

Tonka Bay City Council Agenda Item
Executive Summary

Title of Item: **VARIANCE REQUESTS:** Application from Carol and Kim Culp requesting a variance to allow a swimming pool in the front yard (lakeside) at 20 Old Orchard Lane – R-1A zoning – PID: 28-117-23-24-0007

Meeting Date: **9-10-13**

60 Day Review deadline: **60 day period ends 9-27-2013**

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

Summary: The property owners are proposing a swimming pool in the front yard (lakeside) of the property. The Zoning Ordinance states that for riparian lots, the front yard is that side adjacent to the lake. Section 1011.04, Subd. 1.a. Accessory Buildings, Structures, Uses and Equipment General Provisions states that “except as may be specifically provided, no accessory use, building, structure or equipment shall be allowed within a required front yard”. The requested variance is as follows:

1. A **variance** to allow for the installation of a swimming pool in the front yard (lakeside) of the property.

Staff believes that the applicant has met the Statutory and City Criteria for approving the requested variance. Staff has provided a template approval motion on page 5 as well as findings of fact for approval for the requested variance.

City of Tonka Bay Planning Department
Variance Report

To: City Council

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

Meeting Date: September 10, 2013

Applicant: Carol and Kim Culp

Owner: Carol and Kim Culp

Location: 20 Old Orchard Lane

Zoning: R-1A

Introductory Information

Proposed Project: The property owners are proposing to install an in-ground swimming pool between their home and the lake. The proposed project will also include steps, retaining walls, and a patio around the pool.

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

1. A **variance** to allow for the installation of a swimming pool in the front yard (lakeside) of the property.

Findings

Site Data: Lot Size – 41,694 square feet
Existing Use – Single Family Home
Existing Zoning – R-1A
Property Identification Number (PID): 28-117-23-24-0007

Comp Plan Guidance:

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

Accessory Buildings:

- No accessory building or use, except as specifically provided by the Zoning Ordinance, may be located in a front yard.
- For riparian lots, the front yard is defined as that side adjacent to the lake.
- The applicants have proposed to locate the pool in the front yard. A variance will be required.

Hardcover:

- The maximum hardcover permitted on this lot without any review is 25 percent; hardcover between 25 percent and 35 percent can be allowed subject to approval by the City Engineer and City Administrator.
- The applicants are proposing hardcover in the amount of 11,811 square feet,

which is 28.33 percent of the lot. This is a 3.6 percent increase from what exists today.

- As part of approval, it will be a requirement that stormwater be treated on site. Plans for this treatment will be subject to review by the City Engineer.

Application Review

Applicable Code Definitions:

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.

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

Variance. A variance is a relaxation of the terms of the Zoning Ordinance where such deviation will not be contrary to the public interest and where, owing to conditions unique to the individual property under consideration and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship.

Applicable Codes:

1011.04 Accessory Buildings, Structures, Uses and Equipment. Subdivision 1.a Except as may be specifically provided, no accessory use, building, structure or equipment shall be allowed within a required front yard. Placement of accessory buildings, structures, and equipment in the Shoreland District shall be regulated as found in Section 1070 of this Code.

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 variance is as follows:

1. A **variance** to allow for the installation of a swimming pool in the front yard (lakeside) of the property.

Staff's analysis of the requested variance under the review criteria is as follows:

A. Statutory Criteria

1. *The request is in harmony with the general purposes and intent of this ordinance.*

It is staffs interpretation that the requirement that no accessory structure or use be located in the front yard is intended to maintain a reasonably consistent appearance and high visual standard of all property from the public street. In the case of riparian lots, the lakeside of the property is considered the front yard. It is also staffs interpretation that this is intended to maintain a consistent appearance and high visual standard of properties from the lake, as well as to preserve views of the lake from adjacent property.

A swimming pool is a reasonable use for a single family home and can be found on several other lakefront properties within Tonka Bay and around Lake Minnetonka in adjacent communities. As written, the Code would result in the street side of the property being considered the rear yard; however, staff does not find this to be a desirable or logical location for a pool due to the existing site conditions that are unique to the property as outlined within this report. **Criteria met**

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

The Comprehensive Plan calls for this area of the City to be used for single family dwellings, and for the development to occur in an orderly fashion in a manner best for the community. A swimming pool is a reasonable accessory use to a single family home and the lakeside of the property presents the most viable location for the pool as outlined in criteria 1 above. **Criteria met.**

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

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

The property owners are seeking to install an in-ground swimming pool and patio for greater enjoyment of the lakeside of their property. The uses conform to the allowed uses in the R-1A district. While the zoning ordinance states that the lakeside shall be considered the front yard for riparian lots, and that no accessory uses shall be located in front yards, the lakeside presents the most reasonable location for the pool. Staff finds the request reasonable. **Criteria met.**

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

A request to locate a swimming pool in the front yard (lakeside) of any lakeshore property in the City would require a variance. Removal of significant trees and additional grading due to the drop off in topography would occur if the pool were to be located in the rear yard (street side). Additionally, locating the pool in the rear yard may also require additional variances. **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 this variance. Swimming pools can be found on the lakeside of several other riparian lots in the City of Tonka Bay as well as around Lake Minnetonka in adjacent communities. The swimming pool should not reasonably detract from views of the lake from adjacent property. The lakeside of the property presents a much more reasonable location for a swimming pool than the streets side of the property. **Criteria met.**

B. City Tests:

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

No. The proposed swimming pool should not impair an adequate supply of light and air from reaching adjacent property. A fence will be required to be installed surrounding the pool of a height no greater than six feet; however, the property owners could install a fence for their rear yard without a swimming pool. **Criteria met.**

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

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

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

No. The installation of a swimming pool 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 addition of a swimming pool to the lakeside of the property should not have any impact on the values of neighboring properties. However, allowing a swimming pool on the street side of the property may have adverse effects on neighboring property values.

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.**

Engineering Reports: As noted previously, calculations for this property indicate that approximately 28.33 percent of the property is hardcover. This exceeds the 25 percent maximum and requires approval from the City Engineer and City Administrator. As part of approval, it will be a requirement that stormwater be treated on site. Plans for this treatment will be subject to review by the City Engineer.

Conclusion

Council Options: The City Council has the following options:

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

The 60-day review period for this application expires on 09-27-13. An extension letter may be sent to the applicant and the home owners. A final decision MUST be made prior to 11-26-13.

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

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

- (Provide findings to support conclusion)

Template Approval Motion: "I move that we direct staff to prepare a resolution of approval for the requested variance to allow for the installation of a swimming pool in the front yard (lakeside) of the property based on the findings of fact listed in the report. Furthermore, the approval shall include the conditions listed within the staff report as may have been amended here tonight".
(Recommended)

- a. The proposed use as a single-family home will not change and is consistent with the comprehensive plan.
- b. Granting the requested variance will not impair an adequate supply of light and air to adjacent parcels.
- c. Granting the variance 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 variance will not increase the danger of fire or endanger the public safety.
- e. Granting the variance will not diminish or impair established property values in the neighborhood. However, locating the swimming pool on the street side of the property may have adverse effects on neighboring property values.
- f. Granting the variance will not alter the essential character of the locality. Swimming pools can be found on the lakeside of several other riparian lots in the City of Tonka Bay and around Lake Minnetonka in adjacent communities. The swimming pool should not reasonably detract from views of the lake from adjacent property. The lakeside of the property presents a much more reasonable location for a swimming pool than the street side of the property.
- g. The request for a swimming pool is reasonable given the principal use of the property as a single-family home.
- h. The variance request is in harmony with the general intent of the ordinance and will not lead to an overcrowding of homes. The ordinance states that the lakeside of riparian lots shall be considered the front yard. It also states that accessory structures and uses shall not be permitted in front yards. It seems reasonable that swimming pools on riparian lots may not have been considered when this requirement was adopted.

***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 approval of the building permit for the swimming pool is contingent upon the Applicant obtaining a fence permit that meets city code and the swimming pool regulations. No expansion of the structure, including but not limited to vertical structural expansion.
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. Building of structures (i.e. pool equipment storage structures) shall not occur within any existing easements on the property.
6. The applicant shall work with the City Engineer on a plan to treat stormwater on site. Plans for this treatment will be subject to review

and approval by the City Engineer prior to issuance of a building permit.

7. 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.
8. The building permit for the swimming pool
9. The variances shall expire one year from the date of the resolution. City Council approval will be required for any subsequent extension.