

Zoning Board of Appeals

Regular Meeting Minutes

Monday, January 25, 2016
7:00 p.m., City Council Chambers



City of South Haven

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

2. Roll Call

Present: Boyd, Bugge, Carlson (alternate), Paull, Stegeman, Wheeler, Lewis
Absent: Miller, McAlear (alternate)

3. Approval of Agenda

Motion by Bugge, second by Boyd to approve the January 25, 2016 Regular Meeting Agenda as presented.

All in favor. Motion carried.

4. Approval of Minutes – October 26, 2015

Motion by Stegeman, second by Paull to approve the October 26, 2015 Regular Meeting Minutes with the following correction:

Bugge noted a correction to page 6. 1.7' should be written 1' 7" or 1 1/12'

All in favor. Motion carried.

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

None at this time.

6. New Business – Public Hearings

- a. Bill Fries, currently of Portage MI, requests a front setback variance for his residence at 310 Eagle Street. The applicant is asking for a four (4) foot setback when a 12 foot, 10.5 inch variance had been previously approved. The requested variance relates to zoning ordinance section 402-1. The parcel number is 80-53-019-007-00.

Anderson noted this is a case that came before the zoning board a year ago, Mr. Fries appeared before the board twice; he was demolishing a house and building new. He

asked for two variances, he received the front setback variance but was denied the variance for lot coverage. His front variance was to be in line with the adjacent houses. The open deck has a partial roof that encroaches into the setback. In this case, it was very confusing at the meeting with open decks, porch roofs and so forth. As soon as we noticed that the upper deck construction was encroaching into the setback, the applicant was told he could continue work on the rest of the house but told to quit work on that part of the building. Anything done to the portion of the house extending into the setback would be at his own risk. The applicant came in and filled out the application to request another variance and had some professional plans completed. Anderson noted that the building department had received several letters of support from neighbors and another neighbor, Mike Henry, came in and said he was in support. There were no letters received against granting the variance.

Lewis, looking at the hand drawing, commented, "A nine (9) foot setback from the sidewalk to the roofline. How is that different from what is there now?" Anderson explained the open deck goes back nine (9) feet, so there is six (6) feet of open deck.

Lewis said, "He has a covered porch, not an open deck." When asked Anderson explained that Fries was told he had to stop work and included in the agenda are the minutes of the last meetings as well as information of other variances granted in that neighborhood. Anderson asked that the applicant be invited to explain the request to which Lewis responded that the applicant will be given that opportunity.

Motion by Boyd, second by Wheeler to open the public hearing.

All in favor. Motion carried.

Bill Fries. Noted he is not a Portage resident any longer, he is in South Haven now; he has been renting here while building his house. This is his residence. Fries acknowledged that there was a lot of confusion at the previous meetings, but after the final meeting that he was at here, he hired Duluth Builders, had that plan drawn and all the setbacks and measurements were on that plan which he submitted to city hall. Fries noted, "On the last day the framers were there, I was in Jackson. Linda called me at 3:00 p.m. I almost fell out of my chair. We built the house right to the specs. When I first appeared before you I asked if I could keep my deck three (3) feet within that; we are forty-four (44) feet back. I had the surveyor, Ed Morse, survey that right down to the dime with his satellite; how it's measured and how it's platted is a little different but not significantly." Fries also explained, "I understand my front deck is compliant but the deck above and the roof are not. The second deck covered the first deck so it is counted as a roof. I'm asking you to grant it as it would be virtually impossible to tear that off the way it is built and integrated into the house."

Paull asked how big the deck is. Fries stated that the lower deck is nine (9) feet eight (8) inches. Paull asked how much is covered by roof to which Fries responded that the upper deck comes out six (6) feet. Paull asked how much the lower deck extends beyond the upper deck. Fries noted that the eave was reduced by a couple of inches. Paull asked how far back from the sidewalk the front edge of the deck is which Fries pointed out that while he asked for thirty-six (36) inches the deck sits back more than thirty-six (36) inches. In one area it is more like forty-four (44) inches. Fries noted that he

provided a picture which he does not know if the board has had a chance to see. Anderson said that it is in the agenda packet provided to the board.

Fries added that he has not had any resistance of neighbors, but all are in support. "Some even came tonight from Chicago to support me. Being next to that facility next door, I infringe on no one's view from what has happened there. I believe I've added value to that neighborhood compared to what was there. If you look down the street it fits in well. I didn't have this happen due to deceit, it was the last day of the building that I realized this."

Bugge asked whether when Fries gave the builder the design of the house, did Fries convey what the variance said to which Fries responded, "Yes." Bugge asked if the builder understood the variance to which Fries responded that he wouldn't want to speak for the builder as to whether he understood. Bugge continued, "Usually builders will call the city and . . ." at which point Boyd interjected that the city issued the permit; the city approved the plans. Fries noted he is the general contractor, "They were subbing that for me. They are third generation builders, they build a very nice house, so, yes, they do follow up."

Bugge asked whether the builder had a copy of the site plan to which Fries responded that he thought so. Bugge repeated the question to which Fries responded that he does not recall. Bugge asked, "You don't recall?" to which Fries acknowledged again that he does not recall.

Anderson explained that the zoning permit was issued before the building permit and the zoning permit reflected everything that was required for the zoning permit so it had to be built to those standards. "There was a site plan," Anderson stated, "with everything on it as it was being built. What wasn't shown, what wasn't clear, is the plan showed the deck but not the roof over the deck. And the roof over the deck, that's not allowed." Bugge asked, "That was not on the plan submitted to you?" Anderson responded, "I was going off the site plan. The construction drawings may have had something different, but what I was dealing with was the site plan and the variance as approved by the Zoning Board of Appeals. That was all."

Pat Gaston, 97 Superior Street. Stated she is kind of confused; that she looked at the packet and tried to figure out the old minutes. She stated is trying to figure out when the building permit was approved, did the building permit show that roof over those decks? It kind of shows that he submitted a plan that showed that roof over those decks. She can see he submitted something, that it showed those roofs over those balconies. But also, through this whole thing, listening to this, the building permit was given based on the site plan or the variances you gave. "I guess I can't quite blame him if you gave him a building permit, if it showed a roof over that. I'd kind of have to agree with him. But if the building permit didn't show that, then he is kind of out of line here. I know he has all these people here, but I'm just trying to figure out what the building permit allowed and what he did."

Paull said there is a difference between a building permit and a drawing that is submitted for zoning approval. Paull added, "That is the difference; that is where the confusion happened." Gaston responded, "When you go in for a building permit, don't you have to show elevations of your building? Isn't that part of it? You don't go in with just where you

are going to build on that property; you're going in with elevations of your building, don't you?" Anderson stated that before you can get a zoning permit you have to show elevations, you have to show a site plan, you have to show where all the roofs are, you have to show driveways, you have to show all site and building elements on that plan. That's before you can even get your zoning permit. When the construction permit is issued, all of that is submitted again. They actually submit two applications. One is for zoning and building is another one for site plan review by the Planning Commission or zoning administrator."

Steve Earls, 72074 4th Avenue. Stated he has been here long enough to know, as a real estate associate broker, how important this issue is to all of us. Stated he knew the house that was there previously very well, the people who lived there were friends of his. Stated he got to know Bill (Fries) during the real estate transaction. As a real estate agent, it's great to have someone coming in to town as a permanent resident and improve the neighborhood. It is a confusing situation here, the way it turned out." Also noted he has a business which builds cell towers; does land acquisition and zoning for cell towers so he thinks he understands the process. Someone tonight noted that there are a lot of variances in that neighborhood. The neighbors are all in favor of it; there is no opposition. "It's unfortunate what happened, because if this does not get approved it is going to be very costly and a huge mistake on everybody's part. For it to get this far, the site plan had to be reviewed, the plans had to be reviewed, the variance was given, if there is a roof that is hanging over the piece of building that's already on the parcel, that's how the ordinance reads. It would be in everyone's benefit to approve as it is, as it has been very confusing. There are a number of people who are still trying to figure this out, and I think it would be in everybody's best interest to let this pass."

Tom Jager, 316 Eagle. Stated he and his wife live fulltime on Eagle Street, two (2) doors down; that they were through his old house; it was rough and needed to come down. Said he could only speak as a neighbor. "We needed a new house there that helps make it a better neighborhood. The house looks really nice as it is. It would be a shame and a big mistake to make a change at this point. Bill is a good neighbor, a very good neighbor and I speak strongly in support of keeping the project as it is."

Sue Denice 325 Eagle Street. Stated she is catty corner to where Bill (Fries) is building his new home. "I think this is a marvelous street, too, that this is a beautiful home; a fantastic project, would hate to see anything changed at this time; it adds character to the whole street. I'm very much in favor of allowing him the ability to continue on this project."

Motion by Stegeman, second by Paull to close the public hearing.

All in favor. Motion carried.

Lewis said that he is confused with Pat (Gaston) also on this, noting, "The zoning part I understand. Who approves the building plan?" Anderson responded that the building official, mechanical inspector, electrical inspector all have to look at it. After a question by Lewis Anderson noted that she looked at the zoning and needs to issue a permit before the building code officials begin their reviews. In this case, what the board of appeals had ruled was fine, the wall of the house was right where it should have been. The deck was allowed to be three (3) feet from the sidewalk. Everything was fine until

the roof went up; that was the problem. Lewis said, "The roof we discussed at length, at the December meeting. That roofline becomes the setback. That's where I am bothered that the code enforcement people didn't see that and say that the roof extends into the setback." Anderson explained that they were aware there were variances granted and it looked compliant when Anderson reviewed it, just doing an aerial view and the side elevations and everything was fine. Then the roof came out and Anderson does not think Fries understood that the deck coming out became a roof.

Lewis asked, "There is a deck above the deck; even without the deck you still have the roofline?" Anderson responded yes. Lewis said he understands the layman's confusion; oh, we just put a deck over top of this, it's a deck, it's not a roof. But this isn't that case, this is a roof.

Wheeler said he is looking at this in two stages. The compliance stage and being in line with the variances is one thing. The second thing is, should this man suffer because somebody somewhere dropped the ball. Lewis stated that is a consideration and noted that if the site plan were to come to us today from scratch, he would not have been in favor of it. He would have said, "No, you have to push the whole thing back."

Lewis said he doesn't know how to formulate a decision on this, because he is so up in the air. "I understand what our intent was, but the scrutiny was not good enough." Lewis reiterated that the setback was to the roofline. Paull asked, "Do you see it then, that the variance was approved with the roof? That although you would not approve it now, that's how you see it having been approved?" Lewis said, "No, no, we approved it with the roof being there, we approved it with the roofline." To which Paull responded, which roofline? How much?" Lewis said six (6) feet, Bugge interjected 10 inches, Lewis said, "No, no, from the front, oh, how did we do that again?" Paull said, "I don't remember." Lewis, referring to the plans, "I'm referring to . . . from here . . . from the property line back.

Boyd commented that, as Mr. Earl mentioned, this is a very confusing matter. "I'd like to make a motion to approve the four (4) foot setback variance for 310 Eagle Street, parcel number 80-53-019-007-00, when a 12 foot, 10.5 inch variance had been previously approved. Second by Wheeler.

Lewis asked if there were any conditions or any reasons. Boyd said, "I call the vote." Lewis responded, "You can't do that," to which Boyd noted, "Yes, I can." Lewis stated, "You can do it but I don't have to agree."

Boyd said, "We are going to go round and round. In the future, I agree with you, we need to be asking two questions about setbacks and lots, as well as building plans, and instruct our building officials to have tighter scrutiny, to use this as a template for looking at things in the future. We're not the zoning board, we are the zoning variance committee, so I think this variance is a realistic request."

Bugge stated she has a serious problem with this. "We asked the applicant to be more specific in his application. I don't think he was forthcoming with us during our two meetings which we held when we talked about porches that were covered would be considered in the setbacks. We were generous to grant him a setback the same as the adjacent houses, because we felt that their setbacks had been determined by his house. I'm very uncomfortable with this; in the past when people have made errors, people have

had to bring them into compliance. I'm uncomfortable with the whole thing; the way it was presented to us; I feel someone came in and they wanted to build a house, and they just wanted to build their house regardless. I have a very difficult time with this house."

A roll call vote was taken.

Ayes: Stegeman, Wheeler, Boyd, Carlson

Nays: Bugge, Paull, Lewis

Lewis noted that the variance passes.

Wheeler congratulated the applicant.

Anderson noted that when we have had problems in the past it has been with open porches with decks over them. "I would like to see something more clear as we work on the ordinance with the Planning Commission. I've had some good ideas of ways to do that. This is getting difficult; it always causes us a problem. We go out and check and applicants often didn't realize that was going to be counted as part of the house." Anderson reminded the board of another situation where someone came in for a variance for a balcony; it was the very same thing, it wasn't on her drawing because she didn't think it had to be."

Bugge stated she would like to reiterate, if these porches are enclosed, they will have to be un-enclosed, noting, "I think this needs to be clearly explained, that these can never be enclosed." Lewis noted that there is nothing that stops this one from being enclosed and Bugge agreed, "That's right by the way the variance was granted?"

- b. Lawrence and Donna Zeppiero of South Haven request a landscaping variance for their commercial business at 380 73 ½ Street. The subject property is in the Corridor Overlay Zone and the variance is requested from section 2406 of that ordinance. The parcel number for the property is 80-53-620-051-00.

Anderson explained that for a long time, the D & L store was on Phoenix Street, they sold plates and napkins and it was a very popular spot in the city. That location closed and the owners moved everything out to their warehouse on 73½ Street. "The Zeppieros were originally just using that location for warehousing and wholesale sales; when we found out they were doing retail sales we told them it needed to be checked by the building official and fire marshall." Anderson noted that going from a warehouse to retail sales requires interior and exterior alterations and it is in the overlay zone, which requires if you are doing even a minor change of use, which this is, they have to comply with signage and landscaping requirements. Anderson reminded that this same kind of thing has come before the board several times. "They aren't redoing the entire site; they are keeping the existing vegetation; planting some trees; putting in a landscape island. They are only using half of the small building, so they are only using a small portion as store. If the board would like to see more in the way of pots or boxes, that would be fine. They are anxious to open; they have been working with the fire marshall and the building official for some time now. We received no comments on this. Tom (Stegeman) was the only one who came in to look at the plans."

Lewis asked, "According to the letter of the law, he's only using half of the small building? Does he have to include landscaping for the entire parcel?" Anderson responded, "I'm saying not, just to make it more attractive along 73 ½ Street; and striping just for this store; just to make this building more attractive. That is the whole point of the overlay."

Bugge wanted to know if the site plan could be placed on the overhead but it was not available in that format. Bugge referenced the drawing on page 53 of the agenda packet. Anderson had a full-size plan, which she brought up to the board, noting where 73 ½ is; the large building; the small building which will be used half for storage and half for retail. The areas that are green are landscaped or greenspace already; the blue dots are additional trees they are planting. There is a landscape island with ornamental trees. Lewis noted that's far away from the small building. Anderson noted that the trees along the north property line are actually on the adjacent Goodwill property.

Bugge asked what they are proposing in the portion of green area closest to the building. Anderson said those are large existing trees, not ornamentals. Lewis noted that according to Anderson's interpretation, the applicants only need to worry about what is in front and alongside the smaller building, adding that kind of brings them into compliance.

Motion by Paull, second by Boyd to open the public hearing.

Donna Zeppiero, South Haven. Stated her husband runs D & L Sales and she doesn't have anything to do with that business. Explained that he has used that for a warehouse since 1999 and would like to convert the wholesale showroom into a retail outlet. It would measure 45 x 65 feet long. That is six and seven-tenths (6.7) percent of the overall building space out there, so this is a very small amount of the total building space. The other building is used for a warehouse, used for an industrial purpose; there are loading docks so there is no way we could have landscaping along the entire front, but along where the retail outlet would be there is landscaping now. The west end, the rear, is grass, mature trees and bushes in an area roughly 40 feet x 330 feet. Bugge asked what width is required. Zeppiero noted that the green area is what is already there; the blue is what we propose to do to be in as much compliance as we can. Regarding the suggested interior landscaped area within the parking lot, the fire chief when he was out there to give a fire approval, said that could be a problem to put it in the middle for the maneuvering of emergency vehicles, so we propose to put two islands on the sides. Zeppiero noted that they could have brought a lot of people to support this, as they want to buy their napkins and plates from us, but stated that she does not think that should influence the board's decision.

Bugge asked if they are in area A to which Anderson responded yes. The required greenbelt is 25 feet in the front, according to Anderson.

Lewis asked if the proposed landscaping plan and the small building can essentially be called something different than the entire lot, do they meet the ordinance and if so how. Lewis stated he would like to know if they meet the ordinance without us having to grant a variance.

Anderson said they have a 25 foot greenbelt but they have not met the landscaping along the front. Lewis said it is kind of confusing. Stegeman said the islands are

impractical; they tried to make the best they could to meet the requirements. Boyd commented that the board appreciates that the applicants came with plans, reminding the board of one that came without plans.

Bugge noted that the property has potential for future redevelopment. While Bugge is comfortable recognizing they are just making a small change, if something different should happen they would have to come back to bring that into compliance; to make it more attractive which was the whole purpose of that ordinance overlay zone. Bugge noted they do have green space around the building; we haven't required anyone else to dig up pavement which Lewis agreed with.

Motion by Bugge to grant this variance as proposed providing it pertains to only the current proposed use. Future changes in use would require compliance with the ordinance. Second by Wheeler.

Paull asked if the applicant is conducting retail business there. Zeppiero said wholesale only; buyers such as hospitals, schools and restaurants have to show a sales tax license to buy. Lewis repeated it is wholesale only. Anderson confirmed that noting as proof that we have had people call or come in to complain that they could not buy holiday supplies.

Motion by Paull, second by Stegeman to close the public hearing.

Paull stated he thinks the applicant has demonstrated that he has done something to improve the surroundings. "As long as we don't reduce the pressure for other tenants that go out there. Others will need to contribute to make that an attractive gateway to the city. I'm glad to see a start."

Bugge said maintenance to the property has value as well as landscaping.

A roll call vote was taken.

Ayes: Paull, Stegeman, Wheeler, Boyd, Bugge, Carlson, Lewis

Nays: None

The variance was granted unanimously.

7. Commissioner Comments

Lewis: Asked if any pots have gone in at the detailing shop. Anderson heard that they were not in business any more. Paull asked if the property owner or the business were granted the variance. Anderson said it was the property and the variance would go with the property.

Lewis asked about the special meeting on February 8 to which Anderson responded that the meeting will be in council chambers. Anderson noted that most do not like special meetings but due to a grant that is available, if we waited until the regular meeting date, the applicant would miss the deadline to show whether she had parking or not. Anderson explained that if the applicant gets the variance she can move forward; if not, she won't.

Lewis asked if there will be a quorum to which Anderson responded yes.

8. Adjourn

Motion by Bugge, second by Paull to adjourn at 8:00 p.m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom
Recording Secretary