MINUTES
TONKA BAY CITY COUNCIL
REGULAR MEETING
March 13, 2007

1. CALL TO ORDER

The regular semi-monthly meeting of the Tonka Bay City Council was called to order at 7:30 p.m.

2. ROLL CALL

Members present were: Mayor LaBelle, Councilmembers Marceau, Folley, Tessness and De La Vega. Also present were City Administrator Sandin, City Planner Gozola, City Attorney Penberthy, and Recording Secretary Link.

3. APPROVAL OF AGENDA

De La Vega moved to approve the agenda as submitted. Marceau seconded the motion. Ayes 5. Motion carried.

4. APPROVAL OF MINUTES - Regular Meeting - February 27, 2007

Marceau moved to approve the minutes of the regular meeting of February 27, 2007 as written. Folley seconded the motion. Ayes 5. Motion carried.

5. CONSENT AGENDA - Accounts Payable, Resolution 07-11

Sandin noted there were two sizable bills on the Accounts Payable relating to watermain breaks. **Marceau moved to approve the Consent Agenda approving the accounts payable and Resolution 07-11 as presented. De La Vega seconded the motion. Ayes 5. Motion carried.**

6. MATTERS FROM THE FLOOR

None

7. PUBLIC HEARING

A. Variance Request - Jeff/Patty Wuensch, 90 Brentwood Avenue - Gozola reviewed the request from Jeff and Patty Wuensch, 90 Brentwood Avenue. The applicants are seeking two variances and two conditional use permits to add a bedroom and entryway. He reviewed existing and proposed elevations. The first variance is for a five foot variance from the side yard setback. It will not increase the existing, non-conforming structure. A variance is also required for the hardcover. The conditional use permit requests are from the floor area ratio and hardcover. He reviewed the variance criteria. He noted that the expansion of the second story will not impact light or increase height. The increase in hardcover due to the entryway is offset by the removal of some hardcover on the site, but it does not satisfy the variance criteria. The request will not alter the character of the city. An adequate supply of light and air will not be denied to adjacent property owners. It will not increase traffic congestion, impair public safety, lower property values, or violate the intent of the Comprehensive Plan. The structure was

built before the adoption of current setbacks, so there is a hardship. He recommended approval of the side yard setback but not the request for the hardcover. He stated since he recommended denial for the hardcover variance, he did not review it in relation to the conditional use permit. He reviewed the conditional use permit criteria as it relates to the floor area ratio request. He stated they have met all the criteria. He reviewed his recommendation for approval. LaBelle asked what the floor area ratio is for the house today. Sandin stated it is 32%, and the proposed floor area ratio is 34%. LaBelle opened the hearing for public comments on the variance request. There were no comments. LaBelle closed the public hearing. Marceau agreed with staff's recommendation that the hardcover could be reduced. **Jeff Wuensch, applicant** stated that he could remove the stepping stones. Tessness stated he was also concerned about the hardcover. De La Vega asked if the applicant could do more than remove the stepping stones. Wuensch stated it would be difficult. De La Vega suggested using fabric instead of plastic if any landscaping is redone. Wuensch agreed. LaBelle stated he had no problems with the side yard setback. **Marceau moved to adopt Resolution 07-12 approving a 5-foot variance from the required 8-foot side yard setback for Jeff and Patty Wuensch, 90 Brentwood Avenue based on the following findings of fact, conclusions, and subject to the following conditions:**

FINDINGS OF FACT

1. The proposed addition will not impair adequate supply of light and air to adjacent properties.

2. The use of the property for a single family dwelling is not proposed to change as a result of the variances requested. The average number of daily trips expected from this type of property will not change.

3. The possibility of fire will not increase as a result of the variance requests.

4. The proposed improvements to the home will undoubtedly increase the home's value which in turn will support or boost the value of surrounding properties. The proposed variances will not be in direct conflict with the intent of the zoning ordinance.

5. The Comprehensive Plan calls for this area of the City to be used for single family dwellings, and for development to occur in an orderly fashion in a manner best for the community.

6. The structure in question was presumably built before the adoption of current setbacks in this area given the exiting home is nonconforming to setback requirements. The applicants are building over the existing footprint of the home and not increasing the side yard setback nonconformity**.**

CONCLUSIONS

1. The requests will not impair an adequate supply of light and air to adjacent property.
3. The requests will not unreasonably increase the congestion in the public street.
4. The requests will not increase the danger of fire or endanger the public safety.
5. The requests will not unreasonably diminish or impair established property values within the neighborhood or in any way be contrary to the intent of this Ordinance.
6. The requests will not violate the intent and purpose of the Comprehensive Plan.
7. The requests will not violate any of the terms or conditions of Section 1004.02 Subd. 4.
8. The requests do not deprive the applicants of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance or deny the applicants the ability to put the property in question to a reasonable use.
9. The special conditions and circumstances causing the undue hardship do not result from the actions of the applicants.
10. Granting the variances requested will not confer on the applicants any special privilege that is denied by this Ordinance to other lands, structures or buildings in the same district under the same conditions.

CONDITIONS

1. The applicant shall at a minimum take actions to remove seven square feet of existing hardcover to offset the additional hardcover being created by the new construction.
2. The applicant shall obtain all necessary permits and approvals from the City and other applicable entities with jurisdiction prior to any construction.
3. Construction to follow the survey as submitted.
4. No construction shall occur within any existing easements on the property.
5. The variance shall expire one year from the date of resolution; City Council approval will be required for any subsequent extension.

De La Vega seconded the motion. Ayes - Marceau, Tessness, De La Vega, Folley and LaBelle. Motion carried.

B. Conditional Use Permit Request - Jeff/Patty Wuensch, 90 Brentwood Avenue - LaBelle opened the hearing for comments on the conditional use permit request. There were none, and the public hearing was closed. Tessness stated the footprint of the house is not being expanded. He thinks it is a good design and will not block any light. He didn't have any issues with the request. Folley stated the request looks good. Marceau also supported the request. De La Vega was also in favor as was LaBelle. **Folley moved to adopt Resolution 07-13 approving the conditional use permit request to allow a 2% increase in floor area ratio for Jeff and Patty Wuensch, 90 Brentwood Avenue based on the following findings of fact, conclusions, and subject to the following conditions:**

FINDINGS OF FACT

1. The proposed addition will not impair adequate supply of light and air to adjacent properties.

2. The use of the property for a single family dwelling is not proposed to change as a result of the variances requested. The average number of daily trips expected from this type of property will not change.

3. The possibility of fire will not increase as a result of the variance requests.

4. The proposed improvements to the home will undoubtedly increase the home's value which in turn will support or boost the value of surrounding properties. The proposed variances will not be in direct conflict with the intent of the zoning ordinance.

5. The Comprehensive Plan calls for this area of the City to be used for single family dwellings, and for development to occur in an orderly fashion in a manner best for the community.

6. The structure in question was presumably built before the adoption of current setbacks in this area given the exiting home is nonconforming to setback requirements. The applicants are building over the existing footprint of the home and not increasing the side yard setback nonconformity**.**

CONCLUSIONS

1. The requests will not impair an adequate supply of light and air to adjacent property.
2. The requests will not unreasonably increase the congestion in the public street.

3. The requests will not increase the danger of fire or endanger the public safety.
4. The requests will not unreasonably diminish or impair established property values within the neighborhood or in any way be contrary to the intent of this Ordinance.
5. The requests will not violate the intent and purpose of the Comprehensive Plan.
6. The requests will not violate any of the terms or conditions of Section 1004.02 Subd. 4.
7. The requests do not deprive the applicants of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance or deny the applicants the ability to put the property in question to a reasonable use.
8. The special conditions and circumstances causing the undue hardship do not result from the actions of the applicants.
9. Granting the variances requested will not confer on the applicants any special privilege that is denied by this Ordinance to other lands, structures or buildings in the same district under the same conditions.

CONDITIONS

1. The applicant shall at a minimum take actions to remove seven square feet of existing hardcover to offset the additional hardcover being created by the new construction.
2. The applicant shall obtain all necessary permits and approvals from the City and other applicable entities with jurisdiction prior to any construction.
3. Construction to follow the survey as submitted.
4. No construction shall occur within any existing easements on the property.
5. The variance shall expire one year from the date of resolution; City Council approval will be required for any subsequent extension.

Marceau seconded the motion. Ayes - LaBelle, Tessness, Marceau, Folley and De La Vega. Motion carried.

Folley moved to adopt Resolution 07-14 denying the request for a variance and conditional use permit for hardcover. Marceau seconded the motion. Ayes - De La Vega, LaBelle, Marceau, Folley and Tessness. Motion carried.

C. Variance Request - Bill McHale, 180 Wildhurst Road - Gozola reviewed the request, showing aerial photographs and the survey. He noted that several variances have already been approved. During the construction process, the decision was made to make some changes. One of the changes requires a variance. He reviewed the previously approved variances. Two changes were made - the deck railing was built

higher than proposed. This does not require a variance. The second change was the extension of the deck towards the lake. Since the footprint changed, a new variance is necessary. He reviewed the variance criteria and explained how they have been met. He discussed concerns raised by the neighbors about the views. He recommended approval of the request. LaBelle opened the hearing for public comments. **Bill McHale, applicant** distributed pictures of the views from the north to south and south to north. He didn't believe views would be hindered. **Thomas Healey, 170 Wildhurst Road** gave a background on the earlier request which he had opposed. He discussed why he was opposed to the current request. He reviewed the staff report, noting what he believed to be inaccuracies. He believed changes need to be made to existing codes, specifically hardcover requirements and fences. He believed the fence is drastically blocking his view of the lake. He asked that the request be denied. He didn't believe that a hardship exists. He stated the view is important to his wife and the activity on their side of the house should be limited. **McHale** stated the deck is off his bedroom. He believed what he is asking for is very minimal. De La Vega asked if there was any particular reason the fence ordinance was not reviewed. Gozola stated it is a fixture affixed to the house needing to meet the lakeshore setback and he did not consider it a fence. Tessness asked if the pergola was considered hardcover. LaBelle stated hardcover is not an issue on this lot. Gozola stated it was not considered hardcover on this particular case based on the previous engineer's report. Marceau wished the neighbors could work together on this. He believed the request is something that is routinely granted. Folley stated no matter what is done, sight lines will be blocked. He believed they have done well alleviating any problems. He didn't see the request as a problem. LaBelle stated the issue is four feet of deck. **McHale** stated the deck is next to Healey's garage. He didn't see the problem. **Bob Huibregtse, builder** stated McHale's lake views are also obstructed. He stated the construction is responsibly done. Healey asked the City Attorney if the deck and wall are exempted from the fence ordinance. Penberthy stated they are separate structures in his opinion. There is no fence on the house. It is part of the principal structure. Fence requirements do not apply. **Marceau moved to adopt Resolution 07-15 approving a 7-foot variance from the required 15-foot required fill in the side yard for Bill McHale, 180 Wildhurst Road based on the following findings of fact, conclusions, and subject to the following conditions:**

FINDINGS OF FACT

1. The proposed deck extension will not impair adequate supply of light and air to adjacent properties.

2. The use of the property for a single family dwelling is not proposed to change as a result of the variance requested. The average number of daily trips expected from this type of property will not change.

3. The possibility of fire will not increase as a result of the variance request.

4. The proposed improvements to the home will undoubtedly affect the value of surrounding properties. The proposed variance will not be in direct conflict with the intent of the zoning ordinance.

5. The Comprehensive Plan calls for this area of the City to be used for single family dwellings, and for development to occur in an orderly fashion in a manner best for the community.

6. The applicant is not responsible for the platting of this substandard lot width, and the elevations within a 15' radius of the extended deck are above the required flood plain elevations.

CONCLUSIONS

1. The requests will not impair an adequate supply of light and air to adjacent property.
2. The requests will not unreasonably increase the congestion in the public street.
3. The requests will not increase the danger of fire or endanger the public safety.
4. The requests will not unreasonably diminish or impair established property values within the neighborhood or in any way be contrary to the intent of this Ordinance.
5. The requests will not violate the intent and purpose of the Comprehensive Plan.
6. The requests will not violate any of the terms or conditions of Section 1004.02 Subd. 4.
7. The requests do not 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.
8. The special conditions and circumstances causing the undue hardship do not result from the actions of the applicants.
9. Granting the variances 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.

CONDITIONS

1. The applicant shall obtain all necessary permits and approvals from the City and other applicable entities with jurisdiction prior to any construction.
2. Construction to follow the survey as submitted.
3. No construction shall occur within any existing easements on the property.

4. The variance shall expire one year from the date of resolution; City Council approval will be required for any subsequent extension.

Folley seconded the motion. Ayes - Folley, De La Vega, Marceau, and LaBelle. Nays - Tessness. Motion carried. Healey suggested there be a period of time after the certificate of occupancy is issued when no more variances can be applied for.

D. Variance Request - Christopher/Katherine Moses, 25 Cedar Street - Sandin stated the applicants need to provide additional information, and the request should be continued. **Folley moved to continue the request to the March 27 meeting. Tessness seconded the motion. Ayes 5. Motion carried.**

8. OLD BUSINESS

None

9. NEW BUSINESS

A. Code Interpretation Discussion - Code 1040 (4.25) - Gozola stated there is some issue with interpretation of Section 1040 (4.25). The question is how exactly it should be interpreted as it relates to a 15' buffer. He couldn't think of any situation where such a request would be denied. LaBelle stated the Council agrees with his interpretation. Penberthy noted the DNR is working with the same issue, and he suggested there be as much discussion as possible before a decision is made. He suggested it be sent back to the Development Review Committee for additional discussion.

B. Review Marina License Applications - Marceau reviewed the license requests. He and staff will inspect them before May 1. **Marceau moved to approve the marina licenses as outlined subject to review and approval by staff. De La Vega seconded the motion. Ayes 5. Motion carried.**

C. First Reading - Amend Ordinance to Change Council Meeting Start Time – LaBelle stated the second reading for the ordinance amendment can be waived. Council concurred. **Tessness moved to waive the second reading and adopt Resolution 07-16 ordering publication of the ordinance amendment. Marceau seconded the motion. Ayes - Tessness, Marceau, Folley, LaBelle and De La Vega. Motion carried.**

10. MATTERS FROM THE FLOOR

None

11. REPORTS

Sandin - Sandin stated that Janice Hoese has given her notice that she will be retiring the end of April. We have started recruitment for the position and hope to have someone start the third week of April. Staff has begun work on the webpage's bulk e-mail

tool, and ten people have already signed to receive automatic notifications and information.

Marceau - Finance, Marinas - no report

Tessness - Buildings, Building Inspections, LMCD, Municipal Docks, Fire Lanes - no report

Folley - Animal Control, LMCC, Technology - no report

De La Vega - Excelsior Fire District, Parks, Sanitation, and Southshore Senior/Community Center - De La Vega encouraged the Council to tell their friends and neighbors about the Parks & Trail meeting on April 3 at 7:00 p.m. He attended a meeting at the Senior Center regarding funding. The service provider is running short of funds and would like to start using a funding formula for contributions from other cities.

Attorney's Report - no report

LaBelle - Public Works and SLMPD - no report

12. ADJOURNMENT

There being no further business, it was moved by Marceau to adjourn the meeting at 9:10 p.m. Folley seconded the motion. Ayes 5. Motion carried.

Attest:

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Clerk