

Tonka Bay City Council Agenda Item
Executive Summary

Title of Item: **VARIANCE REQUESTS:** Application from John Sonnek on behalf of Howard Root and Beth Heinemann requesting a variance from the required 15-foot floodplain buffer around all new structures; a 2.75 foot variance from the front yard (lakeshore) setback for the house; a 5.0 foot variance to exceed the maximum building height requirements of the R-1A zoning district; a one dock variance from Section 510.02, Subd. 2 to exceed the maximum number of docks; and a 10-foot variance from Section 510.02 Subd. 4 to allow a dock within 10 feet of the side lot line for a new home at 25 Fairhope Avenue – R-1A zoning – PID: 21-117-23-41-0035

Meeting Date: **6-12-12**

60 Day Review deadline: **60 day period ends 6-18-12. An extension notice has been sent to extend the application review period to 8-17-12.**

Staff/Guest Reporting: Jack Corkle, AICP, PTP – Interim City Planner
Justin Messner, PE – City Engineer

Summary: The applicant is seeking to tear down and rebuild the existing home at 25 Fairhope Avenue. In summary, the requested variances are as follows:

1. A **variance from the required 15-foot floodplain buffer** around all new structures.
2. A **2.75-foot variance** from the required front yard setback for the house.
3. A **5.0-foot variance** to exceed the maximum building height requirements of the R-1A zoning district.
4. A **one dock variance** from Section 510.02, Subd. 2 to exceed the maximum number of docks.
5. A **10-foot variance** from Section 510.02 Subd. 4 to allow a dock within 10 feet of the side lot line.
6. A **10-foot variance** from Section 510.02 Subd. 4 to allow a dock within 10 feet of the side lot line.

Decision Points: Staff has provided template approval and denial motions on page 14. Staff has indicated findings of fact for approval for all variances except Height Variance. In order to approve Height Variance, findings of fact will need to be determined at the Public Hearing. If the other variances Staff has indicated meet the variance criteria are to be denied, findings of fact for denial will need to be determined at the Public Hearing.

Findings of Fact needed to approve height request for following Criteria:

- Consistency with the general purposes and intent of the ordinance
- Practical difficulties
- Property value diminishment

City of Tonka Bay Planning Department
Variance Report

To: City Council

From: Jack Corkle, AICP, PTP – Interim City Planner
Justin Messner, PE – City Engineer

Meeting Date: June 12, 2012

Applicant: John Sonnek

Owner: Howard Root and Beth Heinemann

Location: 25 Fairhope Avenue

Zoning: R-1A

Introductory Information

Proposed Project: The applicant is seeking to tear down the existing home and rebuild a new home at 25 Fairhope Avenue.

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

1. A **variance** from the required 15-foot floodplain buffer around all new structures.
2. A **2.75-foot variance** from the required front yard (lakeshore) setback for the house.
3. A **5.0 foot variance** to exceed the maximum building height requirements of the R-1A zoning district.
4. A **one dock variance** from Section 510.02, Subd. 2 to exceed the maximum number of docks.
5. A **10-foot variance** from Section 510.02 Subd. 4 to allow a dock within 10 feet of the side lot line.
6. A **10-foot variance** from Section 510.02 Subd. 4 to allow a dock within 10 feet of the side lot line.

Findings

Site Data: Lot Size – 20,318 square feet
Existing Use – Single Family Home
Existing Zoning – R-1A
Property Identification Number (PID): 21-117-23-41-0035

Comp Plan Guidance: ■ The comprehensive plan guides this lot for single family use.

	<ul style="list-style-type: none"> ▪ The corresponding zoning assigned to this property (R-1A) allows for single family homes.
<i>Floodplain Buffer:</i>	<ul style="list-style-type: none"> ▪ RFPE = 933.5; fill within 15' must be at or above 932.5 ▪ There are areas within 15' of the primary residence that will be below the 932.5 elevation, so a variance from the required floodplain buffer will be necessary.
<i>Lakeshore Setback Analysis:</i>	<ul style="list-style-type: none"> ▪ The required lakeshore setback for the principal structure is the greater of either fifty (50) feet or “the average setback of the two adjacent riparian principal structures on either side of a proposed building site.” ▪ The average setback based on the closest point of the adjacent homes to the lake is 66.75 feet. ▪ The proposed home will be 64 feet from the OHWM ▪ A 2.75-foot front yard setback variance for the principal structure will be necessary.
<i>Building Height:</i>	<ul style="list-style-type: none"> ▪ The top of the proposed home will be five (5) feet over the maximum height of 30 feet as measured from the average ground level elevation of 937.8 ▪ A 5.0 foot variance for height will be necessary.
<i>Dock Analysis:</i>	<p>Number of Docks</p> <ul style="list-style-type: none"> ▪ Each lot or parcel of land in a residential district is limited to one dock. ▪ The property has two existing docks. ▪ A variance for one dock will be necessary. <p>Dock Setbacks</p> <ul style="list-style-type: none"> ▪ No dock, permanent or floating structure shall be located or constructed within ten feet of the side lot line of any lot or parcel projected to the inner harbor limits and in no event shall a dock and boat encroach or extend beyond the side yard lot lines. ▪ The property owners have two docks which do not meet the 10' setback. They have a formal agreement with one of the neighbors for a shared dock, which was approved by the Lake Minnetonka Conservation District but not with the city. ▪ The docks extend beyond the side lot line so a 10-foot variance is needed for each dock.
<i>Floor Area Ratio:</i>	<ul style="list-style-type: none"> ▪ The allowed FAR in the R-1A zoning district is 0.30 ▪ Based on a lot size of 20,318 square feet, the maximum floor area for a home on this lot is 6,095 square feet. ▪ According to the submitted plan sets, the proposed area of the home will be 5,956 square feet. This calculation includes the main floor living area, the second floor living area and the accessory garage. It also includes the proposed terraces. ▪ Based on the information provided, the proposed home would have a FAR of 29.3 percent. ($5,956 / 20,318 = 0.2931$). A variance is not needed.

Hardcover Analysis:

- The maximum hardcover permitted on this lot without any review is 25 percent; hardcover between 25 percent and 35 percent can be administratively approved by the City Engineer and City Administrator; and hardcover over 35 percent requires a CUP and/or a variance.
- The applicants are proposing hardcover in the amount of 5,908 square feet. Based on a lot size of 20,318 square feet, the hardcover on the lot is 29.1 percent.
- The City Engineer and City Administrator can administratively approve the hardcover. An engineering report has been submitted by the developer and has been reviewed and approved by the City Engineer.

Application Review:

**Applicable Code
Definitions:**

Average Ground Level. The average Ground elevation at least five (5) years prior to construction at the corners of a principal or accessory building footprint. Said average ground elevation shall be established from topography maps on file at the Tonka Bay City Hall or as determined by the City Engineer.

Building Height, Principal Buildings. The height of principal buildings measured from the average ground level prior to construction to the top cornice line of a flat and mansard roof, to the uppermost point on a shed, round or other arch-type roof, or to the average height of the highest gable of a pitched or hipped roof.

Dock. Any wharf, pier, or other structure constructed or maintained in the lake, whether floating or not, including but not limited to, all “Ls”, “Ts” or posts which may be a part thereof, whether affixed or adjacent to the principal structure.

Building Line. A line parallel to the street right-of-way, or the ordinary high water level at any story level of a building and representing the minimum distance which all or any part of the building is set back from said right-of-way.

Floodplain the channel or beds proper and the areas adjoining a wetland, lake or watercourse that have been or hereafter may be covered by the regional flood. Flood plain areas within Tonka Bay shall encompass all areas designated as Zone A, Zone AE, Zone AO, or Zone AH on the Flood Insurance Rate Map adopted in Section 2.1 of this Ordinance. The 100 year floodplain elevation for Lake Minnetonka is 931.5’ (NGVD 1929) as established by the Minnehaha Creek Watershed District.

Floor Area, Gross. The sum of the gross horizontal areas of all floors of the building or portion thereof devoted to a particular use, including accessory storage areas located within selling or working space such as activities, to the production or processing of goods, or to business or professional offices. However, the floor area shall not include basement or cellar floor area other than area devoted to retailing activities, the production or processing of goods, or to business or professional offices. The floor area of a residence shall not include the cellar area.

Floor Area Ratio (FAR). The floor area of a building or buildings on any lot divided by the area of such lot, or in the case of planned developments by the

net site area. The floor area ratio requirements, as set forth under each zoning district, shall determine the maximum floor area allowable for a building or buildings (total floor area of both principal and accessory buildings) in direct ratio to the gross area of the zoning lot.

Impervious Surface. Any structure or surface which interferes to any degree with the direct absorption of water into the ground, including but not limited to, roofs, sidewalks, paved driveways and parking areas, patios, tennis courts, swimming pools, or any other similar surface.

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: **Section 1040 (4.2) Standards for Floodplain Permitted Uses.** Requires that the finished fill elevation around structures 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.

Section 1011.03 General Yard, Lot Area and Building Regulations; Subdivision (5)(d). Requires that all riparian structures be setback from the lakeshore to the greater of 50 feet or the average setback of adjacent structures.

1017.07 Principal Building Heights; subdivision (3). Principal buildings shall be limited to a maximum height of two and one-half (2-1/2) stories or thirty (30) feet.

Section 510.02 Regulations Applicable to Lake Shoreline Property; subdivision (2). Each lot or parcel of land in a residential district shall be limited to one dock providing for a maximum of two slips. The Council, or City Administrator when so designated by the Council, may grant, by special permit, up to two additional slips for a total maximum of four slips per lot or parcel of land. A special permit shall be granted for the additional slips upon a showing that all slips are being used for boats owned exclusively by the person residing on the property, and his immediate family, or if the property is vacant, the owner of said property and his immediate family.

Section 510.02 Regulations Applicable to Lake Shoreline Property; subdivision (4). No dock, permanent or floating structure shall be located or constructed within ten feet of the side lot line of any lot or parcel projected to the inner harbor limits. Boats moored to buoys shall be moored so that the stern of said moored boat as it swings shall not cross the side lot line of any lot or parcel of land projected to the inner harbor limits. In the event that any lot or parcel of land is too narrow to dock a boat as stated herein, then the dock or boat shall be located equally distant between the extended side yard lot lines for any said parcel, but in no event shall said dock and boat encroach or extend

beyond the side yard lot lines as extended.

**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 include:

- A **variance** from the required 15-foot floodplain buffer around all new structures.
- A **2.75-foot variance** from the required front yard (lakeshore) setback for the house.
- A **5.0 foot variance** to exceed the maximum building height requirements of the R-1A zoning district.
- A **one dock variance** from Section 510.02, Subd. 2 to exceed the maximum number of docks.
- A **10-foot variance** from Section 510.02 Subd. 4 to allow a dock within 10 feet of the side lot line.
- A **10-foot variance** from Section 510.02 Subd. 4 to allow a dock within 10 feet of the side lot line.

Staff’s analysis of these requests 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.*

Floodplain buffer request: The flood plain buffer requirement is intended to ensure a property owner can access the structure in the event of a flood. The proposed home’s low floor will be at the RFPE, and all portions of the home are above the flood plain elevation. While the proposed buffer is smaller than is generally required by code, the home should still be accessible in the event of a flood. **Criteria met.**

Front yard setback request – principal structure: The shoreland district is intended to reduce the effects of overcrowding, to prevent pollution of waters, to minimize flood damages, to maintain property values and to maintain natural characteristics of shorelands.

- The proposed structure will be replacing a single family home with another single family home, thus not adding more structures or residences to the lake.
- The proposed structure will not be increasing pollution into the lake. The property owner has been required to have an on-site system to treat water runoff before it drains.
- As identified above, potential flood damages for the principal structure have been minimized by having the home's low floor opening at or above the RFPE.
- There is the potential to negatively impact the property values of adjoining properties in terms of their ability to continue to view the lake from their homes. As previously identified, the terrace of the proposed structure does extend beyond the average setback of the two adjoining residences. This could result in visibility issues for the adjoining properties if the terrace were ever to be enclosed. However, the terrace is not proposed to be enclosed.
- The proposed redevelopment of the property will not be altering the natural characteristics of the shoreline.

Provided the terrace remains unenclosed, criteria met.

Height request: The required height limit on principal building construction is intended to ensure that larger homes do not overshadow structures on adjacent properties that are smaller and to ensure that adequate light and air is provided to adjacent parcels. Like other areas in the city, the homes in this neighborhood vary in size and style based upon the time period in which the home was constructed and/or remodeled. Some of the homes are smaller in nature and others are quite large. These homes co-exist with one another today and make for a unique neighborhood.

Height differences can be highly subjective and vary from case to case. Given the situation of the home in relationship to its neighbors and how the sun travels, there are no facts to suggest that the proposed structure would block the sun and air. Most shadows would fall on the front and rear of adjacent parcels. **If the council finds that there are no facts to suggest that the height of the proposed home would prevent adequate light and air from reaching adjoining properties, the criteria is met.**

Based on the documentation submitted by the builder, the home to the west/northwest has a peak elevation of 961.9 and the proposed home has a peak elevation of 972.8. Thus, there is a 10.9-foot elevation difference between the homes. However, the home to the west/northwest of the subject property is built closer to the lake and sets back farther than the proposed home. The home to the east is more in parallel with the proposed home. Based on the documentation provided by the builder, the home to the east has a peak elevation of 959.0. Thus, there is a 13.8-foot elevation

difference between the home to the east and the proposed home. **If the council finds that there are facts to determine that the height difference between the proposed home and the adjacent parcels would prevent adequate light and air from reaching adjoining properties, the criteria is not met.**

Number of docks request: Chapter V, Section 510 of the City Code regulates docks and other fixed or floating structures. According to Subdivision 2, property owners are allowed one dock with two slips. Property owners may petition the city for additional slips if additional boats are owned by the property owner or his/her immediate family. The intent of the ordinance is to prevent overcrowding on the lake.

The property in question has two docks on site. In 2005, the property owners were informed that their docks would be inspected and would need to be brought into compliance if they were not. In 2006, the property owners were asked to provide additional information about their docks. There is no evidence of a response.

In 2009, the property owners at 25 and 29 Fairhope rebuilt their dock and received a permit from the Lake Minnetonka Conservation District for a shared dock. However, there is no evidence that information was supplied to the city.

In 2011, the property owners at 25 and 15 Fairhope contacted the Lake Minnetonka Conservation District about shared dock requirements and watercraft storage. However, there is no evidence that information was supplied to the city.

On the surface it may appear that the property owner would be contributing to overcrowding on the lake by having two permanent docks. However, it should be noted that the properties at 29, 25 and 15 Fairhope Avenue could each have a dock, with the result being three docks in the area. As it is, the joint arrangements allow for two docks to meet the needs of three neighbors. Thus, there is no net increase in boats that would lead to overcrowding. **Criteria met.**

Dock side yard setback request: Chapter V, Section 510 of the City Code regulates docks and other fixed or floating structures. According to Subdivision 4, no dock, permanent or floating structure shall be located or constructed within 10 feet of the side lot line of any lot or parcel projected to the inner harbor limits. The intent of this section of the ordinance is to ensure that there is enough room for boats to navigate into and out of each property. Both of the docks on the property are located within the 10-foot setback distance.

The property owner has an agreement with the property owners at 29 Fairhope (neighbor to the west) for a shared dock arrangement. The city, however, was not referenced in the agreement and does not appear to have approved the setback.

The shared dock with 15 Fairhope (neighbor to the east) has no documentation for its location or for a shared dock with the city. The property owner has indicated that they met with the Lake Minnetonka Conservation District and have met the requirements for a shared dock since they have agreed to store no more than four watercraft. This letter, however does not address city issues relating to setbacks.

If the property owner were to enter into an agreement with the property owners at 15 Fairhope and the city approves a second dock, this criteria is met.

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

All variance requests: The Comprehensive Plan calls for this area of the City to be used for single family dwellings, and for the development to occur in an orderly fashion in a manner best for the community. **Provided all other variance criteria are met, staff finds the variance requests will meet this criteria.**

3. *The property in question meets the “practical difficulties” test:*

a.) *The property owner proposes to use the property in a reasonable manner.*

All variance requests except height and dock requests: The property owner is seeking to make improvements to an old home by tearing it down and building a new and larger home. The use of the property as a single family residential dwelling unit will remain the same. Accordingly, staff finds the variance requests are reasonable. **Criteria met.**

Height request: The property owner is seeking to increase the height of the building as part of the reconstruction and has included a flat roof as part of the design. A flat roof design is one of the roof design types allowed in Tonka Bay. The existing home has a flat roof and the property owner wishes to maintain the character of the existing home by continuing the same design. **If the council believes the facts suggest the additional height is also reasonable, the criteria are met. If the council believes the facts suggest the additional height is unreasonable, then the criteria are not met.**

Additional dock request: As the property between to other lake homes, the property owner at 25 Fairhope Avenue is in a unique position to share facilities with both neighbors, thereby benefitting all three properties without contributing to lake overcrowding. The shared arrangement is working for all three parties and appears to be reasonable. **Criteria met.**

10-foot setback requests: The property owner has entered into an agreement with the owner of 29 Fairhope for a shared dock arrangement. As such, the dock straddles the two properties and a 10-foot setback cannot be met. This is a reasonable manner in which to

use a shared dock. However, based on the information in the property file, the City of Tonka Bay has not approved this dock. **Provided the City of Tonka Bay approves the dock, the criteria are met for having a setback less than 10-feet between 25 and 29 Fairhope.**

The property owner has not provided documentation of a shared dock arrangement with the property owner at 15 Fairhope. **Provided the property owner enters into an agreement with the property owner at 15 Fairhope and provided the City of Tonka Bay approves a variance for a second dock, the criteria for a variance for a 10-foot setback between 15 and 25 Fairhope is met.**

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

Floodplain buffer: The entire City of Tonka Bay falls under the floodplain ordinance. Given the elevations of most property in and around the lake, the floodplain buffer creates circumstances to the property that are beyond the control of the property owner. The proposed home will have all of its entrances above the RFPE, and access to the home will be provided in the event of a flood. Additionally, the proposed home will not be increasing pollution into the water; nor will it be increasing crowding on the lake or altering the shoreline. **Staff finds these criteria satisfied.**

Front yard setback request: The proposed structure is proposed to be set back 64 feet from the OHW. The ordinance requires the averaging of the setbacks from adjacent parcels or 50 feet, whichever is greater. In this case the averaging of the two properties is 66.75 feet. One of the properties is 43.1 feet away from the OHW and the other is 90.4 feet away. The wide range in setbacks is due to the meandering of the lake in the area, the width of adjoining properties and the amount of land jutting out into the water in front of these three homes. Because the home to the east has a much greater setback due to the size and shape of this property, it impacts what the setbacks can be on 25 Fairhope, even though the size and topography of this parcel of land is quite different. The property owner cannot control the land circumstances on adjacent parcels and has modified their design to pull the home closer to the rear yard. **Criteria met.**

Height request: This request is created by the roof design and ceiling heights chosen by the landowner. **Criteria not met.**

Additional dock request: The property owner at 25 Fairhope entered into a shared dock agreement with his neighbor to the west/northwest in the 1980s. This arrangement came about as a result of property development at that time. This considered the first dock for the property.

The second dock (neighbor at 15 Fairhope) was in some ways needed to accommodate a dock location for the property at 15 Fairhope. This parcel is uniquely shaped and there are very few locations that a dock

could be placed and still allow for boats to get into and out of the neighborhood. One of the better locations for a dock at 15 Fairhope happened to be on the property line with 25 Fairhope. Because the circumstances are unique to the property and not at the sole cause of the property owner, **staff believes the criteria met.**

Dock setback requests:

This request is created by the parties involved in the dock sharing arrangement, the development of the property in 1987 and the topography of the land at 15 Fairhope. Shared docks logically have to be convenient for both users in order to work. The most logical spot to place the dock is on the property line and not 10 feet away from one of the properties. There are circumstances not created by the property owner. **Criteria met.**

- c.) *The variance will maintain the essential character of the locality.*
All variance requests except height: The proposed new home will be consistent with other homes in the neighborhood and will maintain the character of the locality. **Staff finds the criteria met.**

Height request: As previously noted, there are a wide variety of housing styles and sizes in the neighborhood. A home that is a different height than the ones next to it is not unusual for the neighborhood. Additionally, the existing home is a flat-roofed structure and the proposed home has also been designed as a flat-roofed building, thus essentially replacing the same type of design and not altering the character of the locality. **Staff finds the criteria met.**

B. City Tests:

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

All variance requests except height: No. Granting all variances except the height variance would in no way impair an adequate supply of light and air from reaching adjacent properties. **Criteria met.**

Height variance request: Height differences can be highly subjective and vary from case to case. Given the situation of the home in relationship to its neighbors and how the sun travels, there is no hard evidence to suggest that the proposed structure would block the sun and air. Most shadows would fall on the front and rear of adjacent parcels for limited times. **If the council finds that there are no facts to suggest that the height of the proposed home would prevent adequate light and air from reaching adjoining properties, the criteria is met.**

Based on the documentation submitted by the builder, the home to the west/northwest has a peak elevation of 961.9 and the proposed home has a

peak elevation of 972.8. Thus, there is a 10.9-foot elevation difference between the homes. However, the home to the west/northwest of the subject property is built closer to the lake and sets back farther than the proposed home. The home to the east is more in parallel with the proposed home. Based on the documentation provided by the builder, the home to the east has a peak elevation of 959.0. Thus, there is a 13.8-foot elevation difference between the home to the east and the proposed home. **If the council finds that there are facts to determine that the height difference between the proposed home and the adjacent parcels would prevent adequate light and air from reaching adjoining properties, the criteria is not met.**

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

All variance requests: No. The use of the property for a single family dwelling is not proposed to change as a result of the variance being requested. As such, the average number of daily trips expected from this type of property will not change. **Criteria met.**

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

All variance requests: No. Use of the property for a single family dwelling is not proposed to change as a result of the requested variances. The possibility of fire will therefore not increase as a result of the variance requests. **Criteria met.**

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

15-foot buffer around principal and accessory structures; a one dock variance; and a 10-foot variance to allow two docks within 10 feet of the side lot line: The proposed reconstruction of the home will increase the property value, which in turn will support or boost the value of nearby properties. Second, 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.**

2.75-foot variance from the front yard setback for the principal structure:

If the proposed terrace remains unenclosed, there are no facts on record to show that the views of the lake for adjacent property owners would be diminished or impaired by the proposed home location. Thus, their property values also should not be diminished due to this variance request.

Criteria met.

5.0-foot variance from the 30-foot height limit: If the council believes that there are no facts to suggest that the height of the proposed home would prevent adequate light and air from reaching adjoining properties, then there are no facts to support that the property values of adjacent and surrounding properties should be unreasonably diminished. **Criteria met.**

If the council believes that there are facts to determine that the height difference between the proposed home and the adjacent parcels would prevent adequate light and air from reaching adjoining properties, then property values of adjacent properties could be diminished. **Criteria not met.**

C. Criteria specific to flood plain variances:

1.) *Will the variance result in increased flood levels or threats to public safety?*

Engineering has reviewed the proposed improvements and does not find reason to believe the proposed improvements would increase flood levels or any threat to public safety. On the contrary, allowing a lesser buffer around the home will ensure there is less change to the flood plain. **Criteria met.**

2.) *Is the variance the minimum necessary to afford relief?*

Engineering review of the proposed grading around the home shows that the proposal is very reasonable given the constraints on this lot, and the proposed buffer strikes the right balance between providing access and protection to the home, and mitigating potential impacts to the flood plain. **Criteria met.**

Resident Concerns:

- Staff is not aware of any concerns raised to date. Two letters of support have been submitted by neighbors. (Exhibit H)

Additional Information:

- Please see attached letters from the City of Tonka Bay dated June 20, 2005 and June 13, 2006 regarding dock compliance. (Exhibit B)
- Please see attached agreement between property owners at 25 and 29 Fairhope. (Exhibit C)
- Please see attached letter from Lake Minnetonka Conservation District dated July 30, 2009 regarding a permit for a shared permanent dock for 25 and 29 Fairhope. (Exhibit D)

- Please see attached letter from Lake Minnetonka Conservation District dated March 25, 2011. (Exhibit E)
- Please see applicant responses to dock questions in e-mail dated May 21, 2012. (Exhibit F)
- The DNR hydrologist Jack Gleason was asked to comment on the application, and had no objections to the request.

Engineering Report: As noted previously, calculations for this property indicate that approximately 29.1 percent of the property is hardcover. This exceeds the 25 percent maximum and requires approval from the City Engineer and City Administrator. An engineering report has been submitted by the developer and has been reviewed and approved by the City Engineer. An agreement has been prepared between the property owner and the City of Tonka Bay for constructing and maintaining the proposed storm water management system. (Exhibit G - Agreement)

Conclusion

- Council Options:** The City Council has the following options:
- A) DIRECT STAFF TO PREPARE A RESOLUTION APPROVING ALL OF OR SOME OF THE REQUESTS (based on the applicant’s submittals and findings of fact).
 - B) DIRECT STAFF TO PREPARE A RESOLUTION DENYING ALL THE REQUESTS OR SOME OF 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 6-18-12. An extension letter has been sent to the applicant and the home owners. A final decision MUST be made prior to 8-17-12.

- Template Denial Motion:** I move that we direct staff to prepare a resolution of denial for the height variance(s) based on the following findings of fact:”
1. Request is not in harmony with the general purposes and intent of the Zoning Ordinance.
 - a. There are facts to determine that the height difference between the proposed home and the adjacent parcels would prevent adequate light and air from reaching adjoining properties. (height variance)
 2. The property in question does not meet the “practical difficulties” test.
 - a. There are facts to determine that the additional height is unreasonable. (height variance)
 - b. The height issue was created by the roof design and ceiling heights chosen by the landowner. (height variance)

3. The variance impairs and adequate supply of light and air to adjacent property.
 - a. There are facts to determine that the height difference between the proposed home and the adjacent parcels would prevent adequate light and air from reaching adjoining properties. (height variance)
4. The variance will unreasonably diminish or impair established property values within the neighborhood
 - a. There are facts to determine that the height difference between the proposed home and the adjacent parcels would prevent adequate light and air from reaching adjoining properties. Thus, the property values of adjacent properties could be diminished.(height variance)
5. Finding needed at Public Hearing for denial of 15-foot Floodplain Buffer.
6. Finding needed at Public Hearing to deny Front Yard Setback.
7. Finding needed at Public Hearing to deny Maximum Number of Docks.
8. Finding needed at Public Hearing to deny 10-Foot Setback for Docks.

Template Approval Motion:

“I move that we direct staff to prepare a resolution of approval for the requested flood plain buffer variance, the requested front yard (lakeshore) setback variance for the house, the requested building height variance, the requested variance to exceed the number of docks and slips, and the requested variance to allow docks within ten feet of the side lot line 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”.

1. Finding needed at Public Hearing to approve Building Height Request.
2. Findings for remaining variance requests:
 - a. The home will always be accessible in the event of a flood and the applicant does not control all land within 15 feet of the proposed home.
 - b. The proposed use as a single family home will not increase crowding on the lake and it will not increase congestion on public streets.
 - c. The proposed use as a single family home is consistent with the City’s comprehensive plan.
 - d. The second dock will not increase crowding on the lake because there are two docks serving three properties, thus there is no net increase in the number of docks for the neighborhood.
 - e. The neighbors have been sharing docks for a number of years. All parties are involved in the process and the most convenient place to serve the users is to have the docks in a location that serves both

properties equally well. Placing the docks on the property line serves everyone.

- f. The proposed home will not be increasing pollution into the lake. The property owner has been required to have an on-site system to treat water runoff.
- g. The proposed home will not be altering the natural characteristics of the shoreline.
- h. The shape and size of the neighboring property has an effect on the setback requirement for the proposed home. Because the neighboring property has a much greater setback, it impacts the setback at 25 Fairhope. Provided the terrace remains unenclosed, the proposed home will not diminish lake views for neighboring property owners.
- i. The danger of fire or negative impacts to public safety will not be increased with the construction of a single family home.
- j. Provided the terrace remains unenclosed, the proposed home should not diminish property values in the neighborhood.

***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 shall be provided to the city prior to a building permit being authorized.
3. Silt fencing shall be shown on the building permit plans and shall be subject to review and approval by the City Engineer.
4. A sump pump inspection must be completed by the City of Tonka Bay prior to C.O. being issued.
5. A water meter inspection must be completed by the City of Tonka Bay prior to C.O. being issued.
6. Dock permits shall be applied for and approved by the City of Tonka Bay and the Lake Minnetonka Conservation District prior to C.O. being issued.
7. A shared dock agreement shall be entered into by the property owners at 15 Fairhope and 25 Fairhope.
8. Construction shall follow the survey and plans as submitted or as required to be updated by the City Engineer.

9. Building of structures shall not occur within any existing or proposed easements on the property.
10. Per the Storm Water Facilities Maintenance Agreement and Restrictive Covenant, the applicant shall:
 - a) Agree to construct and maintain a drainage system on his/her property as shown on the Drainage System Drawing.
 - b) Maintain and preserve the drainage system until such time as the City, its successors or assigns, agree that the system should be altered in some manner or eliminated.
 - c) Not to dismantle, revise, alter or remove part of the system except as necessary for maintenance, repair or replacement.
 - d) Provide the City the right to ingress and egress over portions of the property in order to access the drainage system for inspection and to reasonably monitor the system for performance, operational flows or defects.
 - e) Be responsible for inspecting and maintaining the storm water treatment and conveyance system, on an annual basis. The property owner will provide a letter to the City Engineer by September 1st of each year, stating that inspection and maintenance have been completed.
 - f) Assume all responsibility for the cost of any maintenance and for repairs to the drainage system. Such responsibility shall include reimbursement to the City within 30 days after the City mails an invoice to the Owner for any work performed by the City. Overdue payments will require payment of interest by the Owner at the current legal rate as liquidated damages.
 - g) Obtain written approval from the City Engineer prior to filling, piping, cutting or removing vegetation (except in routine landscape maintenance) in open vegetated drainage facilities (such as swales, channels, ditches, ponds, etc.), or performing any alterations or modifications to the drainage system.
11. The City Engineer will verify and approve ingress and egress areas for City access to the stormwater treatment system prior to issuing a building permit.
12. 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.
13. The proposed terrace, which extends beyond the average setback of the two adjacent homes, is not to be enclosed as to preserve sightlines to the lake from neighboring properties.
14. The variances shall expire one year from the date of the resolution. City Council approval will be required for any subsequent extension.