

# CITY OF TONKA BAY ITEM NO. 7B

## Tonka Bay City Council Agenda Item Executive Summary

*Title of Item:* **VARIANCE AND CONDITIONAL USE PERMIT REQUESTS:**  
Application from Ann Marie Jennings requesting variances and a conditional use permit to allow for the construction of a new home located at 35 West Point Avenue – R-1A zoning – PID: 27-117-23-32-0017

*Report Date:* **9-16-14**

*Meeting Date:* **9-23-14**

*60 Day Review  
deadline:* **60 day period ends 10-19-14**

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

*Summary:* The Applicant is seeking to tear down the existing home and construct a new home on the property located at 35 West Point Avenue. Construction of the new home as proposed requires four (4) variances.

In summary, the requested variances are as follows:

1. A **7,039 square foot variance from the minimum lot area requirement** to allow for the construction of a new home on a lot that is 12,961 square feet in area.
2. A **25 foot variance from the minimum required lot width requirement** to allow for the construction of a new home on a lot that is 50 feet wide along Lake Minnetonka.
3. A **6.2 foot variance from the required 23 foot rear yard setback** for a roof overhang (**7 foot variance from the required 25 foot rear yard setback** for the principal structure) to allow for the construction of a new home 18 feet from the rear property line with a 1.2 foot roof overhang.

The proposed action will require the following conditional use permit:

1. A **conditional use permit to allow a 13% increase** over the maximum impervious surface coverage of 25.0% for a total of 38% impervious surface coverage.

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

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 23, 2014**

*Applicants:* Ann Marie Jennings

*Owners:* Ann Marie Jennings C/O Bestmark Inc.

*Location:* **35 West Point Avenue**

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

**Introductory Information**

*Proposed Project:* The property owners are proposing to tear down the existing home and construct a new home on the property located at 35 West Point Avenue.

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

4. A **7,039 square foot variance from the minimum lot area requirement** to allow for the construction of a new home on a lot that is 12,961 square feet in area.
5. A **25 foot variance from the minimum required lot width requirement** to allow for the construction of a new home on a lot that is 50 feet wide along Lake Minnetonka.
6. A **6.2 foot variance from the required 23 foot rear yard setback** for a roof overhang (**7 foot variance from the required 25 foot rear yard setback** for the principal structure) to allow for the construction of a new home 18 feet from the rear property line with a 1.2 foot roof overhang.

The proposed action will require the following conditional use permit:

1. A **conditional use permit to allow a 13% increase** over the maximum impervious surface coverage of 25.0% for a total of 38% impervious surface coverage.

**Findings**

*Site Data:* Lot Size – 12,961 square feet  
Existing Use – Single Family Home  
Existing Zoning – R-1A Shoreland  
Property Identification Number (PID): 22-117-23-32-0017

*Comp Plan Guidance:*

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

***Lot Area and Lot Width:***

- The lot area requirement in the R1-A Shoreland District is 20,000 square feet. The lot of record is 12,961 square feet and is therefore a nonconforming lot.
- Minnesota Statute 462.357, Subd. 1e. Nonconformities (d)(e) states that a nonconforming single lot of record located within a shoreland area may be allowed as a building site without variances from the lot size requirement, provided that:
  1. All structure and septic system setback distance requirements can be met;
  2. A Type 1 sewage treatment system consistent with Minnesota Rules, Chapter 7080, can be installed or the lot is connected to a public sewer; and
  3. The impervious surface coverage does not exceed 25 percent of the lot.
- As outlined later in this report, the impervious surface coverage exceeds 25 percent of the lot, therefore a variance from the lot area is required.
- The lot width requirement in the R1-A District is 75 feet. The lot of record is 94.3 feet along West Point Avenue and 50 feet along Lake Minnetonka, therefore a variance from the lot width is required.

***Rear-Yard Setback:***

- The rear-yard setback (street side) in the R1-A District is 25 feet.
- On lakefront homes, the rear yard is considered the opposite side of the front which is the lake side.
- The Applicant is proposing a 16.8 foot rear yard roof overhang setback (18 foot home setback) from the rear-yard, and thus a variance is required.

***Front-Yard Setback:***

- The front-yard (lakeside) setback in the R1-A District 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.
- The average setback of the two adjacent riparian principal structures on either side is 60.8 feet ( $48.70' + 72.90' / 2 = 60.8'$ ).
- The Applicants are proposing a front-yard setback of 67.24 feet.

***Side Yard Setback:***

- The side yard setback in the R1-A District is 8 feet.
- The construction of the new home will meet this minimum requirement as the Applicant is proposing a side yard setback of 8' from the north property line and 8.76 from the south property line.

***Height:***

- The maximum height limit within the R1-A District is 2½ stories or 30 feet.
- The building height limits do not apply to items such as chimneys or flues and parapet walls, so long as such structure element does not exceed forty (40) feet in total height or exceed the maximum height of the building by more than five (5) feet, whichever is greater, except by conditional use permit.
- The height of principal buildings is measured from the top of the average ground level elevation prior to construction to the average height of the

<p><i>Floor Area Ratio (FAR):</i></p>	<p>highest gable or a pitched or hipped roof.</p> <ul style="list-style-type: none"> <li>▪ The existing average ground floor elevation is 932.1 feet. Proposed is 932.9 feet.</li> <li>▪ The proposed new home will 26 feet (30 feet to the peak of the roof) which meets the City ordinance requirements.</li> </ul> <p>▪ The maximum floor area ratio (FAR) permitted by code in the R1-A District is 0.30 unless otherwise allowed by approval of a conditional use permit (CUP).</p> <p>▪ The proposed home will include 2,928sf of space for a FAR of 0.23, which complies with the Code.</p>
<p><i>Hardcover:</i></p>	<ul style="list-style-type: none"> <li>▪ The maximum hardcover permitted on this lot without any review is 25 percent; hardcover between 36 percent and 45 percent may be allowed provided a shoreland impact plan and conditional use permit is approved by the City Council.</li> <li>▪ The existing property has an existing hardcover of 48.1 %. The Applicants are proposing a hardcover of 38.0% with the construction of the new home. This exceeds the 25% maximum impervious surface coverage by 13%, but reduces the total amount on the property by 10.1%.</li> </ul>
<p><i>AC Units:</i></p>	<ul style="list-style-type: none"> <li>▪ The Applicant is proposing one air conditioning unit along the north side property line that is 8' from the property line. This meets the ordinance requirements.</li> </ul>

**Application Review:**

*Applicable Code Definitions:*

**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, modifications, 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.

**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.

**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.

**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:*

**1017.06 Lot Area and Setback Requirements; subdivision (1).** Lots in the R-1A Zoning District shall have a lot area of not less than twenty thousand (20,000) square feet.

**1017.06 Lot Area and Setback Requirements; subdivision (2).** Lots in the R-1A Zoning District shall have a lot width of not less than seventy-five (75) feet.

**1017.06 Lot Area and Setback Requirements; subdivision (3) c.** Principal structures in the R-1A Zoning District shall be setback not less twenty-five (25) feet from the rear yard lot line.

**1070.11 Impervious Surface Coverage; subdivision (1) 2.** Where appropriate and where structures and practices are in place for the treatment of storm water, impervious surface coverage of between thirty-six (36) percent to forty-five (45) percent may be allowed provided a shoreland impact plan/conditional use permit is submitted and approved as provided for in Section 1070.16 of this Ordinance.

The proposed action will require the following variance:

1. A **7,039 square foot variance from the minimum lot area requirement** to allow for the construction of a new home on a lot that is 12,961 square feet in area.

2. A **25 foot variance from the minimum required lot width requirement** to allow for the construction of a new home on a lot that is 50 feet wide along Lake Minnetonka.
3. A **6.2 foot variance from the required 23 foot rear yard setback** for a roof overhang (**7 foot variance from the required 25 foot rear yard setback** for the principal structure) to allow for the construction of a new home 18 feet from the rear property line with a 1.2 foot roof overhang.

The proposed action will require the following conditional use permit:

1. A **conditional use permit to allow a 13% increase** over the maximum impervious surface coverage of 25.0% for a total of 38% impervious surface coverage.

***State Statute:***

**State Statute 462.357, Subdivision 1e. Nonconformities (e).** A non-conforming single lot of record located within a shoreland area may be allowed as a building site without variances from lot size requirements, provided that:

1. All structure and septic system setback distance requirements can be met;
2. A Type 1 sewage treatment system consistent with Minnesota Rules, Chapter 7080, can be installed or the lot is connected to a public sewer; and;

The impervious surface coverage does not exceed 25 percent of the lot.

***Variance Criteria Review:***

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.*

Lot Area and Width Request: The City's intent of establishing minimum lot sizes is to ensure that land does not become overcrowded with structures and that the lake does not get polluted. In this instance while the physical lot area and width along Lake Minnetonka is narrow and does not meet the provisions of the Code, the lot widens out as it extends toward the West Point Avenue, ultimately being wider than would otherwise be required by Code.

There is currently an existing two-story single-family home on the property. The Applicant proposes to use the property in the same manner as it was previously. Staff finds that the newly constructed single-family home in this location would not contribute to overcrowding and therefore is in harmony with the general purposes and intent of the ordinance.

**Criteria met**

Setback Request: The intent of the setbacks is to provide an adequate buffer between homes and to provide for areas of recreation/open space

and stormwater drainage areas on properties. The proposed home is located on a riparian lot that is uniquely shaped. The rear yard is that side of the property opposite the lakeside, which in this case runs parallel to West Point Avenue. The Applicants currently have a detached garage that is located close to the rear property line.

The proposed redevelopment would pull the garage further off of West Point Avenue, which will be in alignment with the neighboring detached garage structure to the north.

It appears the Applicant has provided adequate space for recreational activities/open space and areas to handle stormwater runoff and has provided a home layout that minimizes the impacts to the lakeside of the property by positioning the home further from the lake than required by code. **Criteria 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. The construction of a new home on this property 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. While the layout of the proposed home could be modified to potentially reduce the yard setback encroachments, the Applicants are proposing to use the property in a reasonable manner. Furthermore, the Applicants are meeting/exceeding the front yard (lakeside) setback requirement, which meets the intent of having the setback; to maintain views to/from the lake. With the limited area to construct a new home on the lot given the existing site constraints (setbacks and lot shape), it is reasonable that the Applicants are proposing to construct the proposed home further from the lakeshore by placing the home closer to the west property line as proposed.

**Criteria met.**

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

The property is unique in that it is not a typical "rectangular" shaped lot, which poses unique circumstances which limits the amount of buildable area on the lot. The lot also was recorded with limited frontage along Lake Minnetonka, which is a circumstance that was not created by the landowner, thus the need for the lot width and lot area 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 the requested variances. The lot is unique and poses a challenge to design a home to meet the required provisions of the City Code. The Applicant has given special attention to preserving the views to and from the lake by proposing a home that meets/exceeds the front yard setback.

Furthermore, the proposed home fits into the character of the neighborhood in terms of size and locality along Lake Minnetonka and will be in alignment with other structures along the West Point Avenue corridor. **Criteria met.**

**B. City Tests:**

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

All Variance Requests: No. The proposed home should not impair an adequate supply of light and air from reaching adjacent property. The proposed home will be under the height requirements of the City Code and will meet the required side yard setbacks.

Furthermore, the home will meet/exceed the front yard (lakeside) setback. **Criteria met.**

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

All Variance Requests: 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?*

All Variance Requests: No. The 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?*

All Variance Requests: The proposed construction of the new 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.**

**CUP Reviews:**

The requested conditional use permit with this application is:

1. A **conditional use permit to allow a 13% increase** over the maximum impervious surface coverage of 25.0% for a total of 38% impervious surface coverage.

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 between 0 and 2.9 units per acre. The plan recognizes that “housing conditions have improved and are likely to continue to improve during the next 20 years as deteriorating and obsolete units are replaced with new units.” The stated housing goal is: “Housing Quality and Preservation: Retain the highly valued neighborhood qualities and preserve the City’s housing.” One of the corresponding policies for that goal is to “support housing rehabilitation, remodeling, and some new construction through redevelopment.”

In summary, all language relating to housing shows an expectation that existing homes will continue to be replaced or rehabilitated throughout Tonka Bay in the coming years. The City’s role in this transition is to ensure that such change occurs smoothly and in a manner that protects the existing neighborhood qualities (examined below). **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.*

Numerous homes in Tonka Bay were constructed prior to the adoption of the impervious surface requirements and do not meet these provisions. In addition there many lots in the neighborhood that do not conform to the lot width requirement. Because the lot width and lot area are smaller than what is required, this makes meeting the impervious surface requirements more difficult. This places a hardship on the property owner. The size of the existing home combined with the proposed garage is not out of scale with the neighborhood or other homes in Tonka Bay. The amount of impervious surface found on the property is also not uncommon and is an improvement over existing conditions. In the future, staff believes that other residents will make similar request to improve their homes. **Criteria met.**

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

This requirement relates more to “use” requests vs. a CUP requesting a deviation from the Code. **Staff does not believe this criteria applies in this case.**

4. *The impact on character of the surrounding area.*

The proposed conditional uses will not have any negative impact on the character of the surrounding area. The proposed impervious surface are decreasing over existing conditions and are not inconsistent with other properties in the area. **Criteria met.**

5. *The demonstrated need for such use*

The request to allow an impervious surface above what is permitted by Code is needed for the owners to make the proposed improvements to their home. The requests allow the property owner to make significant improvements to the home while not significantly increasing the FAR or impervious surface. The need for these requests is indirectly due to the small lot size. The size of the existing home with the proposed improvements is not out of scale with other homes in the area. **Criteria met**

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

The proposed improvements will increase the property value, which in turn will support or boost the value of neighboring properties. **Criteria met.**

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

The existing home is currently utilizing city services and granting the requested conditional use permits change will not impact the City's service capacity. **Criteria met.**

**Engineering Reports:**

As noted previously, the existing property has an existing hardcover of 48.1%. The Applicants are proposing a hardcover of 38% with the construction of the new home, which exceeds the 25% maximum impervious surface coverage by 13%.

The proposed grades shown on the plan dated 8/28/14 prepared by Jeffrey Lindgren of Hedlund prevents stormwater runoff from directly discharging to public waters. The City Engineer and City Administrator have reviewed and administratively approved the proposed plans.

**Resident Concerns:**

None at this time.

**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 10-19-14. An extension letter may be sent to the applicant and the home owners. A final decision MUST be made prior to 12-18-14.

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

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

- (Provide findings to support conclusion)

**Template Approval Motion:**  
(Recommended) "I move that we direct staff to prepare a resolution of approval for the requested variances and conditional use permit to allow for the new construction of a home on the property located at 35 West Point 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 comprehensive plan.
- b. Granting the requested variances and conditional use permit will not impair an adequate supply of light and air to adjacent parcels.
- c. Granting the variances and conditional use permit 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 and conditional use permit will not increase the danger of fire or endanger the public safety.
- e. Granting the variances and conditional use permit will not diminish or impair established property values in the neighborhood.
- f. Granting the variances and conditional use permit 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. It is how the property is zoned and it is how the property has been used in the past.
- h. The variance requests are in harmony with the general intent of the ordinance.

- 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