

**MINUTES  
TONKA BAY CITY COUNCIL  
REGULAR MEETING  
July 10, 2007**

**1. CALL TO ORDER**

The regular semi-monthly meeting of the Tonka Bay City Council was called to order at 7:00 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 Attorney Penberthy, and Recording Secretary Link.

**3. APPROVAL OF AGENDA**

**Marceau moved to approve the agenda as submitted. Folley seconded the motion. Ayes 5. Motion carried.**

**4. APPROVAL OF MINUTES - Worksession and Regular Meeting - June 26, 2007**

**Marceau moved to approve the minutes of the regular meeting of June 26, 2007 as written. Folley seconded the motion. Ayes 5. Motion carried.**

**5. CONSENT AGENDA - Accounts Payable, Resolution 07-26**

**Folley 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. Variance Request - Stephen/Andrea Jones, 130 Lakeview Avenue**

**B. Conditional Use Permit - Stephen/Andrea Jones, 130 Lakeview Avenue**

- Sandin discussed the public hearing process to be followed for these public hearings. **Ben Gozola, City Planner** reviewed the property location. He noted the area to the east is owned by Caribbean Marina and is used for boat storage. The applicants are proposing to tear down the existing home and build a new structure. He noted his report and engineering review were written based on a different survey. The applicants provided updates, but the changes do not change the analysis of the report. A 3' front yard variance would now be required, and hardcover has been reduced to 43.9%. The floor area ratio has not changed, and they are still looking for 35.5%. He noted the floodplain buffer is not an issue on this request. Building height is also in conformance. Gozola discussed the request for floor area ratio. He noted the floor area ratio is 17% for the existing home. The detached garage will be removed as part of the request. He reviewed criteria for approval of the request. The proposal will be compatible with uses in surrounding areas. Based on the fact that the surrounding lots are very small in

comparison, the request for additional floor area ratio could be considered to not be in character with the neighborhood. He did explain how this lot could be the transition to the larger homes in the area. He noted property values would not be impacted nor would city services be overburdened. Gozola reviewed the request for a shoreland impact conditional use permit for hardcover. There are different criteria for this kind of request. The criteria relate more to a structure that is being built on the lake or an empty lot. Engineering found that the lot drainage would be sufficient to address storm water runoff. A condition of approval is that a "rise" be constructed in the driveway to deflect any runoff from the street. Two rain gardens are proposed on the site which would also handle runoff appropriately. It is recommended that trees on the lot be protected. He noted that the request is in line with the comprehensive plan. He recommended approval subject to the securing of all necessary permits from the MCWD. Gozola reviewed the variance requests. The applicants have agreed to remove steps proposed to encroach into the side yard setback. A 3' variance into the front yard setback is proposed. The average setback is 15' based on structures on adjoining lots. He stated a house could be built in a conforming location. He recommended denial of the variance request and floor area ratio conditional use permit. Folley asked what the allowable hardcover would be. Gozola discussed hardcover requirements. **Stephen Jones, applicant** stated the hardship is the ability to have a basement on this lot. The irregularity of the lot, he believed, was also a hardship. He suggested moving the house back .43' to lessen the front yard setback variance. He was also concerned about safety on Lakeview Avenue which is why he would prefer the driveway access be changed to Sunrise Avenue. He stated the lack of a basement is the reason the floor area ratio CUP is needed. He stated the house location is limited because of the location of trees and a catch basin on the property. LaBelle opened the hearing for public comments on the variance request. There were no comments. Tessness felt that the views would be inhibited and was concerned about the size of the house and proximity to the street. Folley was also concerned about a larger house being so close to the street. Marceau stated efforts were made to meet requirements, and he concurred with other councilmembers' comments. De La Vega suggested moving the house back as far back as possible and inseting the steps into the deck. LaBelle agreed with De La Vega's comments, and he supported the request. He believed the shape of the lot is a hardship. **De La Vega moved to adopt Resolution 07-29 for a front yard setback variance of one foot for Stephen and Andrea Jones, 130 Lakeview Avenue based on the following findings of facts, conclusions, and subject to the following conditions:**

**Findings of Fact:**

- 1. Sight lines and visibility along Lakeview Avenue are protected by the proposed plan as the deck pushes the main structure south.**
- 2. The lack of a basement on this site supports the need for additional floor area.**
- 3. The proposed floor area ratio is deemed to be consistent with the**

- neighborhood as the subject lot is in a transition area between home sizes.
4. Engineering has reviewed the proposed drainage plans and has found that all storm water is being appropriately handled and treated.
  5. The proposed additional hardcover created by the driveway is necessary to provide a safer access to the lot.
  6. The large area of yard within the right-of-way offsets a great deal of the additional hardcover being requested.

**Conclusions:**

1. Granting the variance will not impact the character of the neighborhood.
2. The request will have no impact on the light and air to adjacent properties that can be reasonably expected given standard city code.
3. The proposed home will be conforming to the side yard setback towards the only neighbor, and the proposed home will be less non-conforming towards the Lakeview Avenue right-of-way.
4. The use of the property for a single-family dwelling is not proposed to change as a result of the variance being requested, and the possibility of fire will not increase.
5. The proposed improvements to the property will increase the value of surrounding properties.

**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. The MCWD shall review and approve the final grading plans approved by the City Engineer prior to any work being authorized.
3. Construction to follow the survey as submitted.
4. No construction shall occur within any existing easements on the property.
5. To address drainage and to ensure adherence to the Shoreland impact plan, 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.
6. The City Engineer shall inspect the property at the applicants' expense

- during the construction process to ensure ongoing compliance with all engineering requirements.
7. The plans shall be updated to incorporate a high point in the proposed driveway to keep street runoff on Sunrise Avenue.
  8. The City Engineer shall review and approve the final rainwater garden designs prior to any work being authorized.
  9. Tree protection fencing shall be erected around all significant trees on the property (primarily the two in the northeastern corner of the lot, the one near the western property line, and those along Sunrise Avenue).
  10. The variance shall expire one year from the date of resolution. City Council approval will be required for any subsequent extension.
  11. The applicants shall dedicate drainage and utility easements in favor of the City over the required rain gardens.
  12. The home location shall be shifted to the south to bring the structure up to the required eight (8) foot setback.

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

LaBelle opened the hearing for public comments. There were none. De La Vega stated the only way to reduce the FAR would be to make the garage smaller. He understood the need for storage and the lack of a basement. He believed if the garage location were closer to the turn in the driveway or in a straight line with the driveway, hardcover could be reduced. Marceau stated the applicants made the effort to not change the driveway access, and he liked the garage relocation to the back of the lot. Folley stated he had a problem with the hardcover request being too high. Tessness stated the size and irregularity of the lot are hardships. He would support the request if drainage issues are addressed. LaBelle stated hardcover is a concern if drainage is not addressed, but here it will be addressed. He supported the request. LaBelle stated houses that can't accommodate basements are typically allowed special conditions. De La Vega stated he believed the proposal fits the lot. **Marceau moved to adopt Resolution 07-30 approving the conditional use permit requests for a 35.5% floor area ratio and 43.9% hardcover for Stephen and Andrea Jones, 130 Lakeview Avenue, subject to the following findings of fact, conclusions, and conditions:**

**Findings of Fact:**

1. **Sight lines and visibility along Lakeview Avenue are protected by the proposed plan as the deck pushes the main structure south.**
2. **The lack of a basement on this site supports the need for additional floor area.**
3. **The proposed floor area ratio is deemed to be consistent with the neighborhood as the subject lot is in a transition area between home sizes.**

4. Engineering has reviewed the proposed drainage plans and has found that all storm water is being appropriately handled and treated.
5. The proposed additional hardcover created by the driveway is necessary to provide a safer access to the lot.
6. The large area of yard within the right-of-way offsets a great deal of the additional hardcover being requested.

**Conclusions:**

1. The city engineer has fully reviewed the proposed plans and has provided an analysis on all measures that must be addressed to offset the requested additional hardcover.
2. The construction of a new home on this lot will have little or no impact on soils, nor will it require any substantial grading of the lot.
3. This inland home will not be visible from the lake.
4. The requested amount of impervious surface does not require a variance and is within the threshold for a conditionally permitted use.

**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. The MCWD shall review and approve the final grading plans approved by the City Engineer prior to any work being authorized.
3. Construction to follow the survey as submitted.
4. No construction shall occur within any existing easements on the property.
5. To address drainage and to ensure adherence to the Shoreland impact plan, 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.
6. The City Engineer shall inspect the property at the applicants' expense during the construction process to ensure ongoing compliance with all engineering requirements.
7. The plans shall be updated to incorporate a high point in the proposed driveway to keep street runoff on Sunrise Avenue.

8. The City Engineer shall review and approve the final rainwater garden designs prior to any work being authorized.
9. Tree protection fencing shall be erected around all significant trees on the property (primarily the two in the northeastern corner of the lot, the one near the western property line, and those along Sunrise Avenue).
10. The conditional use permits shall expire one year from the date of resolution. City Council approval will be required for any subsequent extension.
11. The applicants shall dedicate drainage and utility easements in favor of the City over the required rain gardens.

De La Vega seconded the motion. The applicant will also be asked to provide an easement for the rain garden and provide the City with a legal description. Ayes - Marceau, Tessness, LaBelle and De La Vega. Motion carried 4-1. Folley voted against the motion.

8. **OLD BUSINESS**

A. **Second Reading - Ordinance 2007-1 - Gas Franchise Ordinance** - Sandin stated tonight is the second reading of the gas franchise ordinance. A resolution is provided authorizing the summary publication of the ordinance. **Marceau moved to adopt Resolution 07-31 approving the summary of Ordinance 2007-1 for the gas franchise ordinance. Tessness seconded the motion. Ayes - Marceau, Tessness, Folley, LaBelle, and De La Vega. Motion carried.**

9. **NEW BUSINESS**

A. **Ordinance Review - Survey and Certificate of Occupancy Requirements** - Sandin stated the Council ran out of time when the survey and certificate of occupancy proposed ordinance was reviewed at a worksession. **Ben Gozola, planner** stated this ordinance would clarify when surveys would be required. It would also explain what submittals would need to be provided when a variance is requested. Language on certificates of occupancy will also be clarified. Three kinds of surveys would be required for all new construction. He stated a foundation survey would be required to assure setbacks are met during the construction process. The as-built grading survey would be required at the end of construction. Tessness was concerned about the financial burden on residents when a survey is required. Councilmembers discussed survey requirements. Penberthy stated staff needs guidance and authority in order to tell residents what is required. Any appeal to staff's decision can be brought before the City Council. Gozola stated more language could be added to clarify the flexibility relating to requirements.

B. **Schedule Worksession for Assessment Hearing** - Sandin stated an assessment hearing for Woodpecker Ridge Road will be held on September 11. A

worksession is proposed for August 28 at 6:00 p.m. **De La Vega moved to set Tuesday, August 28 at 6:00 p.m. to discuss the Woodpecker Ridge Road assessment hearing.** Sandin stated there isn't a lot of date flexibility because of the number of budget worksessions coming up. **Marceau seconded the motion. Ayes 5. Motion carried.**

**10. MATTERS FROM THE FLOOR**

None

**11. REPORTS**

**A. Sandin - no report**

**B. Marceau - Finance, Marinas - no report**

**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 - The EFD budget has been revised and will be seen in the next couple weeks. He believed there is consensus among the five cities now. The Parks & Trails Committee will be meeting on July 17. The Southshore Center has also met, and discussions continue on city contributions to the building rather than programs. There is a proposal on the table that will be seen the next week or two whereby each city would contribute at the percentage of ownership in the building.**

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

**G. LaBelle - Public Works and SLMPD - no report**

**12. ADJOURNMENT**

**There being no further business, it was moved by Marceau to adjourn the meeting at 8:40 p.m. Folley seconded the motion. Ayes 5. Motion carried.**

Attest:

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Clerk