

Tonka Bay City Council Agenda Item
Executive Summary

Title of Item: **VARIANCE REQUESTS:** Application from Donald L. and Deborah L. Bierbaum requesting a variance from the minimum required front yard (lakeside) setback, minimum required side yard setback, minimum required rear yard (street side) setback, minimum 15-foot floodplain elevation buffer, and the maximum allowable driveway slope at 195 Woodpecker Ridge Rd – R-1B Shoreland District zoning – PID: 28-117-23-42-0017

Meeting Date: **6-24-14**

60 Day Review deadline: **60 day period ends 7-21-2014**

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

Summary: The property owners are proposing to remove the existing detached garage and add an addition to the existing home which would include connecting the garage and constructing a second story above the garage at 195 Woodpecker Ridge Road. The requested variances are as follows:

1. A **variance of 11.5 feet** from the required 66.5 foot front yard (lakeside) setback;
2. A **variance of 3 feet** from the required 12 foot side yard setback;
3. A **variance of 11.6 feet** from the required 37.5 foot rear yard (street side) setback;
4. A **variance of 15 feet** from the required 15-foot floodplain elevation buffer; and
5. A **variance of 4.65%** from the maximum allowable driveway slope of 5%.

Staff believes that the applicant has met the Statutory and City Criteria for approving the requested variances. Staff has provided a template approval motion on page 7 as well as findings of fact for approval for the requested variances.

City of Tonka Bay Planning Department
Variance Report

To: City Council

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

Meeting Date: June 24, 2014

Applicant: Donald L. and Deborah L. Bierbaum

Owner: Donald L. and Deborah L. Bierbaum

Location: 195 Woodpecker Ridge Road

Zoning: R-1B Shoreland District

Introductory Information

Proposed Project: The property owners are proposing to remove the existing detached garage and add an addition to the existing home which would include connecting the garage and constructing a second story above the garage at 195 Woodpecker Ridge Road.

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

1. A **variance of 11.5 feet** from the required 66.5 foot front yard (lakeside) setback;
2. A **variance of 3 feet** from the required 12 foot side yard setback;
3. A **variance of 11.6 feet** from the required 37.5 foot rear yard (street side) setback;
4. A **variance of 15 feet** from the required 15-foot floodplain elevation buffer; and
5. A **variance of 4.65%** from the maximum allowable driveway slope of 5%.

Findings

Site Data: Lot Size – 17,882 square feet
Existing Use – Single Family Home
Existing Zoning – R-1B Shoreland District
Property Identification Number (PID): 28-117-23-42-0017

Comp Plan Guidance:

- The comprehensive plan guides this lot for single family use. The corresponding zoning assigned to this property (R-1B) allows for single family homes.

Front Yard (lake side) Setback:

- The zoning for the R1-B Shoreland District states principal structures must be the greater of 50 feet or the average setback of the two adjacent riparian principal structures on either side of the proposed building site. The average setback for the two adjacent riparian principal structures is 66.5-feet.

Section 1011.03, Subd. 5.b.2. states that the following shall not be considered encroachments on yard setback requirements “terraces, steps, decks, patios, uncovered porches, stoops or similar features provided they do not extend above the height of the average ground level more than nine (9) inches, or to a distance less than five (5) feet from a side yard and rear lot line, or more than five (5) feet into a required front yard. No encroachment shall be permitted in existing or required drainage and utility easements. All decks, porches, or stoops over nine (9) inches in height from the average ground level shall comply with all principal structure setbacks.” The existing deck is more than nine (9) inches in height from the average ground level and is located 55-feet from the OHWL, which does not meet the required front yard (lakeside) structure setback. Therefore, the existing home (with the deck) is considered a legal nonconforming structure. Any expansion of the structure requires a variance per State Statute.

Side Yard Setback:

- The zoning for the R1-B Shoreland District requires an 8-foot side yard setback. In addition, the “nonconforming” status of the existing home due to the deck setback from the OHWL results in the requirement to have a minimum of one and one-half (1-1/2) times greater side yard setback for any addition that includes a second story per Section 1011.01, Subd. 2.e. Currently the second story addition is shown to be 8-feet rather than the required 12-feet requiring a variance.

Rear Yard (street side) Setback:

- The zoning for the R1-B Shoreland District states principal structures must have a rear yard setback of 25-feet. The site plan as submitted by the applicant shows a rear yard setback of 25.9-feet. However, the “nonconforming” status of the existing home due to the deck setback from the OHWL enacts a minimum one and on-half (1-1/2) times greater setback requirement for any addition that includes a second story. This would require a 37.5 foot rear yard (street side) setback. As shown, the rear yard (street side) setback is 25.9 feet and will require a variance.

15-Foot Floodplain Elevation Buffer:

- Floodplain Section 1040, Section 4.25 requires that the finished fill 15-feet around all accessory structures cannot go one-foot below the RFPE and needs to maintain an elevation of 932.5. The existing grade elevation in the location of the proposed addition is 931 and will need to be raised to meet this minimum requirement around the proposed addition. As proposed, the plans do not meet this requirement and will require a variance.

Maximum Allowable Driveway Slope:

- City code Section 1011.06, Subd. 7.e.10 requires that the grade elevation of any parking area or portion thereof will not exceed five (5) percent. As shown the driveway will exceed the (5) percent maximum allowed by City code and will require a variance.

Hardcover:

- The maximum hardcover permitted on this lot without any review is 25 percent; hardcover between 25 percent and 35 percent can be allowed subject to approval by the City Engineer and City Administrator.
- The applicants are proposing hardcover in the amount of 5,840 square feet, which is 32.66 percent of the lot.
- As part of approval, it will be a requirement that stormwater be treated on

site. Plans for this treatment will be subject to review by the City Engineer.

Application Review:

**Applicable Code
Definitions:**

Lot, Frontage. The front of a lot shall be, for purposes of complying with this Ordinance, that boundary abutting a public right-of-way. For lots abutting on two streets, the front shall be the boundary with the shortest length. For lakeshore lots, the boundary abutting the lakeshore shall be considered the front.

Lot Line, Rear. That boundary of a lot which is opposite the front lot line. If the rear lot line is less than ten (10) feet in length, or if the lot forms a point at the rear, the rear lot line shall be a line ten (10) feet in length within the lot, parallel to and at the maximum distance from the front lot line.

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.

Slope. Means the degree of deviation of a surface from the horizontal, usually expressed in percent of degrees.

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, Subd. 5.b.2. The following shall not be considered encroachments on yard setback requirements "terraces, steps, decks, patios, uncovered porches, stoops or similar features provided they do not extend above the height of the average ground level more than nine (9) inches, or to a distance less than five (5) feet from a side yard and rear lot lines, or more than five (5) feet into a required front yard. No encroachment shall be permitted in existing or required drainage and utility easements. All decks, porches, or stoops over nine (9) inches in height from the average ground level shall comply with all principal structure setbacks.

1011.01, Subd. 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 one-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.

1011.05, Subd. 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.

1011.06, Subd. 7.e.10. The grade elevation of any parking area or portion thereof shall not exceed five (5) percent”. (Note: typical grade for driveway is 10% or under – City Admin. Note, not part of ordinance.)

1018.06, Subd. 3.b. Interior Lots (Side Yards, Principal Structure Setbacks). Not less than eight (8) feet.

1018.06, Subd. 3.c. Rear Lots (Side Yards, Principal Structure Setbacks). Not less than twenty (20) feet.

1040, Section 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, Subd. 1.a.1. Allowable Coverage. 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 (35) percent on any one site with approval of the City Engineer and City Administrator.

***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 are as follows:

1. A **variance of 11.5 feet** from the required 66.5 foot front yard (lakeside) setback;
2. A **variance of 3 feet** from the required 12 foot side yard setback;
3. A **variance of 11.6 feet** from the required 37.5 foot rear yard (street side) setback;
4. A **variance of 15 feet** from the required 15-foot floodplain elevation buffer; and
5. A **variance of 4.65%** from the maximum allowable driveway slope of 5%.

Staff’s analysis of the requested variances under the review criteria is as follows:

A. Statutory Criteria

1. *The requests are in harmony with the general purposes and intent of the ordinance.*

It is staffs interpretation that the setback requirements of the code are to ensure consistency throughout neighborhoods. The adjacent homes in the immediate area are two story structures. It is staffs opinion that the setback variances will not inhibit the high visual standard of the neighborhood.

Given the lot in question and required setbacks it is not possible for the applicant to meet the required 15-foot floodplain elevation buffer. The applicant has, where possible, altered their plans to meet this requirement. Staff does not foresee this variance causing flooding or erosion issues for the property in question or adjacent properties.

It is staffs opinion that the applicant set the floor elevation as needed to meet flood level requirements. The elevation of Woodpecker Ridge Rd is set at such an elevation which causes a driveway slope greater than what is allowed by City Code without a variance. The proposed driveway is similar in slope to other driveways in Tonka Bay and is under 10% slope which is very common with single family residential properties.

Given the removal of the existing garage, a building addition is a reasonable use for a single family home and can be found on several other lakefront properties within Tonka Bay and around Lake Minnetonka in adjacent communities. **Criteria met**

2. *The variances are 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. The proposed addition and required variances are reasonable requests for a single family home. **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 owners are seeking to add an addition to their lakeside home to make it suitable for year round livability. Staff finds the request reasonable. **Criteria met.**

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

The subject property is no more unique than any other riparian lot in the City. A request for a proposed addition, however; is

understandable given the applicants desire to reside at the residence year round. The current state of the primary structure and garage has excess flooding hazards. The proposed addition will eliminate this on-going problem having a positive effect on the property in question as well as an aesthetic improvement for adjacent properties **Criteria 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 these variances. **Criteria met.**

B. City Tests:

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

No. The proposed building addition will not impair an adequate supply of light and air to adjacent properties any more so than adjacent properties with similar setbacks. **Criteria met.**

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

No. The current use of the property is for a single-family home, which will not change as a result of granting the variance. **Criteria met.**

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

No. The proposed addition if added would not unreasonably increase the danger of fire or safety of the public. **Criteria met.**

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

The proposed addition to the property should not have any impact on the values of neighboring 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.**

Engineering Reports: As noted previously, calculations for this property indicate that 32.66 percent of the property will be impervious hardcover. This exceeds the 25 percent allowable impervious maximum and requires approval from the City Engineer and City Administrator.

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 ITEMS and request additional information.

The 60-day review period for this application expires on 07-21-14. An extension letter may be sent to the applicant and the home owners. A final decision MUST be made prior to 09-20-14.

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

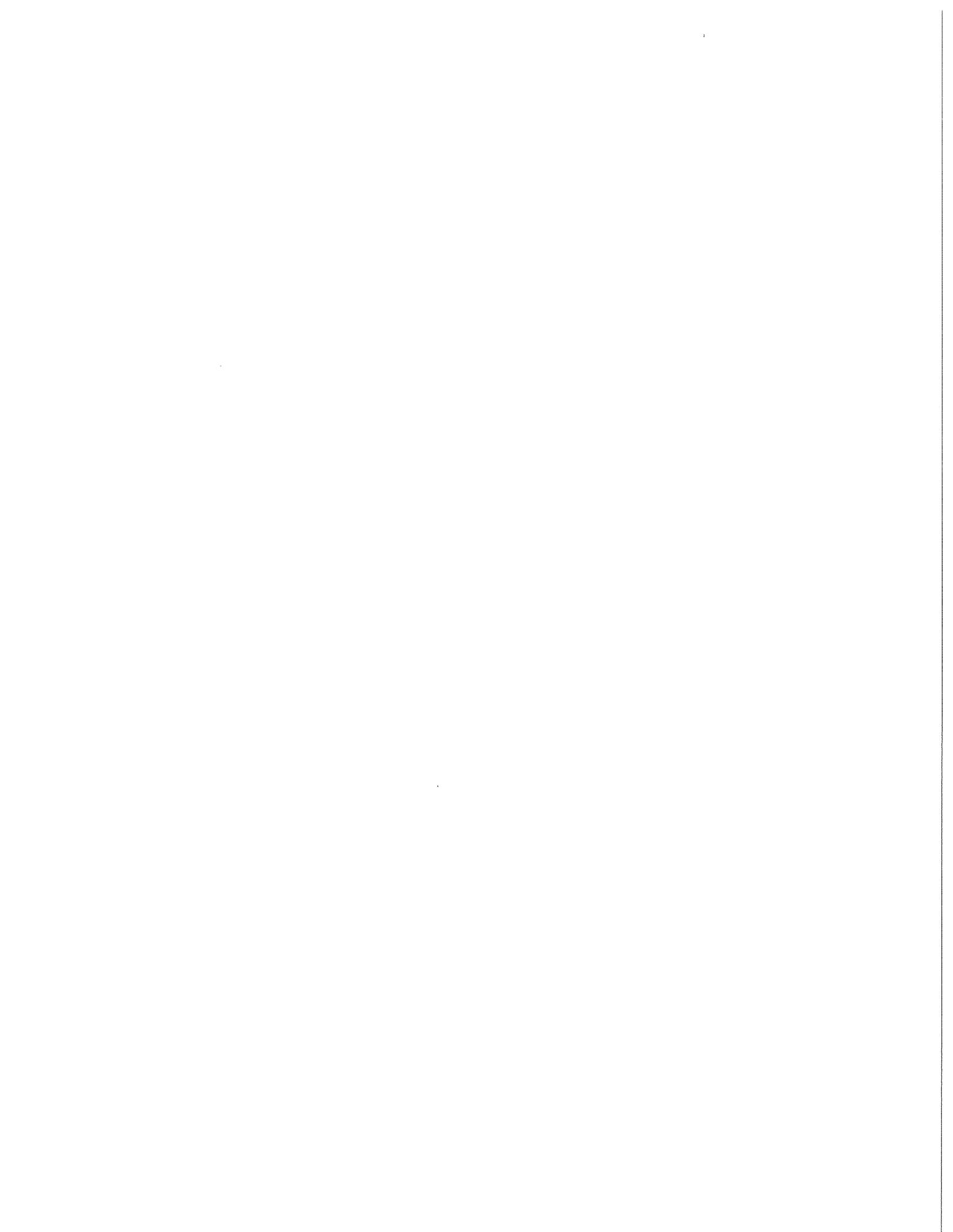
Template Denial Motion: "I move that we direct staff to prepare a resolution of denial for the requested variances based on the following findings of fact:"
(Not Recommended) • (Provide findings to support conclusion)

Template Approval Motion: "I move that we direct staff to prepare a resolution of approval for the requested variances to allow the proposed 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".
(Recommended)

- a. The proposed use as a single-family home will not change and is consistent with the comprehensive plan.
- b. Granting the requested 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 home 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.
- f. Granting the variances will not alter the essential character of the locality. Homes adjacent to the property in question have similar setbacks thus, the property as proposed will not alter the character of its locality.
- g. The variance requests are in harmony with the general intent of the ordinance and will not lead to an overcrowding of homes.

***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 (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 applicant shall work with the City Engineer on a plan to treat stormwater on site. Plans for this treatment will be subject to review and approval by the City Engineer prior to issuance of a building permit.
5. 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.
6. 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
VARIANCE APPLICATION

Phone: (952) 474-7994 Fax: (952) 474-6538
www.cityoftonkabay.net

RECEIVED

MAY 22 2014

CITY OF TONKA BAY

Application fee: \$150.00

The application fee is used to cover publication costs, County recording fees, postage and other supplies.

Escrow fee: \$1,150.00

The escrow fee is charged to cover staff expenses, engineering, planning and attorney expenses (as billed) which may be incurred because of your application. All staff time is billed at the regular employee rate plus 30% for overhead costs, which includes benefits, buildings, lights, heat, etc.

Any remaining funds, after expenses, are returned to the applicant. Expenses incurred over \$1100 will be billed to the applicant.

APPLICATION DATE 5/22/2014

NAME OF PROPERTY OWNER(S) Deborah Lien Bierbaum
Donald Lee Bierbaum

MAILING ADDRESS 1934 Linner Rd, Wayzata, MN 55391
Street Address City State Zip

PHONE (612) 747-1078 (bebe's cell)
SITE ADDRESS (or legal description) 195 Woodpecker Ridge Rd
PID NUMBER 28-117-23-42-0017

NAME OF APPLICANT(S) (if different from above) (same)

MAILING ADDRESS _____
Street Address City State Zip

PHONE _____

Initial where indicated that you have read and understand the requirement(s):

- A. All property owners must sign as co-applicants.
- B. The property corners and proposed construction must be flagged/staked at the time of the application and maintained until the council makes a determination.
- C. Survey Requirements:
 - 1. Initial Survey
Every application for building permit (excluding interior remodels, re-

roofs, re-siding and general maintenance) shall be accompanied by a certified survey at a scale and in quantities deemed necessary by the City of Tonka Bay unless waived in accordance with the City's survey exemption policy (attached). Because the survey will be used to determine an application's conformance with City Code, it shall be the responsibility of the applicant to ensure information provided on the survey corresponds to submitted building plans (including existing and proposed topography). An issued building permit shall only authorize those land alterations identified on the associated survey. Surveys shall include all information as deemed necessary by the City to provide for the enforcement of city code. See below for more details in the "Submit with Application" section, Item 1.

2. **Foundation Survey**

Applications for new structures shall require that an as-built foundation survey be submitted by a time specified by the City (general prior to completing a foundation inspection) unless waived in accordance with the City's survey exemption policy. The as-built foundation survey shall certify both the final setbacks of the structure being built, and the elevations at which the new structure exists. Failure to provide the foundation survey is in direct violation of this ordinance and expenditures incurred beyond the construction of the foundation will not be considered in determining the actions required to bring the building back into conformance if not built to approved plans.

3. **As-Built Survey**

Applications for new structures shall require that an as-built survey be submitted upon completion of work unless waived in accordance with the City's survey exemption policy. The as-built survey shall certify the final topography of the site, verify the drainage patterns existing upon completion of work, and the distance from average ground level to the highest roof peak. Any additional information needed by the city to ensure compliance with code can also be required. The city reserves the right to withhold the certificate of occupancy for dwelling units until final grading addresses all problems that may be detrimental to adjacent properties.

D. The applicant or representative thereof shall appear before the City Council to answer questions concerning the proposed conditional use permit. See attached public hearing information sheet.

Submit with Application:

1. Ten (10) to scale copies and ten (10) reduced (8-1/2" x 11" or 11" x 17") copies of a certified survey of the property. The survey shall include all information necessary to enforce applicable zoning regulations. Such information may include but is not limited to:
 - Location and Floor Area of existing and proposed structures
 - Lot Lines
 - Parcel size in acres and square feet
 - Building setbacks (closest point of building to each property line)
 - Low floor elevations of existing and proposed structures
 - Water features (lakeshore, wetlands, etc.)

- Existing and proposed topography – including ground elevations at corners of existing and proposed structures.
 - General location of vegetation
 - Location of structures on adjacent lots
 - Easements
 - Existing and proposed impervious surface calculations.
 - Location of public and private sewer lines or wells.
2. Hardcover calculation – current and proposed
 3. Floor area ratio – current and proposed
 4. Landscape plan and grading and drainage plan (current and proposed)
 5. Payment

Additional Information

- A. The request for variances shall be placed on the agenda of the first City Council meeting occurring at least thirty (30) days from the date of official submission unless waived by the Zoning Administrator. Upon receipt of a completed application, the Zoning Administrator shall set a public hearing for a regular meeting of the City Council. The City Council shall conduct the hearing.
- B. Notice of said hearing shall be published in the official newspaper at least ten (10) days prior to the hearing and written notification of said hearing shall be mailed at least ten (10) days prior to all property owners within three hundred fifty (350) feet of the boundary of the property in question.
- C. For properties within the Shoreland, Floodway or Flood Fringe Overlay District, the City will submit to the Commissioner of Natural Resources a copy of the application for proposed variances so that the Commissioner will receive at least ten (10) days notice of the hearing.
- D. The applicant or representative thereof shall appear before the City Council to answer questions concerning the proposed variance.
- E. A variance of the Ordinance shall be by four-fifths (4/5) vote of the entire City Council.
- F. If approved, the variance shall become null and void twelve (12) months after the date of approval, unless the property owner or applicant has substantially started the construction of any building, structure, addition or alteration, or use requested as part of the permit.
- G. Prior to approving an application for a variance, the City shall verify ownership, and that there are no delinquent property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the permit application relates.
- H. By state statute, there are three definitive criteria that all variances must address. The three criteria are as follows:
 1. Is the variance request reasonable? The hardship requirement does not mean that a property owner must show the land cannot be put to any reasonable use without the variance. Rather, the property owners must show that they would like to use their property in a reasonable manner that is prohibited by the ordinance.
 2. Does the application present unique circumstances?
 3. If approved, would the variance alter the essential character of the locality?

1004.02 GENERAL PROVISIONS AND STANDARDS

Subd. 3. Review Criteria. In considering all requests for a variance and in taking

subsequent action, the City Council shall make a finding of fact that the proposed action will not:

- a. Impair an adequate supply of light and air to adjacent property.
- b. Unreasonably increase the congestion in the public street.
- c. Increase the danger of fire or endanger the public safety.
- d. Unreasonably diminish or impair established property values within the neighborhood, or in any way be contrary to the intent of this Ordinance.
- e. Violate the intent and purpose of the Comprehensive Plan.
- f. Violate any of the terms or conditions of Subd. 4., below.

Subd. 4. Conditions. A variance from the terms of this Ordinance shall not be granted unless it can be demonstrated that:

- a. Undue hardship will result if the variance is denied due to the existence of special conditions and circumstances which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same district.
 - 1. Special conditions may include exceptional topographic or water conditions or, in the case of an existing lot or parcel of record, narrowness, shallowness, insufficient area or shape of the property.
 - 2. Undue hardship caused by the special conditions and circumstances may not be solely economic in nature, if a reasonable use of the property exists under the terms of this Chapter.
- b. Literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance or deny the applicant the ability to put the property in question to a reasonable use.
- c. The special conditions and circumstances causing the undue hardship do not result from the actions of the applicant.
- d. Granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures or buildings in the same district under the same conditions.

Ronald Dubauer
Signature of Applicant

Donald Dubauer
Signature of Property Owner

Deborah K. Lien Bierbaum
Signature of Applicant

Deborah K. Lien Bierbaum
Signature of Property Owner

This Section Completed by Staff			
FEE	FOR	DATE PAID	STAFF INITIALS
\$150.00	Application Fee	5-22-14	CD
\$1,150.00	Escrow Fee*	"	CD