

**MINUTES  
TONKA BAY CITY COUNCIL  
REGULAR MEETING  
July 24, 2007**

**1. CALL TO ORDER**

The regular semi-monthly meeting of the Tonka Bay City Council was called to order at 7:04 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**

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

**4. APPROVAL OF MINUTES - Worksession and Regular Meeting - July 10, 2007**

Marceau moved to approve the minutes of the worksession and regular meeting of July 10, 2007 as written. Folley seconded the motion. Ayes 5. Motion carried.

**5. CONSENT AGENDA - Resolutions 07-29 and 07-30**

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

**6. MATTERS FROM THE FLOOR**

None

**7. PUBLIC HEARING**

**A. Variance Request - James/Kathleen Mallery, 145 Mound Avenue -**

Sandin stated James and Kathleen Mallery are requesting variances to construct an addition. The variances requested are an 18' setback from the rear yard setback and a 3' variance from the front yard setback. She discussed the public hearing procedure for the meeting. **Ben Gozola, City Planner** viewed the property via aerial photographs. The existing detached garage will be removed, and a new garage will be attached to the existing house. He reviewed the existing survey. He noted the existing garage is located right on top of the right-of-way. An updated survey has been received which brings the northerly side yard setback within the 8' requirement. All elevations are conforming, so a floodplain buffer variance is not required. He reviewed the criteria for approval of the request. The proposed deck will be more conforming than the existing house with regards to the southerly side yard setback. The house conforms to floor area ratio and height. Gozola stated the stakes on the property are set off the property line, because the house goes abuts the property line. The new driveway cuts through the right-of-way

that is not currently driveway. Staff will need to work with the applicants to determine the proper grading, and this should be a condition of approval. Gozola explained a neighbor was concerned about the need for a vegetative buffer in an area where the lot is flat. He stated Engineering felt this was an opportunity to put a BMP in place. Engineering is also requesting a small berm be placed along the area where a new deck is proposed. LaBelle opened the hearing for public comments. **Bruce Iverson, designer for the applicants** stated the applicants desire to minimize the expansion towards the lake. He stated they want to minimize the impact on the vegetation along the fire lane. The staking was done purposely 5' off the actual property line. **Paul Kaster, 155 Mound Avenue** discussed the unique circumstances of the lots in this area. He supported the Mallery's request. **Dennis Nelson, 135 Mound Avenue** stated it is unclear to him where the driveway would meet Mound Avenue. He was also unsure of which trees would need to be removed to construct the new driveway. Mr. Iverson showed on the aerial photograph that 1/3 of the lilac bushes would be removed. There were no further public comments. Tessness stated this is a great improvement to what currently exists. His major concern was the buffer. He supported the request and the conditions placed. De La Vega asked what kind of material would be used under the deck. Iverson stated it will be gravel under the deck. Folley believed that all decks should be considered pervious. He asked what the vegetative buffer would look like. Gozola discussed the need for a vegetative buffer that would slow drainage to the lake. Marceau stated he supported the request, but he was concerned about the buffer and would like to see it eliminated. LaBelle believed the vegetative buffer would be "over kill". He thought it could be approved without the buffer as a condition. De La Vega supported the request. He didn't believe the buffer was necessary. **De La Vega moved to adopt Resolution 07-32 approving a variance of 18' from the rear yard setback and a 3' variance from the side yard setback for James and Kathleen Mallery, 145 Mound Avenue based on the following findings of fact and conclusions, and subject to the following conditions:**

#### **FINDINGS OF FACT**

- 1. The request to construct a garage is more conforming than the existing garage.**
- 2. The new home will still be conforming to both height and floor area ratio requirements.**
- 3. Construction of a deck is a reasonable expectation for a home such as this, and the proposed non-conformity cannot be avoided due to the angled position of the existing non-conforming dwelling.**
- 4. The narrow width of this lot along with the location of the old home presents unique circumstances for any proposed additions.**
- 5. Granting of either variance will not have any impact on the character of the neighborhood or the City as a whole.**
- 6. Neither improvement nor variance will do anything to impair an adequate**

- supply of light and air to adjacent properties.
7. The use of the property for a single family dwelling is not proposed to change as a result of the request, and the proposed improvements to the property will increase the value of surrounding properties.
  8. The request meets the intent and purpose of the Comprehensive Plan.
  9. The requested variances are not solely economic in nature as both are being sought to increase the livability of the existing home.

### **CONCLUSIONS**

1. The subject lot is non-conforming to the width requirement of the R-1A zoning district.
2. The existing home and detached garage are legal non-conforming structures.
3. The proposed attached garage will be less non-conforming than the existing detached garage which is proposed to be removed.
4. The proposed deck is less non-conforming than the existing home.
5. None of the proposed improvements will create any new non-conformity.
6. The final home will be conforming to all height and floor area ratio requirements after the proposed improvements.

### **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. The variances shall expire one year from the date of resolution. City Council approval will be required for any subsequent extension.
5. Upon completion of improvements, a final grading survey shall be submitted verifying that all grades conform to the designed plans and that all engineering recommendations were implemented except the vegetative buffer.
6. Engineering approval shall be required for all proposed grading within the right-of-way to accommodate the new driveway configuration.
7. The property owners shall construct a short height berm or swale along the north side of the proposed deck (beginning at the west edge of the deck and extending 15 feet beyond the lakeside edge of the deck).
8. The City Engineer shall inspect the property at the applicants' expense during the construction process to ensure on-going compliance with all engineering requirements.

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

**LaBelle. Motion carried.**

**B. Second Reading - Ordinance 2007-2 - Fee Schedule**

**C. Second Reading - Ordinance 2007-3 - Roof Pitch**

**D. Second Reading - Ordinance 2007-4 - Survey Requirements, Building Permits, Certificate of Occupancy, and Variance Procedures – Ben Gozola, City Planner**

stated the purpose of Ordinance 2007-2 is to clarify the mechanism for the fee schedule. LaBelle opened the hearing for public comments on Ordinance 2007-2. There were none, and the hearing was closed. Gozola discussed the roof pitch ordinance amendment language. LaBelle opened the hearing for public comments on Ordinance 2007-3. There were none, and the hearing was closed. Gozola reviewed the proposed amendments to survey requirements, building permits, certificate of occupancy, and variance procedures. The changes will help the city catch problems during the building construction process. Variance requirements would also be clarified. Language relating to certificates of occupancy would be clarified, and a temporary certificate of occupancy is now an option. LaBelle opened the hearing for public comments. There were none, and the hearing was closed. De La Vega believed we were creating a "softness" to the ordinance with the amended language that read "unless exempted by the City". He believed it should be the last thing we say rather than the first thus creating a more solid ordinance. He also thought the way the first initial survey reads is confusing as it relates to when a survey is required. The parenthesis should be moved behind the word "permit". With regards to the foundation survey, he questioned when a structure is exempted from having a foundation survey. Gozola explained that a deck or an addition that did not go into the side yard setback would not require a foundation survey. De La Vega stated he would like the language clarified. He also found that the sentence that begins "failure to provide a foundation survey..." opens a loophole. Sandin asked if there were other areas of the Code that would handle this language. Penberthy stated if this language were absent, the penalty would still be in other parts of the ordinance. In the phrase "at your own risk" if you proceed, the remedies are very clear. From a legal perspective, it wouldn't hurt to have the language, but it wouldn't add anything for enforcement to have the language included. If someone were to violate the ordinance, the remedy to the City would be to have the violation corrected. Applicants are presumed to know and obey the law. LaBelle believed the language was adequate. He didn't believe the language invited an applicant to circumvent the requirement. Penberthy stated the language isn't specific. It's basically a procedural warning that already exists in another section of the ordinance. The other changes proposed give the city the opportunity to check during the building process to catch any problems as they occur. Marceau suggested a list be created that would specify when a survey would be required. Gozola agreed a policy could be written to list this information and brought back to the Council for their review. Penberthy believed specific guidelines or a policy handed out to the applicant would be helpful. The applicant always has the right to appeal staff's decision. LaBelle suggested specifying that failure to provide a foundation survey is a

violation. De La Vega also stated language under Section 1004 states fees are set by resolution and needs to be changed. Sandin stated this public hearing should be continued on this ordinance to August 14. Gozola stated Subd. 3, as built survey, a height verification requirement for the distance from the average ground level to the highest peak should be added. **Marceau moved to continue the public hearing to August 14 for Ordinance 2007-4 – survey requirements, building permits, certificate of occupancy, and variance procedures. De La Vega seconded the motion. Ayes 5. Motion carried.**

**Folley moved to approve the second readings for Ordinances 2007-2 (Fee Ordinance) and 2007-3 (Roof Pitch). Marceau seconded the motion. Ayes 5. Motion carried.**

**Marceau moved to adopt Resolution 07-33 and 07-34 authorizing summary publications of the fee ordinance and roof pitch ordinance amendments. De La Vega seconded the motion. Ayes - Marceau, Folley, Tessness, LaBelle and De La Vega. Motion carried.**

**8. OLD BUSINESS**

None

**9. NEW BUSINESS**

**A. Code Violation - 45 Pleasant Avenue** - Sandin reviewed the history of the code violation at 45 Pleasant Avenue. She stated this complaint is in step five of the current process. LaBelle believed the property owner has had more than adequate time to clean up. Folley and De La Vega agreed that a violation exists. **Marceau moved to determine that the following conditions at 45 Pleasant Avenue constitute a violation of City Code: 1. F350 truck with an expired license (Feb 06) of D7610 and a Ford car with no plates or tabs; 2. Junk in front and rear yard includes building materials, discarded or unused equipment, unused furniture, lumber, trash and rubbish; and 3. Tractor parked in the rear yard. Folley seconded the motion. Ayes 5. Motion carried.**

**B. Ordinance Review - Shoreland District Regulations - Ben Gozola, City Planner** stated this ordinance needs to go through a DNR review process. He wanted to assure that the proposed language is what the City Council desires to accomplish. The language will come back to the City Council once we have received DNR determination. LaBelle wanted the Council to be clear that more requests would come before the City Council in the future as a result of the new language. He stated that often, the applicant would be before the Council for a variance anyway. De La Vega didn't know whether he wanted to change the language because of the added cost and review time. Sandin believed staff erred more on the strict side. She believed it was unnecessary to change

the regulations. The Council concurred that the language should not be changed. Gozola agreed with De La Vega's suggestion that the word paved should be removed, and sport courts replace tennis courts. Penberthy noted that Section 1071 should be 1071.01 and then follow through on numbering. De La Vega believed "to any degree" should be removed from the definition of impervious surface. Penberthy stated if the phrase were deleted, it would mean the same thing. He stated we should be given the latitude to put it back in if the DNR so requests.

**C. Southshore Senior Services - Budget Request** - De La Vega stated Tonka Bay has been funding programs at the rate of \$500 per year on a voluntary basis. The original agreement was that the cities would participate only insofar as the building was concerned. He believed program funding requires more attention than the cities can provide. The current proposal is contributions for the cities are based on ownership percentage. Tonka Bay's percentage is 9%. This proposal is short term or a "Band-Aid". If Tonka Bay agrees, the service provider will maintain staff and programs through the upcoming year. The center has lost funding through Dial-a-Ride and will lose funding through United Way. In the short term, the best option is to make a one-time contribution to the building and continue to work for other solutions. Sandin noted other cities have given larger contributions in the past, so this proposal is a less significant jump for them, but it is a major contribution for Tonka Bay. LaBelle stated we were told when the charter was created that this would be a self-supporting organization. He believed the \$500 was above and beyond what is expected. He was not in favor of providing additional funding. De La Vega believed there will be another solution but stated the amount requested should be left in the budget. Sandin stated SCS would like a yes or no answer before August 13. Marceau stated if it is left in the budget and there isn't 100% compliance with the other cities, then it can be pulled. He wanted to make sure this is the last time Tonka Bay is asked for funding. Marceau stated he would not support a request at budget time next year. **Marceau moved to approve a one-year commitment in the amount of \$3,834.18 subject to a 100% commitment from Shorewood, Excelsior, Greenwood and Deephaven. Folley seconded the motion. Ayes 4. LaBelle voted against the motion. Motion carried.**

**10. MATTERS FROM THE FLOOR**

None

**11. REPORTS**

**Sandin** - Sandin provided a response to the McGlassons who requested a zoning change. 2007 revenue and expenditure guidelines were also provided.

**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** - Final details will be provided at the next City Council meeting for the 2008 budget. The Park Committee met to discuss the bench donation from Jane Zambreno. They will continue to research and evaluate bench materials.

**Attorney's Report** - no report

**LaBelle - Public Works and SLMPD** - SLMPD continues to plan their 2008 budget which will be at the August 14 meeting.

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:

---

Clerk