City of Tonka Bay Memorandum

To: **City Council Members**
John Tingley, City Administrator

From: **Thomas Ramler-Olson, Assistant City Planner**
Nick Preisler, City Engineer

Date: **May 8, 2019**
City Council Regular Meeting May 13, 2019

Project: **013314-000, Phase 015**

Request: **Variance to increase the maximum height of a fence within the area between the building line and the OHWM: four (4) feet proposed where a maximum of three (3) is allowed**

Variance to allow encroachment of a patio with an elevation greater than nine (9) inches into the front (lakeside) yard setback: requesting a setback distance of fifty-four (54) feet where 103.5 feet is required

PID: 28-117-23-12-0011

RECOMMENDATION

Based on the findings of fact, staff recommends APPROVAL of a variance to increase the maximum height of a fence within the area between the building line and the OHWM and DENIAL of a variance to allow encroachment of a patio with an elevation greater than nine (9) inches into the front (lakeside) yard setback.

GENERAL INFORMATION

Applicant(s):	Lincoln Danforth
Owner(s):	Tim Herbert
Subject Property:	50 Clay Cliffe Drive
Existing Land Use / Zoning:	Detached, Single-Family Residential; zoned R-1A, Shoreland Overlay
Surrounding Land Use / Zoning:	North: Lake Minnetonka West: Detached, Single-Family Residential; zoned R-1A, Shoreland Overlay South: Detached, Single-Family Residential; zoned R-1A, Shoreland Overlay East: Detached, Single-Family Residential; zoned R-1A, Shoreland Overlay
Comprehensive Plan:	The Tonka Bay 2009-2030 Comprehensive Plan guides this lot for Single-family Residential use.
Deadline for Agency Action:	Application Date: April 10, 2019 60 Days: June 9, 2019 Extension Letter Mailed: N/A 120 Days: August 8, 2019

CONSIDERATIONS RELATED TO THE REQUEST

1. **Overview.** The Applicant is proposing a variety of modifications to the property at 50 Clay Cliffe Drive, which consists of a swimming pool, a patio off the rear of the home, stepping stones, a retaining wall, and fence. Current conditions at the property show a boulder retaining wall and an existing patio, both

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located behind the existing home. Those two features would be removed to make room for the proposed modifications.

The proposed patio runs along the entire lakeside face of the home and is multilevel. Its western portion lines two sides of the proposed pool. The eastern portion is located at a higher elevation, accessible from the pool's elevation by a staircase. For purposes of evaluating this variance request, staff is evaluating the patio as two separate structures: the western portion closest to the pool ("west patio") and the eastern portion that sits at an elevation of 946 feet ("east patio"). The east patio sits above the average grade by over one (1) foot. Per code, patios with an elevation of more than nine (9) inches may not encroach into yard setbacks. The front (lakeside) yard setback for all riparian lots is the greater of fifty (50) feet or the average of distances between the ordinary high water mark (OHWM) and principal structures on abutting lots. As indicated on the survey of proposed conditions accompanying this variance request, the lakeside setback distance is 103.5 feet. One of the requests seeks a variance from the front (lakeside) yard setback for purposes of constructing the east patio.

Another proposed feature at the property is a fence of four (4) feet in height, a requirement for swimming pools not enclosed by a structure. This fence is proposed to extend off the streetside corners of the home, run toward the lake along the side lot lines, and meet in the front (lakeside) yard. The proposed fence meets height requirements and satisfies standards that require enclosure of the pool. However, because of the location of the proposed pool and its distance of about fifty (50) feet from the OHWM, a portion of the proposed fence will have to encroach upon the area of the lakeside which only allows fences with a maximum height of three (3) feet. Therefore, the applicant requires another variance to the maximum height of fences within the front (lakeside) yard of riparian lots.

2. Ordinance Authority

Section 1002.02 DEFINITIONS; Subdivision 1.L defines "lot, frontage" of riparian lots as the area abutting the lakeshore.

Section 1011.03 GENERAL YARD, LOT AREA AND BUILDING REGULATIONS; Subdivision 5.b.2 states that patios are a permitted encroachment on yard setback requirements provided they do not extend above the height of the average ground level more than nine (9) inches, or to a distance less than five (5) feet from a side yard and rear lot lines, or more than five (5) feet into a required front yard.

Section 1011.03 GENERAL YARD, LOT AREA AND BUILDING REGULATIONS; Subdivision 5.d states that no principal structure or building addition shall be located closer to the ordinary high water mark than the greater of fifty (50) feet, or the average setback of the two adjacent riparian principal structures on either side of a proposed building site.

Section 1011.05 FENCING/SCREENING; Subdivision 1.c.10 states that, for the purpose of fence regulations on riparian (lakefront) lots, the yard abutting the lake shall be considered a front yard.

Section 1011.05 FENCING/SCREENING; Subdivision 2.b.1.a states that fences in the front (lakeside) yard between the shoreline and the greater of the building line of the house or fifty (50) feet, shall be no more than three (3) feet in height.

Section 1011.05 FENCING/SCREENING; Subdivision 2.c.1 states that all outdoor swimming pools existing and hereafter constructed shall be completely enclosed by a security fence or wall at least four (4) feet but not more than six (6) feet high and located at least four (4) feet from the edge of a pool. The bottom of the fence or wall shall be no higher than four (4) inches above the surface of the ground. Fence openings or point of entry to the pool area shall be equipped with self-closing and self-latching lockable gates.

Section 1070.12 DESIGN CRITERIA FOR STRUCTURES; Subdivision 1.a requires that all structures on riparian lots as the greater of fifty (50) feet or as regulated in Section 1011.03 Subdivision 5.d.

3. Variance Review Criteria

<u>Statutory Criteria</u>

1. *The request is in harmony with the general purpose and intent of this Ordinance.*

FENCE HEIGHT:
The standard to require a fence of four (4) feet in height around in-ground swimming pools is intended to reduce residents' risk of drowning and is, therefore, in harmony with the Ordinance and its purpose and intent to promote and protect the public health, safety, and general welfare. **Criterion met.**

PATIO FRONT (LAKESIDE) SETBACK:
The purpose of front (lakeside) yard setback requirements on riparian lots, among other reasons, is to provide enough area for property owners to build on their lot and enjoy their property while still treating stormwater and maintaining adequate views of Lake Minnetonka for abutting properties. At its proposed elevation of about one (1) foot above the average grade, the east patio does not violate the intent and purpose of the ordinance. **Criterion met.**

2. *The variance is consistent with the comprehensive plan.*

   BOTH VARIANCES:
   Both requests are consistent with the low-density, single-family nature of the planned land use found in Tonka Bay's 2030 Comprehensive Plan. **Criterion met.**

3. *The property in question meets the "practical difficulties" test:*

   a. *The property owner proposes to use the property in a reasonable manner.*

      BOTH VARIANCES:
      Both requests are a reasonable use of the property. **Criterion met.**

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

      FENCE HEIGHT:
      The unique circumstance is the area of the property that restricts the height of fences and its overlap with location of the proposed swimming pool fence. Because the pool is proposed to be located within the front (lakeside) yard of the lot, a common location found on other riparian lots in the general locality, its required fence will inevitably fall within the lakeside area that limits fence heights to three (3) feet. **Criterion met.**

      PATIO FRONT (LAKESIDE) SETBACK:
      The proposed east patio violates the front (lakeside) yard setback standards because it's proposed to have an elevation height greater than nine (9) inches above the average grade where it is located. The property does not exhibit a unique characteristic that requires this elevation. **Criterion not met.**

   c. *The variance will maintain the essential character of the locality.*

      BOTH VARIANCES:
      Both requests maintain the essential character of the locality. **Criterion met.**

<u>City Tests</u>

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

   BOTH VARIANCES:
   Neither request will impair an adequate supply of light and air to adjacent property. **Criterion met.**

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

   BOTH VARIANCES:
   Neither request will unreasonably increase the congestion in the public street. **Criterion met.**

3. *Will the variance increase the danger of fire or endanger the public safety?*

   BOTH VARIANCES:

Neither request will increase the danger of fire or endanger the public safety. **Criterion met.**

4. *Will the variance unreasonably diminish or impair established property values within neighborhood, or in any way be contrary to the intent of the zoning ordinance?*

   BOTH VARIANCES:
   Neither request will unreasonably diminish or impair established property values within neighborhood, or in any way be contrary to the intent of the zoning ordinance. **Criterion met.**

4. Engineering Considerations:

The additional hardcover resulting from the proposed improvements increases the impervious surface coverage of the lot to 27.8 percent. Section 1070.11 Subdivision 1.a.1 states that impervious surface coverage may be allowed to exceed twenty-five (25) percent to a maximum of thirty-five (35) percent with City Administrator and City Engineer approval provided practices are in place for the treatment of storm water runoff. The extensive green space between the proposed improvements and the ordinary high water level of Lake Minnetonka provides the appropriate treatment of storm water runoff resulting from the additional impervious surfaces.

POTENTIAL ACTION

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 ITEM and request additional information.

The 60-day review period for this application expires on June 9, 2019. If the Council fails to preliminarily approve or disapprove the request within the review period, the application is deemed preliminarily approved.

RECOMMENDATION

Based on the findings of fact in this report, staff recommends the following:

- APPROVAL of a variance to increase the maximum height of a fence within the area between the building line and the OHWM: four (4) feet proposed where a maximum of three (3) is allowed
- DENIAL of a variance to allow encroachment of a patio with an elevation greater than nine (9) inches into the front (lakeside) yard setback: requesting a setback distance of fifty-four (54) feet where 103.5 feet is required

"I move that we direct staff to prepare a resolution of approval for the requested variance to increase the maximum height of a fence within the area between the building line and the OHWM to four (4) feet at the property located at 50 Clay Cliffe Drive based on the findings of fact listed in the report."

a. A swimming pool fence must have a minimum height of four (4) feet and maximum of six (6).
b. The area in the front (lakeside) yard between the building line and OHWM has maximum fence height of three (3) feet.
c. The variance is in harmony with the general purpose and intent of the Ordinance.
d. The variance is consistent with the comprehensive plan.
e. The property owner proposes to use the property in a reasonable manner.
f. The area of the property that restricts the height of the fence to three (3) feet will inevitably overlap with the location of a swimming pool fence required for a pool located in the front (lakeside) yard of property, a common location for swimming pools on nearby riparian lots.
g. The variance will maintain the essential character of the locality.
h. The variance will not impair an adequate supply of light and air to adjacent property.
i. The variance will not unreasonably increase the congestion in the public street.
j. The variance will not increase the danger of fire or endanger the public safety.

k. The variance will not unreasonably diminish or impair established property values within neighborhood, or in any way be contrary to the intent of the zoning ordinance.

Recommendation Conditions

1. Construction shall occur in substantial conformance with the plans presented at the May 14, 2019 City Council meeting.
2. 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.
3. The variance shall become null and void twelve (12) months after the date of approval, unless the property owner has substantially started the construction.
4. The applicant shall comply with all applicable federal, state, and local laws, rules and ordinances.
5. The applicant must adhere to and remain in compliance with the requirements of this Resolution, applicable performance standards and such other requirements as may apply.
6. All conditions of this variance must be complied with, shall run with the land, and shall not in any way be affected by the subsequent sale, lease or other change from current ownership of the Property.
7. This Resolution is subject to the condition that all representations, written and oral, made by the Applicant and its agents and representatives to the City contained in and concerning the Applicant's application for the variance must have been true, complete and accurate at the time they were made, and that they remain true and accurate for the duration of the variance.
8. By undertaking the activities approved by the variance, the applicant agrees to all conditions.

"I move that we direct staff to prepare a resolution of denial for the requested variance to allow a patio with an elevation greater than nine (9) inches above the average grade to encroach into the front (lakeside) yard setback on the property located at 50 Clay Cliffe Drive based on the findings of fact listed in the report."

a. The variance request does not satisfy the uniqueness prong of the practical difficulties test, as it is the proposed elevation of the patio, not the property, that creates the circumstances requiring the variance.