

**MINUTES  
TONKA BAY CITY COUNCIL  
REGULAR MEETING  
June 12, 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, Public Works Superintendent Kluver, City Attorney Penberthy, and Recording Secretary Link.

Soren Mattick was present at the Council table in his capacity as Acting City Attorney.

**3. APPROVAL OF AGENDA**

**Tessness moved to approve the agenda as amended: Items 7D and 7E will be removed from the agenda. Marceau seconded the motion. Ayes 5. Motion carried.**

**4. APPROVAL OF MINUTES - Regular Meeting - May 22, 2007**

**Marceau moved to approve the minutes of the regular meeting of May 22, 2007 as written. De La Vega seconded the motion. Ayes 5. Motion carried.**

**5. CONSENT AGENDA - Accounts Payable, Resolution 07-21**

**Marceau moved to approve the Consent Agenda as presented. De La Vega seconded the motion. Ayes 5. Motion carried.**

**6. MATTERS FROM THE FLOOR**

None

**7. PUBLIC HEARING**

**A. Continued Variance Request - Tom and Mary Lauer, 305 Lakeview Avenue**

**B. Continued Conditional Use Permit Request - Tom and Mary Lauer, 305 Lakeview Avenue** - Sandin thanked Soren Mattick, acting city attorney, for the work he has done for the city relating to the Lauer application. **Ben Gozola, City Planner** reviewed the location of the proposed request. He showed an aerial view of the existing use. The applicants are requesting a variance from the required 15-foot flood plain buffer around all new structures. Rear yard, lot requirements, and new structure variances have been eliminated as part of the new plan. An entirely new footprint has been provided. It became clear that there was a very generous building pad that would allow the elimination of several of the variances originally requested. The CUPs being requested are an 8.5% increase to the allowed Floor Area Ratio and a roof pitch in excess of 45

degrees at the building height limitation. The need for a hardcover CUP has been eliminated in the new plan. The floor area ratio has been decreased to 38.5 and the hardcover reduced to 29.9%. He reviewed the survey for the property. The proposed home falls completely within the building envelope. The current plans don't call for steps from the deck but any future steps could be allowed to encroach if they do not exceed 9" above average ground level. He explained the purpose of a floodplain buffer is to allow access to the home during a flood event. He noted that the variance would not alter the character of the neighborhood as there are a number of large homes in the area. He reviewed the city code criteria which were all met. They relate to light and air, safety concerns, and property values. The variance meets the intent of the Comprehensive Plan. He stated he believed a hardship exists. He stated the hardship was not created by the applicant nor would granting the request give the applicants any special consideration. Gozola reviewed the CUP request for an increased floor area ratio. He stated there is an expectation in the Comp Plan that homes will be replaced. He believed that the request conforms to the Comp Plan. He reviewed aerial photos for existing homes along Lakeview Avenue and discussed floor area ratios. He believed the proposed request would fit in with the floor area ratios in the area. He continued to review the criteria for this request. He noted a basement is not allowed which creates the need for additional floor area. He recommended approval of the requested CUP. He reviewed the request for a CUP for roof pitch in excess of 45 degrees. He noted the request meets the required criteria. He stated concerns have been raised and materials provided by the neighbor at 295 Lakeview Avenue in support of denial of the request. Folley asked if new construction is the time when floor area ratio and hardcover should be kept in check. Gozola stated if an existing non-conforming use "goes away", they must meet code. The State Legislature now states they can construct the same size house as currently existed. De La Vega asked if that would apply for the same owner or a new owner. Mattick stated the variance and CUP run with the land and benefit the current and future owners. **Scott Harri, City Engineer** stated the proposed plan calls for the driveway to flow to the street and a proposed rain garden at the northeast corner of the lot. The garage also flows to this location. A drain tile flows from the rain garden to the lake. The applicant has proposed two sump areas under the deck to trap and filter the water before discharging onto the lot. There will be swale on the east side of the property. The proposed deck will have a basin underneath to trap the water. As a result, it will not be considered an impervious surface. LaBelle asked what percentage of the runoff goes in all four directions. Harri stated the existing conditions show 30-40% draining to the street or northeast corner of the lot. The proposed plan shows the rain garden mitigating the runoff next to 295 Lakeview. Folley asked if a drain tile is the best solution. Harri stated it was. It is a tried and true system. He discussed the mechanics of having a rain garden. It will have greater storm water storage capabilities. Marceau asked how it would impact the city if it goes into the right-of-way. Mattick stated an agreement can be executed with the applicant. Folley asked if the rain garden on the west side could be larger. Harri

stated there doesn't appear to be a need for a rain garden on the west side with the existing drain tile on that side. He recommended the expansion of the easterly rain garden. Folley asked if the proposal meets the average setback on the lakeshore side. Gozola stated it meets the requirement. De La Vega asked if the driveway is pervious. Harri stated no credit has been given, because after a number of years, pavers such as those proposed render themselves impervious. LaBelle opened the hearing for public comments on the variance request. There were none. LaBelle closed the public hearing. De La Vega thanked Gozola for his comments on the variance request. Tessness stated this is a great solution for the neighborhood. Flooding issues will be resolved, and he supported the request. Folley had no concerns. Marceau also supported the request as did LaBelle. **Marceau moved to adopt Resolution 07-23 approving a variance from the required 15-foot flood plain buffer around all new structures for Tom and Mary Lauer, 305 Lakeview Avenue, based on the following findings of fact, conclusions, and conditions:**

#### **FINDINGS OF FACT**

1. The proposed new home is conforming to all primary structure setbacks, and the low floor elevation is conforming to floodplain requirements (933.5). Proper drainage and protection of floodplain have been addressed.
2. The area of floodplain on this property and the relatively flat nature of this property make it difficult to conform to the buffer requirement without impacting the floodplain which would impact adjacent properties.
3. The proposed home will be in character with the other newer homes within the neighborhood.
4. The granting of the variance would not impair light or air to adjacent properties.
5. Congestion and the possibility of fire would not increase as a result of this variance request.
6. The proposed improvements will increase the home's value which, in turn, will support or boost the value of surrounding properties.
7. The Comprehensive Plan calls for this are 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.
8. Access to the home during flooding is being met in the most convenient location (the front of the home).
9. Difficulties could arise for adjacent lots if the full buffer were provided around the entire home.
10. No special uses or privileges would be conferred by the granting of the requested variances.

#### **CONCLUSIONS**

1. The requested variance will satisfy all criteria outlined by code for the granting of such a request.
2. The elevations within fifteen (15) feet of the proposed home are all greater than one foot below the regulatory flood protection elevation and, therefore, meet the intent of the floodplain ordinance.
3. The proposed redevelopment of this lot is in line with the goals and policies of the Comprehensive Plan.

#### **CONDITIONS**

1. The applicants 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. To address drainage and floodplain concerns, three surveys shall be submitted as part of the future building permit for this lot:
  - a. Proposed Grading Survey – an initial survey showing the proposed grading of the property in conformance to all requirements established by the City Engineer;
  - b. Foundation Survey – a survey verifying the location and elevation of the slab prior to framing and construction of the house;
  - c. Final Grading Survey – a survey verifying that all grades conform to the designed plans and that all engineering recommendations were implemented shall be approved by the City prior the issuance of a certificate of occupancy for the new home.
5. The City Engineer shall inspect the property at the applicants' expense during the construction process to ensure ongoing compliance with all engineering requirements.
6. The applicants shall supply an easement to the City for the rain garden located in the northeastern corner of the lot southerly to Lake Minnetonka.
7. 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 - De La Vega, LaBelle, Marceau, Folley and Tessness. Motion carried.**

LaBelle opened the hearing for public comments on the conditional use permit request. There were none, and LaBelle closed the public hearing. LaBelle asked the applicant why the deck did not have stairs. **Mike Sharratt, architect** stated any future stairs would be built within the perimeter of the deck. Folley stated he was concerned about the properties this request is being compared to. He was glad the hardcover has been reduced to under 30%. Tessness stated this is a much better home than the older homes

as far as drainage is concerned. He was also happy about the hardcover reduction. Marceau stated he had a hard time with the floor area ratio but appreciated that it has been decreased. He was concerned about the runoff with the rain garden. He hoped that a utility and drainage easement would be required if this request is approved for the rain garden. De La Vega stated drainage is the biggest issue he sees, and he is comfortable the issue will be addressed. He stated the proposed home is a far better example of what will be seen in the future, and he supported the request. LaBelle appreciated the applicant's patience and bringing forward a plan that he can support. He agreed that an easement is necessary for the rain garden. Sharratt distributed photos showing the house superimposed on the lot with and without a tree on the site. **Marceau moved to adopt Resolution 07-24 approving the conditional use permits allowing an 8.5% increase to the allowed floor area ratio and a roof pitch of greater than forty-five (45) degrees at the building height limitation for Tom and Mary Lauer, 305 Lakeview Avenue, subject to the following findings of fact, conclusions, and conditions:**

#### **FINDINGS OF FACT**

1. The request is consistent with the goals and policies of the Comprehensive Plan.
2. The proposed use is or will be compatible with present and future land uses of the area.
3. The proposed use conforms to all performance standards.
4. The proposed plan is in context with the size and character of homes on nearby lakeshore lots.
5. Lack of a basement necessitates the need for the requested additional floor space.
6. The proposed home would be in context with the existing and future character in the neighborhood.
7. Property values will be increased.
8. The proposed plans have been reviewed by the City Engineer to address runoff concerns onto adjacent properties.
9. The change in floor area ratio will not impact the City's service capacity.
10. The roof lines associated with the proposed structure are in line with other roof lines found on today's newer homes and are consistent with other structures in the neighborhood.
11. The proposed roof pitch will be compatible with present and future land uses in the area.
12. No additional drainage issues would be created by the steep pitch of the roof.
13. The proposed roof configuration would have less impact on surrounding property than would a standard roof configuration.

### **CONCLUSIONS**

1. The requested conditional use permits will satisfy all criteria outlined by code for the granting of such a request.
2. The proposed redevelopment of this lot is in line with the goals and policies of the Comprehensive Plan.
3. Three CUPs for floor area ratio increases have previously been approved in this neighborhood, including two approvals for 45% on two of the lots near and adjacent to the subject parcel.
4. The authorization of the additional floor area ratio will not have significant impacts on this and surrounding properties if the home is ever rebuilt in the future given previous CUP approvals and the size of surrounding legally nonconforming structures.
5. Approval of a CUP for roof pitch at the building height limitation will allow the applicants to construct a home with less mass, thereby benefiting adjacent properties with regards to solar access.

### **CONDITIONS**

1. The applicants 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. To address drainage and floodplain concerns, three surveys shall be submitted as part of the future building permit for this lot:
  - a. Proposed Grading Survey – an initial survey showing the proposed grading of the property in conformance to all requirements established by the City Engineer;
  - b. Foundation Survey – a survey verifying the location and elevation of the slab prior to framing and construction of the house;
  - c. Final Grading Survey – a survey verifying that all grades conform to the designed plans and that all engineering recommendations were implemented shall be approved by the City prior the issuance of a certificate of occupancy for the new home.
5. The City Engineer shall inspect the property at the applicants' expense during the construction process to ensure ongoing compliance with all engineering requirements.
6. The applicants shall supply an easement to the City for the rain garden located in the northeastern corner of the lot southerly to Lake Minnetonka.
7. The conditional use permits shall expire one year from the date of resolution. City Council approval will be required for any subsequent extension.

**Tessness seconded the motion.** Mattick asked for clarification on the easement area.

Marceau believed it would need to include the entire drain tile area to the lake. Harri agreed. Gozola stated a typical utility easement is 5' in width. Lauer agreed with the proposed easement. **Ayes - LaBelle, De La Vega, Marceau, Folley and Tessness. Motion carried.**

Penberthy joined the Council table.

**C. Variance Request - Laura Westphal, 58 Pleasant Avenue** - Sandin stated the new owners of the property are Cliff Ovadia and Kim Nelson. **Ben Gozola, City Planner** reviewed the location of the property on northerly Pleasant Avenue. He also reviewed the aerial photographs. The lot is heavily wooded. The applicant is proposing a pool located in the front yard which would require a 24' front yard setback variance. He reviewed the criteria for approval of the request. Pleasant Avenue at this location is more of a shared driveway than a public road. He noted the proposed pool meets side yard setbacks. There is a large buildable area behind the house, but there is a large wetland area. Forcing construction in this location would change the character of the neighborhood because of the heavily wooded area. The proposal will not impact the light and air or congestion in the area. It will not impact public safety. Property values will not be diminished. He recommended landscaping be extended along the entire boundary to screen the pool from Pleasant Avenue. He recommended approval of the front yard setback variance. LaBelle opened the hearing for public comments. There were none, and LaBelle closed the public hearing. Tessness stated it appears to be the most logical location for the pool, and he supported the request. De La Vega stated it was the most logical location, and he agreed the landscaping should be extended. Marceau assumed the property owners were okay with the additional landscaping. They indicated they were. LaBelle stated he agreed with the Councilmembers' comments on the pool location and landscaping extension, and he supported the request. **Tessness moved to adopt Resolution 07-25 approving a 24-foot variance from the front yard setback for Kim Nelson and Cliff Ovadia, 58 Pleasant Avenue, based on the following findings of fact, conclusions, and conditions:**

#### **FINDINGS OF FACT**

- 1. A below ground pool will not alter the supply of light and air to adjacent properties.**
- 2. Construction of a pool will have no impact on the average number of daily trips expected from this type of land use.**
- 3. Construction of a pool in the desired location will not have any impact on public safety. The location of the pool closer to Pleasant Avenue can be seen as a safety enhancement for the property as it will be far more accessible in the event of an emergency than would the conforming location in the rear of the lot.**

4. Construction of a pool will increase the home's value which will, in turn, support or boost the value of surrounding properties.
5. Placement of the pool in the proposed location will assist in protecting stable soils within the conforming areas of the lot.
6. This proposal would protect the two most important environmental resources on the lot and would not permit construction any closer to the street than the existing houses.
7. The ability to protect defining features of a neighborhood is a right commonly enjoyed by most properties in the R-1A zoning district.
8. The applicants were not responsible for the location of the wetland and mature tree stand.
9. No special uses or privileges would be conferred by the granting of the requesting variances.

#### **CONCLUSIONS**

1. The requested variances were found to satisfy all criteria outlined by code for the granting of such requests.
2. Placement of the pool in the conforming area on the lot would remove a large number of old trees which contribute to stabilizing the soil essential for protecting the large nearby wetland.
3. The proposed pool location would be conforming to side yard setbacks, and would NOT increase the existing nonconformity towards Pleasant Avenue.
4. Removal of the significant trees in the conforming location on the lot would impact the existing character of the neighborhood.

#### **CONDITIONS**

1. The applicants shall plant screening vegetation in the southeastern corner of the property adjacent to the right-of-way similar to the existing vegetation currently fronting the street.
2. The applicants shall install and maintain all BMPs deemed necessary by the City to ensure protection of the existing wetland to the south of the proposed pond location.
3. The proposed fence shall meet all city regulations for a pool fence.
4. The applicants shall obtain all necessary permits and approvals from the City and other applicable entities with jurisdiction prior to any construction.
5. Construction to follow the survey as submitted.
6. No construction shall occur within any existing easements on the property.
7. The variance shall expire one year from the date of resolution, and City Council approval will be required for any subsequent extension.

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

**Vega. Motion carried.**

**8. OLD BUSINESS**

**A. Woodpecker Ridge Road Dock Issue** - Sandin reviewed a compliance report as of June 1. If compliance is satisfied, the residents would like to move forward with researching the sale of the property through the establishment of a committee. LaBelle stated they are almost in compliance. There is still stuff stacked on the shoreline that creates a liability issue. Once removed, the work can begin on the initial discussions. Sandin will coordinate the timing of the first meeting. De La Vega stated there still remains an unpaid dock fee at 255 Woodpecker Ridge Road. LaBelle noted residents would be notified that items in the right-of-way must be removed prior to the first committee meeting. **De La Vega moved to establish a committee comprised of Anthony, Jim, Jessica, Bill and residents of Woodpecker Ridge Road to be named at a future date following removal of items from the right-of-way by the date of the first committee meeting and payment of an outstanding dock fee. Folley seconded the motion. Ayes 5. Motion carried.**

**9. NEW BUSINESS**

**A. Accept Gift - Park Bench** - Sandin stated Jane Zambreno would like to donate a park bench for Wekota Park. A photograph has been submitted. Council should consider the donation, the aesthetics of the bench, and recommend or deny the request. De La Vega suggested the Parks & Trails Committee consider the request. LaBelle agreed and stated the Committee could report back to the City Council following their review.

**B. Request to Change Work Hours for Public Works** - Tessness believed the Public Works Department's request to change their hours is a positive one. Folley agreed it is a great idea. He was concerned about starting work before 7:00 a.m. Folley suggested one person work one hour later in case Public Works is needed by a resident. Kluver stated he wouldn't recommend this option if he thought it would be a problem. He discussed the on call process should an emergency arise. Marceau stated he had a reservation about the winter and working during the dark. He asked if there would be any problem when other cities work different hours. Kluver explained there wouldn't be any problems. De La Vega was confident that the job will get done. LaBelle was concerned about the issue of perception and not having someone available. He was also concerned about the crew not working the same hours as other Public Works Departments that Tonka Bay would interface with regularly. Marceau suggested a six-month trial period and tracking of any problems that arise during that time period. Kluver suggested extending it out through March 1 so all seasons are covered. Sandin asked the crew to explain how it has worked for twenty years from 7:00 a.m. to 3:30 p.m. and now it doesn't work. Kluver stated the positive outweigh the negatives. He believed they were more

productive as a result. He is bringing it up now, because the personnel policy would need to be changed. **Folley moved to continue a trial period through December 31, 2007. Tessness seconded the motion. Ayes 5. Motion carried.**

**10. MATTERS FROM THE FLOOR**

None

**11. REPORTS**

**A. Sandin - no report**

**B. Marceau - Finance, Marinas - Marceau discussed a meeting held with staff to review investments. Investments have been "laddered-out" so each year, two or three CDs will be up for renewal and can be reinvested five years out.**

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

**D. Folley - Animal Control, LMCC, Technology - no report**

**E. De La Vega - Excelsior Fire District, Parks, Sanitation, and Southshore Senior/Community Center - De La Vega stated the EFD has reviewed the first draft of the operating budget. A proposal is on the table to have the City Council review it as well during an EFD meeting. De La Vega stated the Parks & Trails Committee has reviewed the parks, and work is beginning on trail review. The Southshore Center is moving ahead with a financial proposal.**

**F. Attorney's Report - no report**

**G. LaBelle - Public Works and SLMPD - The SLMPD budget meeting will be next week.**

**12. ADJOURNMENT**

**There being no further business, it was moved by Marceau to adjourn the meeting at 8:55 p.m. De La Vega seconded the motion. Ayes 5. Motion carried.**

Attest:

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Clerk