

Planning Commission

Regular Meeting Minutes Thursday, January 7, 2016 7:00 p.m., Council Chambers



City of South Haven

1. Call to Order by Paull at 7:00 p.m.

2. Roll Call

Present: Fries, Gruber, Heinig, Miles, Peterson, Stimson, Webb, Paull
Absent: Frost

Motion by Heinig, second by Stimson to excuse Frost for personal reasons.

All in favor. Motion carried.

3. Approval of Agenda

Motion by Heinig, second by Gruber to approve the January 7, 2016 agenda as presented.

All in favor. Motion carried.

4. Approval of Minutes – December 3, 2015

Motion by Stimson, second by Peterson to approve the December 3, 2015 regular meeting minutes as written.

All in favor. Motion carried.

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

Paull stated that contentious items are being considered. Instructed all, including members of the commission, to be civil, not attack anyone verbally or intellectually. There will be opportunity during these two (2) agenda items for limited public input, although a public hearing is not part of this agenda or discussion.

Susan Ryan, 37 Cass Street. Spoke about commercial development in residential zones, referencing various portions of the Zoning Ordinance.

Jack Fitzer, 24.5 Grand Boulevard or 35 Walk A. Spoke about recent zoning amendments not addressing the issues as he sees them; requested the Planning Commission continue to look at zoning changes in Monroe Park.

Elaine Herbert, 140 North Shore Drive. Spoke about her surprise to read in the minutes of the Council meeting and other places that there was a large plan to redo all of North Shore Drive starting in September of this year.

6. New Business - Site Plan Review for 132 Northshore Drive

Paull announced he will at some point allow for some limited comment from the gallery; would appreciate that we not spend more than ten (10) to fifteen (15) minutes total on such comments.

Michael Burnett, 132 North Shore Drive. Stated he is asking for nothing beyond what is allowed in the current ordinances; no variances, not a foot or an inch more. Worked for months with a local architect to ensure that his request met the zoning requirements. Burnett said it will be a home and when I do not occupy it, it will be rented.

Paull asked for the size of the applicant's family. Burnett said he just welcomed a new daughter, and hopes to be blessed with more. Spoke of enjoying Christmas with his wife's family in a small home, mentioning where various family members lived.

Gruber asked about Burnett's duplex at 95 North Shore Drive, noting that in 2013, during the meetings regarding that project, Burnett mentioned that he thought that someday he would like to locate to South Haven to which Burnett responded, "Yes, we fell in love with it, like the local contractors and vendors and others worked with on the other project. We believe in and enjoy this town." Burnett also noted a good friend who bought a home in 2009 is hoping to retire here in the next year.

Gruber asked whether or not Burnett stated that the property at 95 North Shore Drive would be a permanent residence to which Burnett responded that he envisioned using 95 North Shore Drive; he did use it; his wife had her baby shower there; they are thrilled to have the opportunity to use it; and "when we aren't using the properties others can use them."

Gruber asked about parking changes to the property at 132 North Shore to which Burnett responded the covered porch area will be a carport.

Paull asked how many parking spaces are designated on the property to which Burnett responded nine (9) but he hopes there will not be that many, noting that he believes in car sharing, carpooling and mini-vans. Gruber pointed out that cars will have to be parked in a line, necessitating people moving their cars to allow others to leave to which Burnett noted that when a family is at a property, "you throw them your keys to the vehicle last in line and they borrow the car to do their errand."

Peterson asked about Burnett's intention of renting by the room or by the floor to which Burnett said we have never even contemplated doing one room, one floor or even Air B & B.

Paull said over the course of the last month or so we have been looking at similar kinds of buildings and gave an analogy of duck to which Burnett stated, "First of all, it was designed as a home by my architect, with one kitchen, a very large kitchen designed for

group and family get-togethers. It is not designed to rent separate rooms to private individuals; I don't even think there is one non-private restroom."

Paull asked if the property at 132 North Shore is a business to which Burnett responded that he owns it personally and he rents it personally. Paull asked if he would be deriving income and Burnett said, "Yes, there is income involved."

Gruber expressed his appreciation of Burnett's use of local contractors, his love of South Haven, especially with everything that is going on regarding a rental ordinance. Gruber noted Chairman Paull's reference to the weak ordinance, the repealed rental ordinance, and added that the community is trying to put something together and a home of this size does not fit with this plan. Burnett responded that he appreciates this comment, but he purchased this property at a price that reflected that this is in the RM-1 district; that he is all about improving things; that the 95 North Shore Drive lot was vacant, littered with dog excrement and beer bottles; noted the value at that time and the added value due to him spending an enormous amount of money. Burnett stated that he appreciates what this community is talking about; he understands, but there is a distinction of certain areas where things are allowed and the objective to not do things in areas in which that community may be destroyed. Burnett noted that at both 95 North Shore Drive and this house, it is his belief that no one has ever resided there full-time. He is going to improve it and build a beautiful building. Paull asked if the building looks to be more than a single family home to which Burnett responded that it sounds large because we are including the basement in the square footage and spoke of the size of the footprint.

Stimson directed a question to the city attorneys who were present, "Throughout this process with the moratorium and the permits being issued, nothing has been done illegally, and the applicant followed the rules in place at the time?"

Scott Smith, City Attorney: Explained that the application for a permit was filed on November 12, 2015; on November 16th the moratorium was put into effect. The city followed the practice always followed; the single family home was not put through a site plan review by Planning Commission. When the single line in the Zoning Ordinance was pointed out, Smith noted, "We overlooked this; the permits were revoked; we contacted Mr. Burnett and we required him to come before this body."

Stimson asked, "Is it not a one (1) family dwelling?" Smith responded that the city had overlooked that line in the Zoning Ordinance and thus had not required single family homes to go before the Planning Commission for site planning. Stimson asked "Everything else was okay?" Smith stated that otherwise the applicant's sight plan complies with the Zoning Ordinance. His application was in before the moratorium but no site plan review by Planning Commission was done.

Paull explained that the moratorium was put into place to prevent the kind of development this project represents. Paull stated this is a tough issue with him; on one hand we have acted as a community to begin to resolve the problem of seasonal rentals, large buildings and other aspects of our community that is changing and need regulating. On the other hand this application has seemed to squeak in and that bothers him; all good intentions of the developer aside, it is a commercial business; a lodging facility and should be recognized as a lodging facility and regulated accordingly. Paull stated "I think this building violates our intention of the moratorium."

Stimson said this application and building permit was done before the moratorium; we had a previous rental ordinance that was then taken off the books by the City Council; when the work was done the applicant was not doing anything wrong. Paull responded that this community has a moral responsibility to do more than follow just the letter of the law, but to act in behalf of the citizenry of the community.

Peterson noted that these things are usually, if not close to cut and dried; pretty cut and dried. With the flurry, the blizzard of information and outpouring of input it is making this much less cut and dried. Peterson stated that he believes, along with other people, he has issues with some things. Whatever comes from tonight, the most impressive thing is that people are out here and expressing opinion.

Webb said the rental ordinance we are putting together will take care of a lot of the concerns that we have; we are going to address occupancy, parking, noise, and are working on creative parking solutions that we will be talking about in the near future. Webb stated that she does not like what this project has done to our community; all the negativity; so does not like the project for that reason. "But when somebody buys a property, they have their rights to use it the way our zoning states that they can, so that is what I have a hard time with, when you start cutting out the black and white and start making emotional decisions, that's what I have a hard time with."

Heinig noted that the question in his mind at this point does not have anything to do with the looks of the building or the owner's intentions but what the requirements meant in terms of filing the site plan. "It's a question in my mind. I've heard what Smith said. I am not sure those requirements have been met.

Smith reiterated that the applicant's application for a building permit and for administrative site plan review was filed on November 12th. That was what had been understood and always been applied. On the 13th the Planning Commission met and recommended to City Council that they impose a moratorium. On the 16th City Council imposed a moratorium; a few days later the applicant filed for site plan review by this body. That application was given a date of November 12th because that is when the application would have been filed had the applicant been properly instructed. Smith explained the moratorium states that the city shall not issue permits or approvals, so even if the application was in, the permit or approval could not have been issued before the moratorium, because it required approval by this body and this body could not meet by the time the moratorium went into effect.

Paull said we are facing a sticky issue; "Is there anyone who wishes to try to resolve it?"

Paull opened the meeting to limited public comment.

John Lohrstorfer, 712 Maple Street. Stated he has been a permanent resident for five (5) years; that this does not have to be an emotional issue at all. Noted that the city attorney and the Planning Commission recommended the moratorium. "In this case, you didn't just stop everything, you provided a path for someone who wants to do a home for over thirty-five hundred (3500) square feet; the standards are on page two (2) of the resolution. The applicant has to certify in writing that for five (5) years, or until a rental ordinance is adopted, that this property will not be used for a rental. Mr. Burnett admitted in the questioning today that he is going to live there, but I heard nothing that would qualify for a Principal Residence Exemption (PRE) by state law or ordinance. The pathway is to follow

the law that has been enacted in November.” Lorsdorfer stated that Mr. Burnett could go back and amend his site plan application and enumerated some other options; stated that it hinges on when the event starts. Noted that in 1993 he defended someone in a case and the conclusion was that when building permits have been applied for but not issued, vested rights are not in place. When the application is up for approval it must meet the standards of the moratorium.

R.K. Kripaitis, owner, 140 North Shore Drive, Yelton Manor. Spoke about his objections to the proposed building at 132, next to Yelton Manor; that their Bed & Breakfast (B & B) was allowed in the RM-1 zone with a special use permit; that Mr. Burnett would have to present his proposal as a B & B and apply for it as in the code; that a B & B or a PRE would be welcomed; that the proposed building would be on an identical property to the Manor itself. Kripaitis noted that the Manor’s guest capacity is twenty-two (22) with an apartment for the innkeeper. In 1988, to build it, basement guest rooms were not allowed and the innkeeper must have an apartment, by code we had to provide parking so we had to cut a piece of property twelve feet (12’) by one hundred thirty-two feet (132’) from the adjacent Guest House property. “I object to the boarding house at 132 as it is not a single family home; it is a boardinghouse. It’s too expansive for the property, doesn’t provide for parking and should only be allowed to be developed to any allowable use in RM-1.”

Bob Hiddema, 212 Monroe Street. Spoke about looking at the site plan drawings and that there are discrepancies in regards to the entrance between the first floor and on the west elevations. “That brings the question why you need two (2) entryways for a single family home twenty feet (20’) from each other.” Noted he discussed this with an architect friend who enumerated the signs that might indicate this is not a single family home including two (2) entryways. “Is it possible to lock out part of it? You can by running a wall down the middle of the house. Can the city follow up? How will you know?” Hiddema requested that the commission recognize this as a small business and a boardinghouse. Noted he had a small business here and was required to follow the international code, which supersedes the Michigan code and the local code.

Eric Guerin, representative for Herbert & Kripaitis. Pointed out two quick things. “First of all, that it is permitted, that it is a single family dwelling, which it is not. Redefining the single family dwelling. The only other thing is the moratorium clearly applies; recognize that the developer wasn’t told that he had to have a site plan review by this commission. He has no protection from the ordinance.”

Michael Burnett: Stated there is no intention to turn this into two units. “This will be used as one home, not with two (2) entrances leading to two (2) units for two (2) different groups. I’m here for site plan review, respectfully. I know there is a great deal of information out there; I’m glad that you were given that information; I’d like to focus on the opportunity to have the plan review which I was alerted to way after the fact. I did submit everything well before the deadline, even before I knew there was discussion of a moratorium. All that I ask is to be allowed to do what the law and zoning ordinances allow. I did not ask for an inch more than I was allowed. I hope that is what will be considered. I have absolutely no intention to rent it by the night, by the room or as two units.”

Motion by Gruber: Although the permit complies with zoning requirements, I move to deny site plan approval based on the moratorium enacted by the City Council on

November 16, 2015, which provides that “the City shall not issue any zoning, building, or other permits or approvals” for specified large dwellings intended to be used for short-term rentals, with the denial being subject to reconsideration when the moratorium expires or is terminated by the City Council.

Gruber offered this additional explanation: This means that the Planning Commission can consider this application again after the moratorium expires or terminates earlier due to the adoption of ordinance amendments.

Second by Heinig.

Paull called for discussion. There was none.

A roll call vote was taken, with a yes vote being to deny the application.

Ayes: Gruber, Heinig, Miles, Peterson, Stimson, Webb, Fries, Paull

Nays: None

Motion carried.

(Chair Paull called for a 10 minute recess.)

7. Other Business – Rental Ordinance discussion

Paull explained this is a progress report by the sub-committee to the full commission. The sub-committee is seeking question or comments. Paul noted, “Although some public comment may be allowed, the actual amount is up to my discretion.”

Anderson: “You received a copy of the draft ordinance and I have heard back from some planning commissioners and sub-committee members. It is important to remember it is a draft. The sub-committee has been studying for three (3) months; looking at other communities’ ordinances; looking at what works and what doesn’t; worked with legal counsel to come up with a draft. The avalanche of emails we have received we have forwarded to you. It is important to remember that starting on Wednesday at 10:00 a.m. we will begin to get into the issues. Some of the things I saw as a pattern: the majority of members agree that the R1-C should be included in Single Family Residential provisions of the ordinance, addressing existing rentals that do not have enough parking, perhaps an overlay or special regulations. Many rentals have reservations for this summer or going into 2017; if those reservations exceed parking or number of people allowed, how will this be grandfathered? There needs to be provision made looking at the number of bedrooms, the number of bathrooms, or the number of people per bedroom. There are a number of ways, how do you want to limit occupancy? Or is that something we don’t want to consider, instead consider size or number of bedrooms and bathrooms. When larger owner-occupied dwellings are given site-plan approval we might want to look at the certification document we used on 800 St. Joseph Street. We might want to include that in those approvals. Site plan approval for certain houses, certain areas, over a certain size, have some supplementary language that has been added for reviewing site plans for some of those houses. We need to have a registration to determine where we have a lot of short term rentals. We may look at something where the Planning Commission can be a little more discretionary, that is in the state statute, a special use, or something like that. Or can we build in enough supplementary standards?”

Stimson asked what might follow the site plan process but not be into that “touchy-feely” part. Anderson responded that when looking at the site plan review standards, they are really geared more toward commercial, PUD development and so forth. “We need to look at coming up with something more specific; we have a good start on that in the draft ordinance and can study that some more.”

Anderson also noted that it has been suggested that the fine for not registering a rental property should be increased from the proposed \$750 to perhaps double that. “The city will have an ample registration period but that is something the sub-committee will consider when we get into discussion of this.”

Anderson would like to see these standards (Good Neighbor/Owner Agreements) applied so everyone is on the same page, rental owners, renters, neighbors.

The seven-day rental was something that came up with the Personal Residence Exemption (PRE) requirement. “You would be allowed to rent a house for fifteen (15) days or so, and still hold on to your PRE; it might be a good thing to register those types of rentals and keep them in a separate category.

Anderson stated that the sub-committee has something to start with; asked the public to keep sending in your emails, comments, things you would like to see. The more we see patterns it helps us with this.

Paull said there has plainly been quite a bit of work and there is quite a bit to be done.

Heinig noted that single family residences are permitted in the B-3 Waterfront Business zone; that needs to be identified as an area to allow larger size rental houses.

Webb pointed out that the zoning on the first single family residence in the B-3 has been rezoned to R-1. Anderson noted the B-3 zone does allow for single family homes with a special use permit and a lot may not be split to create a lot for a single family home. “We do allow them on an existing lot with a special use permit.”

Webb noted that the one that was recently built, the zoning was changed to R-1 so the zoning is no longer B-3. Anderson agreed that Webb is correct. Webb asked whether that applies here. Heinig responded that the city is not going to rezone every lot in the B-3 that wants to be used for a rental.

Heinig said several emails suggested that the thirty (30) day limit should be changed to twenty-eight (28) due to February; that needs to be looked at. Smith said normally a month-to-month tenancy is a thirty (30) day tenancy. Heinig suggested using the term “monthly rental” instead of calling it thirty (30) days to which Smith responded that it could say twenty-eight (28) days.

Gruber referenced the regulations on short term rentals do not apply to R-2 which Paull noted is something worth discussing.

Gruber asked for clarification regarding the four thousand (4,000) square feet or five (5) bedrooms or bathrooms. “Don’t we need another ‘or’ in there?” Stimson noted that the occupancy would be separate; that wouldn’t be what we look at for a site plan or a special

use, would it? Smith said, "The 'or' is just taking three (3) items and saying any one of them would trigger it, but if you want another 'or' in there, we can do that."

Stimson commented that she appreciates all the work that has gone into this, particularly by Terry (Webb) who did the documents for the renters and for the tenants. Paull noted that we are not done; there are things that need to be discussed. Anderson noted the meetings are on Wednesday at 10:00 a.m. so we have a little more time without running into peoples' lunch hour. Paull said these are public meetings; anyone is invited to come, although it is not for public participation. This is for us to do our job, freely discuss, wrangle with and deal with these issues, so we can come up with some good legislation. There was an effort a month or so ago, to try to have public input, and I fought against that, and we do have a legal interpretation, and we can go back to running a sub-committee meeting as a subcommittee meeting.

Anderson noted that at next month's Planning Commission meeting we will be back to talk about the progress we have made. Once the whole Planning Commission is satisfied with the draft, we will start public hearings. The proposed draft will then pass on to City Council, who will also have public hearings.

Gruber said we did a great job; we had a lot of really good help. When I initially looked at it we had four (4) different proposals. Commented that we need to be looking at prohibiting below-grade bedrooms, and some other issues.

Paull permitted some public comment.

Dorothy Appleyard, 806 Wilson Street. Stated that a really important issue is that the public had a lot of input into the existing Master Plan; there were very important values that were reiterated over and over again. "If I heard you correctly, there will not be time for public participation at the worksessions," to which Paull responded that there will be opportunity to do so.

John Lorsdorfer, 712 Maple. Consider redefining short term as less than thirty (30) days but no less than six (6) days. Give notice to people so they can make changes. Limit occupancy to ten (10) in a square foot area. Regarding allowing a non-conforming use, "Don't do that, nothing will have changed at all. That's the beauty to a stand-alone ordinance so there is no grandfathering." In definitions in the draft it appears that a PRE does not register as a short-term rental. Are PRE people exempt from registration? Gruber said it was rethought after the document was written; would like to see the packets include the PRE law so they understand at what point they lose their PRE.

Frank Ray, 223 Oak Street. Three (3) years ago he and his wife purchased their home with intention of retiring here. "We rented it, didn't make a profit and retired in August to become full-time residents. One reason we moved here is tourism is a trade and we could start a business. We own a piece of property; we call it an investment. If you decide that when I sell my home it cannot be a rental property, then if I have to sell my house soon, I'm going to lose my investment. I didn't move here with the intent of living here for the rest of my life, now I'm concerned. I hope you consider not having homes sold taking them off the market being rental properties for summer or short-term rentals."

Paull noted we are considering a rental ordinance, not a rental ban. We are not trying to do away with the industry. We are very aware that the rental industry in this community is

vital and must be properly regulated. Paull noted he also lives in a neighborhood which is surrounded by summer rentals; wants to deal with times when living by a summer rental is a mess. Although he can count on his hands the times when it has really been a problem, he wants to make this a properly regulated industry in this tourist community.

8. Commissioner Comments

Peterson: None.

Fries: This was my first time here. Thank you.

Heinig: We have given you a proper welcome.

Stimson: When I moved here I knew it was a summer community that had tourists and that for six (6) weeks of my life it was going to be a summer rental community. Everyone needs to consider that South Haven is a tourist town; during those six (6) to eight (8) weeks in the summer remember that you decided to live here and you'll have to live with it too.

Webb: None.

Mills: Appreciates the emails being forwarded. It makes our jobs easier when we know what the community is thinking

Gruber: Appreciates, too, the emails, texts, phone calls, and so forth.

8. Adjourn

Motion by Gruber, second by Stimson to adjourn at 8:32 p.m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom
Recording Secretary