existing deck attached to the lake side of the home at 265 West Point Road. The deck replacement and expansion, based on the plans submitted by the Applicant, will require three (3) variances. The requested variances are as follows:

1. A **770 square foot variance from the minimum required lot area** of 20,000 square feet.
2. A **28.35 foot variance from the minimum required front yard (lake side) setback** of 76.35 feet.
3. A **0.2 foot variance from the minimum required side yard setback** of 8 feet.

*Recommendation:* Staff believes that the applicant has met the Statutory and City Criteria for approving the variances. Staff has provided findings of fact for approval starting on page 8.

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:* **01-13-15**

*Applicant:* Steve Hansen

*Owner:* Wendell Peterson

*Location:* **265 West Point Road**

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

**Introductory Information**

**Proposed Project:** The Applicant is seeking to reconstruct and slightly enlarge an existing deck structure on the lake side of the existing home that will not meet the required side yard and front yard (lake side) setbacks on the property located at 265 West Point Road, which does not currently meet the minimum required lot area.

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

1. A **770 square foot variance from the minimum required lot area** of 20,000 square feet.
2. A **28.35 foot variance from the minimum required front yard (lake side) setback** of 76.35 feet.
3. A **0.2 foot variance from the minimum required side yard setback** of 8 feet.

**Findings**

**Site Data:** Lot Size –19,230 square feet  
Existing Use – Single Family Home  
Existing Zoning – R-1A  
Property Identification Number (PID): 27-117-23-33-0018

**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 Lot Width Analysis:**

- The lot area requirement in the R-1A District is 20,000 square feet.

The lot of record is 19,230 square feet.

- The lot width requirement in the R-1A District is 75 feet. The lot of record is 75 feet wide as measured at the minimum required building setback line per City Code.
- The lot is a non-conforming lot of record due to the lot area 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. The existing home and site conditions result in an impervious surface coverage over 25 percent, therefore a variance for lot area is required.

***Setback Analysis:***

- The existing, and proposed, deck is located in the front (lakeside) yard of the property.
- All decks over nine (9) inches in height from the average ground level must comply with all principal structure setbacks.
- The front yard setback in the R-1A District is the greater of fifty (50) feet, or the average setback of the two adjacent riparian principal structures on either side of the building site.
- The average setback of the two adjacent riparian principal structures on either side of the Applicant's home is 76.35 feet  $(88.4' + 64.3' / 2)$ .
- The existing deck is located 48 feet from the Ordinary High Water Level (OHWL) of Lake Minnetonka.
- The proposed deck will be set back 48 feet.
- The proposed deck will be expanded slightly (to the south) over the existing deck layout to accommodate a reconfigured stairway, and therefore a variance is required (expansion of a nonconforming structure).
- Additionally, the side yard setback in the R-1A District is 8 feet.
- The existing home is located 7.8 feet from the south property line, which makes the home a non-conforming structure.
- While the proposed deck will meet all side yard setback requirements, the slight expansion of the deck is technically an expansion of a nonconforming structure, and therefore a variance is required.

***Hardcover Analysis:***

- The maximum hardcover permitted on this lot without any additional review is 25 percent; hardcover between 25 and 35 percent can be administratively approved by the City Engineer and City Administrator provided that there are structures and practices in place

for treating storm water runoff.

- The Applicants are proposing hardcover in the amount of 6,674 square feet (where 6,489 square feet currently exist). Based on a lot size of 19,230 square feet, the hardcover on the lot with the proposed changes to the deck is 34.7 percent.
- The Applicants will be required to treat storm water runoff.

**Application Review:**

**Applicable Code  
Definitions:**

**Addition.** Any physical enlargement of an existing structure.

**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.

**Deck.** A horizontal, unenclosed platform with or without attached railings, seats, trellises, or other features, attached or functionally related to a principal use or site.

**Dwelling.** 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.

**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.

**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:*

**1011.03 General Yard, Lot Area and Building Regulations; subdivision (5) (b) (2).** All decks, porches, or stoops over nine (9) inches in height from the average ground level shall comply with all principal structure setbacks.

**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.

**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) (1).** Lots in the R-1A Zoning District shall have a side yard setback for the principal structure no less than eight (8) feet.

**1070.11 Impervious Surface Coverage; subdivision (1)(a)(1).** Impervious surface coverage for lots in all zoning districts shall not exceed twenty-five (25) percent of the lot area, except as provided below:

1. Where appropriate and where structures and practices are in place for the treatment of storm water runoff and/or prevent storm water from directly entering a public water, impervious surface coverage may be allowed to exceed twenty-five (25) percent to a maximum of thirty-five percent on any one site with approval of the City Engineer and City Administrator.

*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  
(findings of fact):***

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 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 **770 square foot variance from the minimum required lot area** of 20,000 square feet.
2. A **28.35 foot variance from the minimum required front yard (lake side) setback** of 76.35 feet.
3. A **0.2 foot variance from the minimum required side yard setback** of 8 feet.

Staff’s analysis of the request 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.*

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 the setbacks from the ordinary high water level. Under City Code, the property would be treated as a non-conforming lot and would be allowed for single family use (as it is currently occupied) as long as the lot’s area and frontage were within 60 percent of the 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. The house already exists and the owners propose to use the property in the same manner in the future. The property owners will be required to treat water runoff from the site in order to prevent runoff from going directly into the lake. Staff finds that the reconstruction and slight expansion of the existing deck in this location would not contribute to overcrowding, will not encroach closer to the lake, and that the appropriate water runoff treatment plan will prevent lake pollution. **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 development to occur in an orderly fashion in a manner best for the community. The Plan also recognizes that the redevelopment of existing homes is anticipated to continue in the future, and such improvements are encouraged. Staff finds the variance request **meets this criterion.**

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 is seeking to make improvements to the home by reconstruction the existing deck with a small addition. The use of the property will remain the same. As the proposed use conforms to the allowed uses in the R-1A zoning district, the proposal is reasonable. **Criteria met.**

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

The subject property is 19,230 square feet in area. There is nothing the property owner can do to increase the size of the lot, other than purchasing an adjacent property and combining it with their own. 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 area of 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 lot area requirement to 20,000 square feet. Thus, this was not a situation created by the current land owner. **Criteria met.**

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

The proposed deck reconstruction and small addition will be in character with other homes within the neighborhood and will generally remain consistent with existing conditions. The deck will not encroach further into the front yard (lake side) setback over existing conditions. **Criteria met.**

**B. City Tests:**

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

No. Granting the variance request will not diminish the amount of sunlight, nor prevent an adequate amount of air to reach the

neighboring property. **Criteria met.**

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

No. The continued use of the property for a single family dwelling is not anticipated to increase congestion in the public street.

**Criteria met.**

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

No. The continued 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?*

No. The proposed improvements to the home may increase the property value slightly which in turn will support or boost the value of surrounding properties. Second, the intent of the 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 requested variance will be in direct conflict with the above intent. **Criteria met.**

**Resident Concerns:**

- Staff is not aware of any concerns raised to this date.

**Engineering Reports:**

As noted previously, calculations for this property indicate that with the proposed deck addition, approximately 34.7 percent of the property will be hardcover. This exceeds the 25 percent maximum and requires approval from the City Engineer and City Administrator. As of the writing of this report, no plan for treating stormwater runoff has been submitted. Such a plan needs to be submitted and approved prior to issuing a building permit.

**Conclusion**

**Council Options:**

The City Council has the following options:

- 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 01-31-15, but can be extended for an additional 60 days if more time is needed. A final decision must be made prior to 04-01-2015.

**Template Approval Motion:  
(Recommended)**

"I move that we direct staff to prepare a resolution of approval for the requested lot size, front yard and side yard variances 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 continued use as a single-family home is consistent with the City's Comprehensive Plan.
- b. Granting the variance will not impair an adequate supply of light and air to adjacent parcels.
- c. Granting the variance will not unreasonably increase congestion in the public street. The continued use is a single family home which will not generate traffic volumes that would increase congestion.
- d. Granting the variance will not increase the danger of fire or endanger the public safety.
- e. Granting the variance will not diminish or impair established property values in the neighborhood. The proposed deck addition is likely to slightly increase property values in the neighborhood.
- f. Granting the variance will not alter the essential character of the locality.
- g. The size of the parcel was not created by the current owners. This circumstance is unique to the property.
- h. The variance request is 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.
- i. The variance request is in harmony with the general intent of the Ordinance. 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. The property owner will be required to treat water runoff.

- j. The variance request is in harmony with the general intent of the Ordinance. The proposed deck addition will not be constructed closer to the ordinary high water level over existing conditions and therefore does not conflict the ordinance intent in any way.

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

“I move that we direct staff to prepare a resolution of denial for the requested side and front yard (lake side) setbacks and required minimum lot area variance based on the following findings of fact:”

- *(provide findings to support your conclusion)*

***Recommended  
Conditions:***

1. The Applicant shall submit a stormwater management plan acceptable to the City Engineer, and include a maintenance agreement for such plan, and that no building permit will be issued until this condition is met;
2. The Applicant shall obtain all necessary permits and approvals from the City and other applicable entities with jurisdiction prior to any construction.
3. The MCWD shall review and approve the final grading plans prior to any work being authorized (which may require an erosion control permit). Proof of MCWD approval shall be provided to the city prior to a building permit being authorized.
4. Silt fencing shall be shown on the building permit plans and shall be subject to review and approval by the City Engineer.
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 City Engineer will verify and approve ingress and egress areas for City access to the stormwater treatment areas/system prior to issuing a building permit.
8. 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.
9. The variance shall expire one year from the date of resolution; City Council approval will be required for any subsequent extension.

## Joe Kohlmann

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**From:** Kelsey Johnson <kjohnson@wsbeng.com>  
**Sent:** Wednesday, January 07, 2015 10:32 AM  
**To:** Joe Kohlmann; JAMES G PENBERTHY; Justin Messner  
**Subject:** 265 West Point  
**Attachments:** Location\_265WestPointRd.pdf; 140922 TB REV 12-16.pdf; 265 W point rd council letter.pdf; SR 265 West Point Rd.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

DRC,

Attached is the staff report for the CC Meeting next week for 265 West Point. I've also attached the updated letter I received in an email that the Applicant would like placed in the packet instead of the original submitted, as well as the updated survey I requested reflecting the accurate front yard (lake side) setbacks.

Let me know if you have any questions.

Thanks!

Kelsey Johnson, AICP  
Community Planning and Economic Development Group, Manager  
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WSB & Associates, Inc. | 701 Xenia Avenue South, Suite 300 | Minneapolis, MN 55416



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12/09/14

To Honorable council Members for the City of Tonka Bay

Wendell Peterson is asking for your approval of a Variance to improve the existing deck in Two areas #1 build a new straight stairway and #2 alter an existing deck. Regarding the 1<sup>st</sup> area - stairway improvement , Wendell's Son has a disability and cannot use the existing circular stairs which is the main access from the deck to the lake. The new Deck plan includes a straight stairway that his son with Wendells help will be able to use. We are asking you to considered the hardship of the Disabled and improve his lake experiences. We are not encroaching any more into the current existing setbacks so please consider the straight stair request as a large improvement to the enjoyment and mobility of his whole family for many years to come. The 2<sup>nd</sup> Deck improvement is to the Deck off the living room. It currently comes out 10' from the house and would like it to be 12' off the living room . We would be open to removing the portion to the south to keep the square footage the same and again this portion of the deck is well back from the lake setback . Thanks you for your consideration.



Hansen Hometech Inc.

President