

CITY OF TONKA BAY ITEM NO. 7B

Tonka Bay City Council Agenda Item Executive Summary

Title of Item: **VARIANCE REQUEST:** Application from Southview Design on behalf of Mike & Cindy Schwartz requesting a variance to allow for the construction deck steps that will encroach into the required 103 foot front yard setback by ninety-seven (97) feet and four (4) inches on the property located at 195 Mound Avenue – R-1A zoning, Shoreland Overlay – PID: 28-117-23-43-0049

CONDITIONAL USE PERMIT REQUEST: Application from Southview Design on behalf of Mike & Cindy Schwartz requesting a conditional use permit to install boulder retaining walls within the on the property located at 195 Mound Avenue – R-1A zoning – PID: 28-117-23-43-0049

Report Date: **08-04-15**

Meeting Date: **08-11-15**

60 Day Review deadline: **60 day period ends 8-29-15**

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 complete a landscape and shoreline project on the property located at 195 Mound Avenue. The project, as proposed requires one Variance and one Conditional Use Permit.

In summary, the requested variances are as follows:

1. A **variance to allow for steps to be installed**, as they are considered a structure encroaching into the front yard setback that exceeds 9” above the average surrounding ground elevation;
2. A **conditional use permit to install boulder retaining walls**, as modifications are considered an “obstruction on land located within the Shoreland District”;

Staff believes that the applicant has met the Statutory and City Criteria for approving of the requested variance and conditional use permit. Staff has provided a template approval motion as shown on Page 10 as well as findings of fact for approvals.

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

To: **City Council**

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

Meeting Date: **August 11, 2015**

Applicants: Southview Design

Owners: Cindy & Mike Schwartz

Location: **195 Mound Avenue**

Zoning: **R-1A**

Introductory Information

Proposed Project: The Applicant is proposing to complete a landscape and shoreline project consisting of several elements. The installation of boulder retaining walls is proposed to help retain the steep hillside grade, and to create a more aesthetically pleasing view from Lake Minnetonka. A sand patio will be created between the last two tiers to the right of the lowest deck landing. There is currently a wooden staircase that will remain throughout the project. The applicants have proposed to add an additional staircase off the bottom of the existing one to allow access to the sand patio. The new staircase will encroach into the required 103 foot front yard setback by ninety-seven (97) feet and four (4) inches. The last component of the proposed project is to install seventy-five (75) linear feet of rip-rap shoreline work. The rip-rap would be centered in the property's shoreline and includes irregular Chilton stone steps extending out at a 1:3 slope with the rip-rap. This would replace the existing stone steps.

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

- **A variance to allow for steps to be installed**, as they are considered a structure that exceeds 9" above the average surrounding ground elevation encroaching into the front yard setback. They will encroach into the required 103 foot front yard setback by ninety-seven (97) feet and four (4) inches.

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

- **A conditional use permit to install boulder retaining walls**, as the proposed modifications are considered an artificial obstruction on land located within the Shoreland District

Findings

| | |
|----------------------------|---|
| Site Data: | Lot Size – 31,779 square feet Existing Use – Single Family Home Existing Zoning – R-1A Shoreland Property Identification Number (PID): 28-117-23-43-0049 |
| Comp Plan Guidance: | <ul style="list-style-type: none">▪ 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: | <ul style="list-style-type: none">▪ The lot area requirement in the R1-A Shoreland District is 20,000 square feet. The lot of record is 31,779 square feet.▪ The lot width requirement in the R1-A Shoreland District is seventy-five (75) feet. The lot of record is approximately 121 feet. |
| Front-Yard Setback: | <ul style="list-style-type: none">▪ The front-yard (lakeside) setback in the R1-A District for principal structures is the greater of 50 feet or the average setback of the two adjacent riparian principal structures on either side of a proposed building site. In the case of this property, the average setback of the two riparian principal structures is approximately 103 feet.▪ The Applicants are proposing a front-yard setback for the proposed steps of five (5) feet, eight (8) inches. |
| Hardcover: | <ul style="list-style-type: none">▪ The maximum hardcover permitted on this lot without any review is 25 percent; the proposed improvements indicate hardcover of 21.5%. |

Application Review:

Applicable Code Definitions:

Accessory Building or Use. A subordinate building or use which is located on the same lot on which the main building or use is situated and which is reasonably necessary and incidental to the conduct of the primary use of such building or main use.

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.

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 not 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:

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

1070.16, Shoreland Impact Plan/Conditional Use Permit; subdivision (1). Shoreland Impact Plan. Except for situations listed below, landowners developers desiring to develop land or construct any dwelling or any other artificial obstruction on land located within the Shoreland District within the City of Tonka Bay shall first submit a conditional use permit application as regulated by Section 1003 of the Zoning Ordinance and a plan of development, hereinafter referred to as “Shoreland Impact Plan”, which shall set forth proposed provisions for sediment control, water management, maintenance of landscaped features, and any additional matters intended to set forth proposed changes requested by the applicant and affirmatively disclose what, if any, change will be made in the natural condition of the earth, including loss of change of earth ground cover, destruction of trees, grade courses and marshes. The plan shall minimize tree removal, ground cover change, loss of natural vegetation, and grade changes as much as possible, and shall affirmatively provide for the relocation or replanting of as many trees as possible which are proposed to be removed. The purpose of the Shoreland Impact Plan shall be to eliminate potential pollution, erosion and siltation.

**Variance Criteria
Review:**

The proposed action will require the following variance:

- **A variance to allow for steps to be installed**, as they are considered a structure that exceeds 9” above the average surrounding ground elevation encroaching into the front yard setback. They will encroach into the required 103 foot front yard setback by ninety-seven (97) feet and four (4) inches.

Staff’s analysis of the requested variances 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”

Staff does not foresee any way in which the above requested variances will be in direct conflict with the above intent. **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. The construction of deck steps in order to access a sand patio 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.*

The property owners are proposing to continue to use the property for a single family home and to install deck steps on the property. The placement of the steps is necessary to allow access to the sand patio, located within the front yard. Applicants are proposing to use the property in a reasonable manner. **Criteria met.**

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

The unique circumstances on this property are largely related to the slope of the terrain. The steps are required so that the property owners may access the lakeshore area of their property. **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 the requested variance. The proposed deck steps fit into the character of the neighborhood in terms of size and location along the Lake Minnetonka shore. **Criteria met.**

B. City Tests:

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

No. The proposed deck steps 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 deck steps 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 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?*

The proposed deck steps will have no impact on neighboring property values.

Engineering Reports:

Per Section 1070.13 Subd. 2C of the City Ordinance states that a grading and filling permit shall be required for 1) The movement of more than ten (10) cubic yards of material on steep slopes or within shore or bluff impact zones; and 2) The movement of more than fifty (50) cubic yards of material outside of steep slopes and shore and bluff impact zones.

Prior to issuance of the building permit, a grading and fill permit shall be completed and \$1,000 escrow secured at City Hall. The escrow shall be returned to the applicant upon completion and acceptance of the proposed improvements. Similar permit will be required from the Minnehaha Creek Watershed District and MN Dept. of Natural Resources. Copies of the permit will need to be submitted to the city prior to issuance of the building permit.

CUP Review:

The proposed action will require the following conditional use permit:

- **A conditional use permit to install boulder retaining walls**, as the proposed modifications are considered an artificial obstruction on land located within the Shoreland District.

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. Staff believes the proposed project will be an improvement to the property. **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 boulder retaining walls do not change the land use and are common among other homes in the neighborhood. **Criteria met.**

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

Criteria met.

4. *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. There are numerous homes in Tonka Bay that have retaining walls. In addition, the new boulder retaining walls will create a more aesthetically pleasing view from Lake Minnetonka. **Criteria met.**

5. *The demonstrated need for such use*

The steep grade of the property leading to the lake makes retaining walls necessary. The walls and rip-rap would also help prevent erosion. **Criteria met.**

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

The proposed improvements will not have any negative impact to adjacent property values and will enhance the appearance of the rear yard for the subject property. **Criteria met.**

7. *The proposed use can be accommodated with existing public services and will not overburden the City's service capacity.*

The proposed project should not have any impact on public utilities.

Resident Concerns:

Prior to construction, a Shoreland Impact Plan must be submitted by the applicant, and approved by the City Engineer, which should address how the property owners will mitigate the storm water impacts of the increase in impervious surface. **Criteria met.**
None to date.

Engineering Reports:

In addition to the above criteria, per Section 1070.16 Shoreland Impact Plan/Conditional Use Permit, the following criteria are applicable to Conditional Use Permit Requests within the Shoreland Impact Zone:

- 1. The projects shall be analyzed to determine the impact of impervious surfaces, storm water runoff, floodplain, and water quality implications. Only those projects shall be allowed where the adverse impacts have been mitigated through approved means to the extent possible.*

The proposed improvements consist of boulder walls, landscaped areas and sand patio and therefore do not result in additional impervious surface. **Criteria met.**

- 2. Storm water treatment measures including, but not limited to, sediment basis (debris basins), desilting basins or silt traps, installation of debris guards, and microsilt basins on storm water inlets, oil skimming devices, etc. shall be required subject to the review of the City Engineer and Minnehaha Creek Watershed District on projects where applicable.*

Based on the findings above and the proposed of 21.5% impervious surface falling below the 25% threshold, this requirement is not applicable. **Criteria met.**

- 3. Projects shall be analyzed by the City in terms of provisions for maintenance and enhancement of landscape features, change in the natural condition of the soil, removal of trees, grade courses and marshes. The plan shall also minimize tree removal, ground cover change, loss of natural vegetation, and grade changes as much as possible. It shall further provide for the relocation or replanting as many trees as possible which are proposed to be removed.*

The proposed improvement consists of natural boulder walls to reinforce an existing steep embankment. Elements such as landscaped planting areas and a natural sand patio are consistent with the natural surrounding environment of Lake Minnetonka. **Criteria met.**

4. *Projects shall be analyzed by the City in terms of the appearance of the structure when viewed from the lake's surface. Building materials, and color shall be analyzed to determine which facade and roof materials minimize the appearance and blend the structure into the shoreland and vegetation.*

As previously stated the proposed improvements consist of materials found with the surrounding natural environment. **Criteria met.**

5. *Lot coverage on a project basis shall be restricted to the provisions for maximum impervious surface coverage as provided for in this Ordinance.*

As previously stated in condition no. 2, this item is not applicable. **Criteria met.**

6. *Residential densities on a project basis shall not be allowed to exceed the maximum allowed density of the base zoning districts for which the project is proposed.*

The proposed improvements consist of landscape improvements; therefore this condition is not applicable. **Criteria met.**

7. *All projects shall be in conformance with the Shoreland Management Plan, Comprehensive Plan, and Zoning and Subdivision Ordinances of the City of Tonka Bay.*

Criteria met.

8. *All projects shall be subject to the review by the Minnehaha Creek Watershed District and the City Engineer.*

The City Engineer has reviewed and approved the proposed improvements along with the Minnehaha Watershed District. Copies of the MCWD approval will be recorded on the property record at City Hall. **Criteria met.**

Council Options:

The City Council has the following options:

- A) DIRECT STAFF TO PREPARE A RESOLUTION APPROVING THE REQUESTS (based on the applicant’s submittals and findings of fact).
- B) DIRECT STAFF TO PREPARE A RESOLUTION DENYING THE REQUESTS (based on the applicant’s submittals and findings of fact).
- C) TABLE THE ITEMS and request additional information.

The 60-day review period for this application expires on 8-29-15.

Recommendation:

Staff recommends approval of the requested variance and conditional use permit based on the findings detailed in the report and as outlined in the template approval motion below.

Template Denial Motion for Variance and Conditional Use Permit:

“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:”
a. (Provide findings to support conclusion)

Template Approval Motion for all Variances:

“I move that we direct staff to prepare a resolution of approval for the requested front setback variance and conditional use permit to allow for a landscape and shoreline project (including construction of steps and boulder retaining walls) on the property located at 195 Mound Avenue based on the findings of fact listed in the report. Furthermore, the approval shall include the conditions listed within the staff report as may have been amended here tonight”.

- a. The proposed use as a single-family home will not change and is consistent with the City’s Comprehensive Plan.
- b. Granting the requested variance and Conditional Use Permit will not impair an adequate supply of light and air to adjacent parcels.
- c. Granting the variance and Conditional Use 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.
- g. The continued use of the property as a single-family home is a reasonable use of the property. The proposed steps and boulder retaining walls are a reasonable means for the property owners to access the lakefront areas of the property.
- h. The variance requests are in harmony with the general intent of the ordinance.

Recommended

1. The Applicant shall submit an updated survey showing the proper establishment of the benchmark used to determine the finished grades

***Conditions (if
approved variance
and Conditional Use
Permit):***

and must be approved by the City Engineer.

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. 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.
4. Erosion control measures shall be shown on the building permit plans and shall be subject to review and approval by the City Engineer.
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. Construction shall follow the survey and plans as submitted or as required to be updated by the City Engineer.
7. Building of structures shall not occur within any existing or proposed easements on the property.
8. The variance shall expire one year from the date of the resolution. City Council approval will be required for any subsequent extension.

blank

DECK STEPS

CITY OF TONKA BAY VARIANCE APPLICATION

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

RECEIVED

JUN 28 2015

Application fee: \$150.00

CITY OF TONKA BAY

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 6/11/15

SITE ADDRESS (or legal description) 195 MOUND AVE
PID NUMBER _____

NAME OF PROPERTY OWNER(S) CINDY & MIKE SCHWARTZ
MAILING ADDRESS 195 MOUND AVE, TONKA BAY, MN 55331
Street Address City State Zip

PHONE 214.551.5430 - CINDY E-MAIL _____

NAME OF APPLICANT(S) (if different from above) SOUTHVIEW DESIGN

MAILING ADDRESS 2383 PILOT KNOB ROAD, MENNOTA HEIGHTS, MN 55120
Street Address City State Zip

PHONE 651.203.3002 - MEGAN E-MAIL mbeisner@southviewdesign.com
651.755.4513 - TIM

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. Eleven (11) to scale copies and Eleven (11) 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?

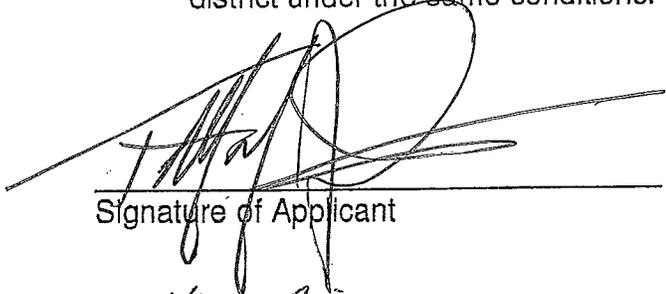
1004.02 GENERAL PROVISIONS AND STANDARDS

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:

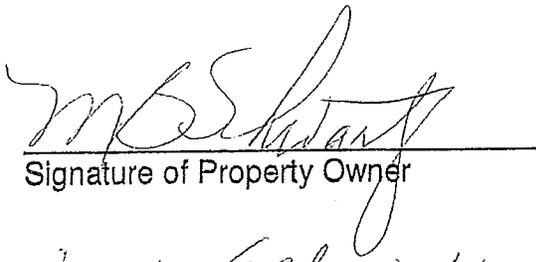
- a. Impair an adequate supply of light and air to adjacent property.
- b. Unreasonably increase the congestion in the public street.
- c. Increase the danger of fire or endanger the public safety.
- d. Unreasonably diminish or impair established property values within the neighborhood, or in any way 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:

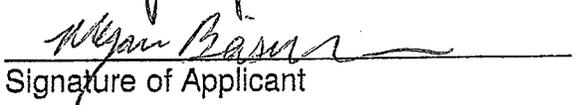
- a. Undue hardship will result if the variance is denied due to the existence of special conditions and circumstances which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same district.
 - 1. Special conditions may 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.



 Signature of Applicant



 Signature of Property Owner



 Signature of Applicant



 Signature of Property Owner

| This Section Completed by Staff | | | |
|---------------------------------|-----------------|-----------|---|
| FEE | FOR | DATE PAID | STAFF INITIALS |
| \$150.00 | Application Fee | 6/23 | CS by  |
| \$1,150.00 | Escrow Fee* | 6/23 | CS by  |

CITY OF TONKA BAY
CONDITIONAL USE PERMIT APPLICATION
Phone: (952) 474-7994 Fax: (952) 474-6538
www.cityoftonkabay.net

RECEIVED

JUN 23 2015

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 6/11/15

SITE ADDRESS (or legal description) 195 MOUND AVE
PID NUMBER _____

NAME OF PROPERTY OWNER(S) CINDY + MIKE SCHWARTZ

MAILING ADDRESS 195 MOUND AVE, TONKA BAY, MN 55331
Street Address City State Zip

PHONE 214.551.5430 - CINDY E-mail address _____

NAME OF APPLICANT(S) (if different from above) SOUTHVIEW DESIGN

MAILING ADDRESS 2383 PILOT KNOB RD, MENDOTA HEIGHTS, MN 55120
Street Address City State Zip

PHONE 651.203.3002 - MEGAN E-mail address mbeisner@southviewdesign.com
651.755.4513 - TIM

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. Eleven (11) to scale copies and Eleven (11) 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. Shoreland impact plan (see following page)

5. Landscape plan and grading and drainage plan (current and proposed)
6. Payment

Additional Information

1. The request shall be considered as being officially submitted and the application timeline commences when all the information requirements are in compliance.
2. The request for conditional use permits 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.
3. 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.
4. 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 conditional use permits so that the Commissioner will receive at least ten (10) days notice of the hearing.
5. A variance of the Ordinance shall be by four-fifths (4/5) vote of the entire City Council.
6. If approved, the conditional use permit 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.
7. Prior to approving an application for a conditional use permit, the City will 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.

1070.16 SHORELAND IMPACT PLAN/CONDITIONAL USE PERMIT

Subd. 1. Shoreland Impact Plan. Except for situations listed below, landowners or developers desiring to develop land or construct any dwelling or any other artificial obstruction on land located within the Shoreland District within the City of Tonka Bay shall first submit a conditional use permit application as regulated by Section 1003 of the Zoning Ordinance and a plan of development, hereinafter referred to as "Shoreland Impact Plan", which shall set forth proposed provisions for sediment control, water management, maintenance of landscaped features, and any additional matters intended to set forth proposed changes requested by the applicant and affirmatively disclose what, if any, change will be made in the natural conditions of the earth, including loss of change of earth ground cover, destruction of trees, grade courses and marshes. The plan shall minimize tree removal, ground cover change, loss of natural vegetation, and grade changes as much as possible, and shall affirmatively provide for the relocation or replanting of as many trees as possible which are proposed to be removed. The purpose of the Shoreland Impact Plan shall be to eliminate potential pollution, erosion and siltation.

Subd. 2. Feasibility. Where strict conformity with provisions of this section is not possible, the requirements specified herein may be exceeded subject to a conditional use permit and shoreland impact plan set forth in this section and with approval by the Minnehaha Creek Watershed District and the City Engineer where applicable.

Subd. 3. Conditions. All conditional use permits for consideration under this section shall be subject to the following conditions:

- a. The projects shall be analyzed to determine the impact of impervious surfaces, storm water runoff, floodplain, and water quality implications. Only those projects shall be allowed where the adverse impacts have been mitigated through approved means to the extent possible.
- b. Storm water treatment measures including, but not limited to, sediment basins (debris basins), de-silting basins or silt traps, installation of debris guards, and micro-silt basins on storm water inlets, oil skimming devices, etc. shall be required subject to the review of the City Engineer and Minnehaha Creek Watershed District on projects where applicable.
- c. Projects shall be analyzed by the City in terms of provisions for maintenance and enhancement of landscape features, change in the natural condition of the soil, removal of trees, grade courses and marshes. The land shall also minimize tree removal, ground cover change, loss of natural vegetation, and grade changes as much as possible. It shall further provide for the relocation or replanting as many trees as possible which are proposed to be removed.
- d. Projects shall be analyzed by the City in terms of the appearance of the structure when viewed from the lake's surface. Building materials, and color shall be analyzed to determine which facade and roof materials minimize the appearance and blend the structure into the shoreland and vegetation.
- e. Lot coverage on a project basis shall be restricted to the provisions for maximum impervious surface coverage as provided for in this Ordinance.
- f. Residential densities on a project basis shall not be allowed to exceed the maximum allowed density of the base zoning districts for which the project was proposed.
- g. All projects shall be in conformance with the Shoreland Management Plan, Comprehensive Plan, and Zoning and Subdivision Ordinances of the City of Tonka Bay.
- h. All projects shall be subject to review by the Minnehaha Creek Watershed District and the City Engineer.



 Signature of Applicant



 Signature of Applicant



 Signature of Property Owner



 Signature of Property Owner

| This Section Completed by Staff | | | |
|---------------------------------|-----------------|-----------|----------------|
| FEE | FOR | DATE PAID | STAFF INITIALS |
| \$ 150.00 | Application Fee | 6/23 | CS |
| \$1,150.00 | Escrow Fee* | 6/23 | CS |



Engineering ■ Planning ■ Environmental ■ Construction

701 Xenia Avenue South
Suite 300
Minneapolis, MN 55416
Tel: 763-541-4800
Fax: 763-541-1700

July 15, 2015

Megan Beisner
Southview Design
2383 Pilot Knob Rd.
St. Paul, MN 55120

Re: Variance and CUP Applications for 195 Mound Ave.
Tonka Bay, Minnesota
WSB Project No. 01987-450

Dear Ms. Beisner,

On July 1, 2015 the City received Variance and Conditional Use Permit Applications for 195 Mound Ave. I have reviewed for completeness the applications to allow for the creation a new sand patio, modifications to boulder walls and creation of new deck steps on the property located at 195 Mound Ave. in Tonka Bay. I have determined that the applications are complete.

Please note: the erosion control plan for the site will be required to be submitted prior to the August 11th City Council meeting.

Your applications will be added to the August 11th, 2015 City Council meeting agenda which will include a public hearing on the proposed application.

Please feel free to contact me at 763-287-8316 or by email at eperdu@wsbeng.com if you have any questions or need clarification regarding this letter or the application process. Thank you.

Sincerely,

WSB & Associates, Inc.

A handwritten signature in cursive script that reads 'Erin Perdu'.

Erin Perdu, AICP
City Planner

cc: Cindy & Mike Schwartz, Property Owners
Joe Kohlmann, City Administrator (e-mail only)
James Penberthy, City Attorney (e-mail only)
Justin Messner, City Engineer (e-mail only)

blank



June 9, 2015

Megan Beisner
Southview Design
2383 Pilot Knob Rd.
St. Paul, MN 55120

Re: Application for 195 Mound Ave., Tonka Bay

Dear Ms. Beisner:

The City of Tonka Bay is in receipt of your conceptual design for modifications to the lake-side yard at 195 Mound Ave. The development team has reviewed your concept; because the work you are proposing would occur within the shoreland impact zone, there are several pieces of additional information required:

1. Please provide an erosion control plan for the proposed grading within the shoreland impact zone.
2. Please provide the proposed section of the sand patio so that we may determine the perviousness of the surface; please include the depth of sand and any underlayment proposed.
3. Please provide the exact location of the proposed shed.
4. Per Section 1070.12 Subd.2a & 2B indicate the width of the proposed stairways and landing. Stairways shall not exceed 4-feet in width and landing shall not exceed 32sqft within shoreland impact zones.

The City will require both a variance and a conditional use permit for the proposed work. The new wooden steps proposed off the existing landing to the sand patio will require a variance as this these are considered a structure encroaching into the front yard setback that exceeds 9" above the average surrounding ground elevation. The proposed boulders and retaining walls will require a conditional use permit because the modifications constitute an "obstruction on land located within the Shoreland District". Evaluation criteria for these types of conditional use permits can be found in Section 1070.16, Subd. 3.

The DNR will need to approve the additional riprap shoreline proposed as well as the stone steps which appear to be installed under the NWL.

In addition, Section 1070.13 Subd. 2C states that a grading and filling permit shall be required for 1) The movement of more than ten (10) cubic yards of material on steep slopes or within shore or bluff impact zones; and 2) The movement of more than fifty (50) cubic yards of material outside of steep slopes and shore and bluff impact zones. A fill permit will be required from both the City and the Minnehaha Creek Watershed District. We will require documentation of the permits from both the DNR and MCWD prior to releasing a building permit for the work.

June 9, 2015

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In summary, based on the conceptual drawings you have provided, the necessary approvals include: a variance for the wooden steps; a conditional use permit for the shoreland modifications; DNR approval for the riprap shoreline and the stone steps to be installed under the NWL; and a grading and filling permit from both the City and the Minnehaha Creek Watershed District.

Please feel free to contact either of us with any questions you may have about this review.

Sincerely,

WSB & Associates, Inc.



Justin Messner, PE
City Engineer
651-286-8465
jmessner@wsbeng.com



Erin Perdu, AICP
City Planner
763-287-8316
eperdu@wsbeng.com

cc: Cindy and Mike Schwartz, Property Owner
Lindy Crawford, City Administrator, City of Tonka Bay
Jim Penberthy, City Attorney, City of Tonka Bay