

Construction Board of Appeals

Regular Meeting Minutes

Wednesday, April 28, 2010
4:00 p.m., Council Chambers



City of South Haven

1. The meeting was Called to Order by Lundgren at 4:00 p.m.

Spaeth noted that a quorum is the majority of the board which in this case is two out of three members. It was also noted that in the absence of the Chairperson, a temporary Chairperson will need to be appointed.

2. Roll Call

Present: Brian Lundgren, Tim Stegeman
Absent: Lewis

Lundgren noted that also present are Bill Spaeth, Zoning Administrator; Ross Rogien, Building Inspector; Marsha Ransom, Staff; John Davis, owner 829 Phillips

3. Approval of Agenda

Motion by Stegeman, second by Lundgren to approve the agenda with the addition of Item 3a. Select a Chairperson. All in favor. Motion carried.

3a. Select a Chairperson

Stegeman nominated Lundgren to be Chair by acclimation. There was no discussion.

4. Approval of Minutes – June 17, 2009 and March 24, 2010

Motion by Stegeman, second by Lundgren to approve both the June 17, 2009 Regular Meeting Minutes and the March 24, 2010 Regular Meeting Minutes. All in favor. Motion carried.

5. Interested Citizens in the Audience Will be Heard on Items Not on the Agenda

There were none.

OLD BUSINESS

The following agenda item was heard by the Hearing Officer on February 24th, at which time the Hearing Officer issued an order which was subject to appeal to the Construction Board of Appeals pursuant to the Dangerous Building Ordinance provisions that each property owner has the right to appeal the Hearing Officer's Order, requesting that it not be enforced by the City or modified in extent or time limit. Said property owner is only required to attend the Construction Board of Appeals meeting if they want to appeal the Hearing Officer's Order.

6. 829 Phillips – The property owner attended the March 24th, 2010 CBA meeting and the case was continued for 30 days to allow the owner to prepare a response to the Hearing Officer’s order to be heard on April 28th, 2010.

Davis stated he was here last month and since then he began cleaning up the cottage; Davis said he has taken out the carpeting and padding because it was water-soaked. Davis stated he doesn’t think there has been that much rain but that it was caused by the firefighters. Davis noted that once the carpet was up he saw that the floor tiles were bad so he took those out; some were easy to pull up but he had to chip at some of them. Davis stated that he has air dried the cottage out and started taking a look. Davis thinks it might not cost that much to fix the cottage, relatively speaking.

Davis stated that he started calling contractors. Davis has called Greg Erickson three times and hasn’t gotten a call back, noting that he has known Erickson for years and “I don’t know why he wouldn’t get back with me. I don’t owe him any money or nothing. Maybe he has a problem with my gender orientation.” Davis stated that he called John Getman and got an answering machine, then called again, and stated he thinks he was calling Getman, the first time he got an answering machine, but the second time it rang and rang. Davis called Flash Construction, the phone rang ten (10) times with no answer; called Shane Moore, the phone rang ten (10) times and no answer; Davis called 3-D Construction, left a message and no one called back; Davis called Hope Construction and left a message but nobody called back; Davis stated that he called Mike Hill Construction and left a message and didn’t get a call back; and called Brian Morgan, talked to his wife and left a message with her but Morgan didn’t get back with him. Davis stated that to him that isn’t very professional. Davis stated that he does not understand why no one is getting back with him and cannot understand how people can be in business and not have an answering machine or someone answering the phone. Davis also stated he cannot understand and thinks it is unprofessional that these contractors don’t reply to their messages. Davis noted no one has come and asked him to see inside; as far as he knows no one has inspected the interior of the cottage. Davis stated that if any or all of those present at the meeting want to come and take a look at it, they can come and see for themselves and see where Davis is with the cottage. Davis noted that he wants to get some contractors over there, but he is going through a lot of difficulty with that.

Spaeth noted that we called in an outside consultant to get an idea of the costs involved in renovation of the cottage. Spaeth asked Rogien to go over the cost/repair estimate from John Brush, who Spaeth noted is a valid licensed builder. Spaeth stated that Brush prepared a Code Compliance Check List for the City to determine costs versus value. Rogien, Building Inspector, said his estimation upon reviewing the cost/repair ratio was to tear it down.

Davis stated he didn’t think it was fair. He stated he would need to go through the law and figure out all this about assessed value. Davis stated that for example, “Lets take my cottage and clone it and put it on the North Beach; it’ll be worth a lot more over there. If they had \$10,000, let’s just use that number, if they had \$10,000 worth of damage the City would do everything to help them rebuild, because that same cottage is going to be worth a lot more over on the North Side. If I have \$10,000 of damage and you say there is a rule that it is not worth enough that’s not fair to the people with modest means. I may not have much but I have assets that I need to hold on to.” Davis stated that the City is pushing him to demolish the cottage, but when the black people down the street from him had a fire a few years back, the City gave them all the time in the world to fix that up. Davis stated that he just

wants to have the opportunity to bring people in and see what he can do to fix this cottage up. Davis said, "Nobody has been through there that I know of, no one has come to me and asked to go through it. It would only take me about ten minutes to pull a few nails out so you could go in there and look it over."

Stegeman asked Rogien why the cottage should be demolished. Rogien said the foundation is bad and would have to be rebuilt; that's where you start and then . . . Stegeman interjected and asked if the foundation is 50% damaged. Rogien asked Stegeman if he had been there to look at the cottage to which Stegeman stated yes, he had. Rogien stated the foundation is way beyond 50% damaged and the cottage's repair cost is way beyond its value. Davis said the foundation is block on three (3) sides and stated that he has been in that basement and cement block doesn't burn.

Rogien said beyond the foundation, the framework is badly damaged, beyond just fixing; the framing would have to be redone. Lundgren stated that if you go down to Check List Item 11, Electrical Service, there is an issue of safety if the electrical service isn't completely replaced. Lundgren noted that the fire would have caused softening of the wiring insulation and if not completely replaced would be inviting another fire. Lundgren reiterated that this is a safety issue; asking how long the City can just leave a burnt out empty building. Lundgren stated that the cottage is virtually a total loss.

Spaeth stated there are two (2) reasons for the estimate of cost repair and what Davis has referred to is in the Zoning Ordinance in terms of determining whether a building permit is allowed to be issued. This Zoning Ordinance states that if a structure is destroyed by more than 60% of its value the Zoning Administrator can't issue a repair permit without granting a variance. Spaeth explained that the other reason for the evaluation of repair is in the context of the Dangerous Building Ordinance which lets the CBA know whether they can order a more expeditious demolition of this property; twenty-one (21) days instead of sixty (60) days. Those are two distinctly different issues.

Lundgren said in terms of trying to beat this price (the Code Compliance Check List), the structure would have to be torn down and rebuilt. Davis stated that he is not asking to tear down and rebuild, just to repair, because if the cottage were torn down it would have to be built to current setbacks. Davis stated that he does not think it is as bad as the board, Spaeth and Rogien are saying it is.

Spaeth pointed out that another item is the issue of notification. Notification always goes to the owner of record in the Assessor's office. Notifications regarding the cottage were sent to the owner of record, evidently from whom Davis apparently had purchased the property on contract, and the deed had not been transferred. The previous owner was notified and the family became very upset with getting multiple notifications and called Attorney George Dunn to authorize him to quit-claim the subject property over to the owner, John Davis, which deed was recorded February 11, 2010. Davis stated that is what he was saying, that he wasn't notified; he wasn't notified and now the City is putting pressure on him to move on this and he wasn't given enough time, and wasn't notified.

Lundgren stated that this is an additional meeting beyond the normal requirements. We are doing the right thing legally and there has been a cushion of time provided beyond the initial hearing, which Davis missed. Spaeth pointed out that the City's legal counsel did advise that

an extra meeting be extended to the Applicant to allow for the missed notification and hearing, which is this April 28th meeting of the CBA.

Lundgren asked for clarification of what Davis had said previously regarding setbacks.

Spaeth stated that the property in question is zoned R-1B Single Family. Spaeth pointed out that there is already a second non-conforming multi-family dwelling on that property; under the current zoning, a second primary dwelling would not be allowed on this property. Lundgren asked even if a contractor were to come in and feel it could be rebuilt, a second building would not be permitted on this lot. Davis said, "I don't quite understand that. I would imagine whatever it is that is there would be grandfathered in. In 1998 we went through that, I went through that with the City and everything was up to code and everything passed." Lundgren pointed out that if there had not been a fire that would not be a question, but the property is substantially destroyed and now the question exists.

Lundgren stated he would entertain a motion to demolish in twenty-one (21) days, noting that it gets right down to the fact that a permit could not be granted even if someone felt they could renovate the cottage.

Spaeth pointed out that it is Article XIX Section 1901 sub-paragraph (b) of the Zoning Ordinance.

Stegeman said we have this estimate from one contractor, mainly to show the difference between that estimate and the value of the cottage. The question is whether it is worth that to Mr. Davis to rebuild the cottage. Lundgren clarified that if Davis had the money and could say 'let's start today' Spaeth could still not issue a permit. Spaeth agreed that he could not issue a permit, not without a zoning variance. Lundgren said he cannot see a legal path to preserve a non-conforming use. Lundgren stated that is the way non-conforming use works; when it gets destroyed it is not permitted any more.

Davis said, "At the end of the day you can talk legalities and rules but it goes back to fairness. I'm treated different because I don't have a cottage on the north side." Lundgren pointed out that a millionaire with a non-conforming three-story structure had to tear down their non-conforming structure. Davis said he can FOIA the City and see if there is proof of that. Davis stated, "You are saying it cannot be done and I am saying that is discriminatory. It is discrimination that assessments are different in different areas."

Stegeman asked Davis if Davis thinks his building is repairable. Davis said he does, but "that's just me," and he would like to have a contractor out to tell him. Davis said he cannot get anyone to come out. Davis said "I can't just take a Smith and Wesson and go grab a contractor and say, 'Hey, come take a look at this project.' I have more class than that."

Stegeman said we can proceed with the twenty-one (21) day removal and in the meantime Davis could contact contractors for the repairs. Stegeman noted that if after twenty-one (21) days nothing has been done the City would turn the order over to the court to be affirmed and then the court may order a demolition. Stegeman said Davis could build on that site because one (1) wall is probably okay. Spaeth said no, it has to be 40% okay. Stegeman said Davis could apply for a variance. Spaeth noted that if during that twenty-one (21) day period Davis asked for a variance, then we can determine that at that time. But, Spaeth noted, if after twenty-one (21) days nothing has been done, then the City turns the case over

to the courts, and the owner can make his argument before a judge why the building should not be demolished; it would then be up to the judge to affirm or modify the order.

Davis said he was told by somebody in the neighborhood that had contacted an attorney, noting "Now I didn't hear this, so I don't know this, but it was said that the attorney said if you have one good wall standing you can rebuild." Stegeman said he knows this is so because his neighbor has a nonconforming house and he rebuilt that.

Davis asked, "What if the City pushes this and this drives me into bankruptcy? What about that?" Spaeth said after twenty-one (21) days if nothing is done, and the court orders demolition, then the City can contract to do the demolition and a lien will be placed on the property for the cost of the demolition. Davis said, "I've had trouble with the City for a long time about who I am, and my gender orientation and all of that, going to court and everything, does this have anything to do with that, about who I am?" Spaeth responded no.

Davis directly asked Spaeth, "What if you push this and this drives me into bankruptcy? What do you say to that?" Spaeth responded that he had no comment.

Stegeman asked if the board gives Davis the twenty-one (21) days, what other recourse does Davis have. Spaeth said Davis can continue to put together his argument but it would be to the court, not the Construction Board of Appeals, that if would need to be presented.

Stegeman said that if the board does this, we need to be clear about what Davis has to do and what his options are so he is not confused. Spaeth told Davis he can continue to pursue contractors after this board makes a decision, and then his next step will be to make that argument to the courts. Spaeth stated that Davis will get notification of those dates. Stegeman asked Spaeth if he would be willing to present a summary of the steps required after this meeting to which Spaeth responded, "Yes."

Lundgren said that he sees the Construction Board of Appeals as a technical body, noting that this building is substantially damaged and we have an estimated cost of repair that far exceeds the value of the structure. Lundgren noted that the board has given Davis extra time and at this point Lundgren thinks the board should do their job as a technical body. Lundgren noted that he is not a judge nor is he qualified to pursue some of these issues Mr. Davis has asked.

Stegeman asked if there is fencing around the cottage. Ross said the roof has a tarp over it; the door and windows are boarded up but it could be an attractive nuisance for neighborhood kids. Davis stated that he does not see that it would be dangerous. He further stated he has put boards over all the window and doors and nobody could get in there.

Motion by Stegeman, second by Lundgren to affirm the Hearing Officer's order of February 24, 2010 for the fire damaged structure to be demolished in twenty-one (21) days or May 24, 2010, and additionally that Mr. Spaeth supply a synopsis outline of what he just stated to Mr. Davis about the steps involved.

Davis stated that there has always been problems between him and the City, about who Davis is and his gender orientation, and stated that the City has treated him wrong. Davis reiterated that he thinks he can repair the cottage and he is being treated discriminatorily

and it is unfair. Stegeman said a lot of people that call me are calling about buildings in better shape than yours is in, which is why the board has to spur this to move forward.

Lundgren called the question. All in favor. Motion carried.

Davis stated that he is not going to contact any contractors because Spaeth said it's a waste of time. Davis then stated that there has always been a problem between himself and the City, that the City has harassed him about who he is, and stated that he is very mad and he will be telling everyone. Davis exclaimed, "Don't think I won't!" (Mr. Davis pointed and shook his finger). Davis noted that he has always been discriminated against by the City and he thinks this whole thing is unfair and it is not right that the people of modest means are treated differently than those on the north side.

7. Adjourn

Motion by Stegeman, second by Lundgren to adjourn at 4:35 p.m. All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom
Recording Secretary