

Zoning Board of Appeals

Regular Meeting Minutes

**Monday, March 20, 2017
7:00 p.m., City Hall Basement**



City of South Haven

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

2. Roll Call

Present: Dennis Lewis, Bob McAlear, Steve Runkle, Tom Stegeman, Judi Stimson, Lisa Bettis-Cooper (Alt.), Scott Boyd

Absent: Jodi Carlson, Dave Miller

Staff Present: Jenna Levin, Zoning Administrator; Nicholas Curcio, City Attorney

3. Approval of Agenda

Moved by Lewis, seconded by Runkle to approve the agenda as presented.

Voted Yes: All. Motion carried.

4. Approval of Minutes – January 23, 2017

Moved by Stegeman, seconded by Stimson to approve the meeting minutes of January 23, 2017 as presented.

Voted Yes: All. Motion carried.

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

None at this time.

6. New Business – Variance Requests

- a) 207 Prospect St: Olsen Brothers Company requests a front setback variance. The front setback would be 16’6” feet where 25 feet is required by zoning ordinance section 403-1.**

Chairperson Boyd reviewed the request: The applicant is requesting a dimensional variance on the front setback requirement of the zoning ordinance Section 403. R-1B Area Requirements.

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Built in 1870, the structure with the porch had a 16'6" front setback. The owner removed the porch as part of a rehabilitation project, but has not changed any of the building footprint. The owner would like to rebuild the porch as it was previously. This needs a variance because the porch (a structure with a roof) was removed and per the zoning ordinance, must conform to the current front setback requirement.

Twenty-five (25) feet or the average of the immediately adjacent property front setbacks is required. If a property is on a corner, which 207 Prospect St. is, the "missing" adjacent front setback is deemed 25'. The average front setback here is 20'5".

Before discussion on the item began, Bettis-Cooper asked for clarification on what it meant to be detrimental. Boyd used a situation to explain what would be detrimental to a property. City staff further clarified that something could be detrimental in terms of use as well.

Attorney Curcio provided even further clarification that detriment applies to all dimensions and could be anything that would be blocking air, sunlight or anything that has historically been enjoyed. Examples would be encroaching on a property or a use that is noisy.

After clarification was provided, Boyd continued to review the findings of fact regarding the item contained within the agenda packet. He thanked the board for visiting the properties that were being considered on the agenda.

Moved by Lewis, seconded by Stimson to open the public hearing.

Voted Yes: All. Motion carried. Public hearing declared open.

A representative of Olson Brothers (applicant) stated that he had no comments other than they were just replacing the existing porch.

Lewis questioned if porch was still there or if it had been torn down already. To which the applicant replied that it has been torn down approximately one month prior or it would have fallen down.

Lewis stated that he asked because he felt that maintenance items needed to have a time frame so that an applicant couldn't tear down a porch and then request to rebuild 3 years down the road.

Boyd questioned if there was any public comment. There was none at this time.

Moved by Stimson, seconded by Lewis to close the public hearing.

Voted Yes: All. Motion carried. Public hearing declared closed.

There was no further discussion on this item.

Moved by Stimson, seconded by McAlear to accept the requests at 207 Prospect Street for a front setback variance of a front setback of 16'6" feet where 25 feet is required by

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zoning ordinance section 403-1 based on the findings of fact stated by staff in the agenda packet.

Voted Yes: All. Motion carried.

b) 259 Brockway Ave: Wayne and Paula Pecina request a front setback variance. The front setback would be 17 feet where 25 feet is required by zoning ordinance section 403-1.

Boyd began with a review of the item: The applicant is requesting a dimensional variance to construct a new principal structure with a front setback of 17', which would provide relief from zoning ordinance section 403-1.

City Staff added that a ravine is located in the rear and side yards. The amount of useable yard space, especially in the rear of the lot, is already infringed upon by the ravine. The plans indicate the rear setback will meet the 25' requirement to the lot line, however, there is less than that available to the ravine. Based on their findings, staff recommends granting the variance for the 17' setback.

Stimson stated that she drove by the property and saw that the area is a mix of new and old construction and that she could see there were a lot of homes that are closer to the street.

Moved by Lewis, seconded by McAlear to open the public hearing.

Voted Yes: All. Motion carried. Public hearing declared open.

Applicants Wayne & Paula Pecina were present. Applicants stated that there are several older homes on the same side of the street that sat just as close to the road and the only part that actually exceeds the requirement is the porch. They also told the board that they were not blocking the views of any neighbors and that the reason for the request is because of the drainage ditch in the back yard.

Lewis asked applicant if the stakes that were on the property were the proposed house location to which the property owner confirmed. He further stated that having the stakes was very helpful.

Mary Lynne Bugge, 70 Gabriel Dr – Stated that when a person purchases a lot they should build within the regulations for that lot. If it is a 100' deep lot with 25' front and back setbacks, then the house needs to be 50'.

Pat Gaston, 97 Superior St – Stated that this a new house but the lot hasn't changed. They knew the problems with the lot when they bought it and should have taken those problems into account when they designed their house.

Lewis asked applicant what the square footage of the first floor was. The applicant responded that it was 1100 square feet plus the sun room.

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Runkle asked the applicant when they purchased the lot to which the applicant responded 5 years ago.

Moved by Stimson, seconded by Runkle to close the public hearing.

Voted Yes: All. Motion carried. Public hearing closed.

Stimson questioned if Items 6a and 6b should be considered together or separately. Boyd stated that he would like to handle them separately.

Lewis stated that historically the board has not been very lenient for new construction.

Boyd stated that people need to have a certain size home for their family and with the ravine running through the back, the setbacks could create a limit to the number of people that would want to buy it to build on it. Voiced concerns that the lot could sit vacant for a great amount of time instead of having a home built.

The applicant stated that when they bought the home they did some investigation on the land. They found that many of the houses in the neighborhood were only setback 17'. They incorporated that into the plan because they were under the impression that it would only need an administrative review however it was found that it would require a variance. Applicant informed the board that he was requesting the variance to build his retirement in which he planned to live in full time.

Mary Lynne Bugge asked if she could have another moment to speak with the board. When granted, she asked for permission to approach the board and show them something on the topography photo. She approached and pointed out areas that she felt there was more area to build on if the design was different.

Boyd reminded everyone that they were not a design board.

McAlear stated that what the neighbors think is very important.

Stimson questioned if they would be setting a precedent by approving the variance.

Applicant stated that the home 2 doors down was new construction, approximately 5 years old, and that has a 17' setback.

City staff clarified that the zoning ordinance allows some grace in considering the setbacks, but that only takes into account an average of the adjacent properties. In this instance, one of the lots was vacant so that must be considered 25' while the other lot had a home closer than 25'. The average worked out to be less than 25' but more than the 17' they were requesting.

Stimson asked the attorney his thoughts on setting a precedent.

The City Attorney stated that the applicant didn't create the circumstance by purchasing the lot. The key issue is if the ravine poses difficulty in building a structure. The board

needs to consider the request for a structure that is bigger than allowed and weigh the alternatives.

Lewis questioned if the plans called for the structure to be built right up to the side yard setback. He felt that the front variance shouldn't be allowed if there was room on the sides.

Moved by Stegeman, seconded by Boyd to approve a front setback variance at 259 Brockway Ave to allow relief from Section 403-1 of the zoning ordinance and allow a front yard setback of 17'.

Lewis stated that he doesn't see enough support to approve the request.

Boyd stated that if the neighbors have the closer setback that this should be allowed.

A Roll Call Vote was taken:

Yeas: McAlear, Runkle, Stegeman, Stimson, Bettis-Cooper, Boyd

Nays: Lewis

Motion carried. Variance granted.

c) 259 Brockway Ave: Wayne and Paula Pecina request to build their new home with 2.5 stories where 2 stories are permitted and 36 feet from grade where 35 is permitted by zoning ordinance section 405.

Chariperson Boyd began with a review of the item: The applicant is requesting a dimensional variance to construct a new principal structure with two and a half (2.5) stories and 36 feet in height from grade which would provide relief from zoning ordinance section 405.

The current site plan for the new structure sets the half story, which the applicant and plan states is for storage, with an approximately 5'11" to 11'3" ceiling and a window. Staff considers this a half-story.

Staff informed the board that the ordinance states that the height is not to exceed 35' and two stories. She clarified for the board what a half story was.

Stimson stated that she is a representative of the Planning Commission and that there were changes to the ordinance regarding height and stories based on the input of people living here. She stated that she will vote no because of the work that the Planning Commission and that allowing it would cause other problems.

Moved by McAlear, seconded by Runkel to open the public hearing.

Voted Yes: All. Motion carried. Public hearing declared open.

Applicant stated that the reason the request is being made for the story is because the plans call for an 8:12 pitch roof which would leave a big empty attic space that they would like to put up drywall in. As for the extra 1' in height, the applicant believed that

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had to do with an egress window in the basement. Applicant stated that not being allowed the extra height would not be a deal breaker. He also stated that this is going to be his primary residence and was looking forward to living there and spending time with his four children and seven grandchildren.

Applicant wondered why there were houses on the lake with 3 stories and sliding glass doors for entry and exit. The board informed him that those homes were in a different zoning district that allowed for that height.

Applicant told the board that the attic will be there regardless and he would just like to drywall it and use it for storage.

Lewis questioned if there was a difference between living space and storage space.

Stimson stated that while the current owner intends to use it for storage, future use needs to be considered.

Staff clarified that regardless of the current use, the space is still a ½ story which is against the zoning code.

Stimson stated that the ordinance is very clear and even contains language on the types of roof structures that are allowed.

Owner questioned how they were to put a roof on the home and when does it become a ½ story.

Staff stated that they need to lower the roof to be one foot shorter. The City Attorney stated that the level becomes a ½ story when it could be finished and inhabited. Staff and the Attorney stated that the applicant should speak with staff if they have any further questions about design.

Pat Gaston, 97 Superior St – Reminded the board that the Planning Commission just changed the ordinance after months of hard work and much debate came to the 2 story and 35' ordinance. The ZBA needed to stick with that.

Moved by Stimson, seconded by Runkle to close the public hearing.

Voted Yes: All. Motion carried. Public hearing closed.

Bettis-Cooper clarified that she felt the detriment would be in the inequity to other people in the community that have had to build within the guidelines.

Moved by Lewis, seconded by Runkle to deny the variance request at 259 Brockway Ave to build their new home with 2.5 stories where 2 stories are permitted and 36 feet from grade where 35 is permitted by zoning ordinance section 405.

Boyd clarified that a yes vote was to deny.

A Roll Call Vote was taken:

Yeas: McAlear, Runkle, Stegeman, Stimson, Lewis, Bettis-Cooper, Boyd
Nays: None.

Motion carried. Variance denied.

d) 125 Van Buren St.: Linda Schubel requests to rebuild the garage at the same distance of 10 inches from the side lot line where 3 feet is required by section 402-2.

Chairperson Boyd reviewed the request: The applicant is requesting a dimensional variance to construct a new garage on the property with the same nonconforming side setback of 10", which would provide relief from zoning ordinance section 402-2.

Staff stated that while they empathize with the applicant's situation, this situation does not meet the purpose for a variance, which is to allow for relief from the Zoning Ordinance regulations if the situation is not due to the actions of the applicant, is the minimum option to mitigate the situation, would not be contrary to public interest, and are circumstances unique to the individual property.

Staff stated that additional options exist though they are deemed inconvenient to the applicant. They include:

1. Repair the existing garage rather than rebuild it to maintain the current legal nonconforming structure. The applicant can add 6 feet to the front or back of the existing structure along the same side lot line.
2. Demolish the current garage and rebuild the garage structure in the rear lot horizontally providing 3 feet remains from the rear lot line. Extend the driveway to feed into the rear garage.
3. Move the deck east and rebuild the garage east at least 6 feet from the deck.

Moved by Stimson, seconded by Runkle to open the public hearing.

Voted Yes: All. Motion carried. Public hearing declared open.

Applicant was present to discuss her variance request with the board. She stated that she didn't think her request was unreasonable because she was not altering the landscape of her neighborhood at all because she simply wanted to rebuild exactly where it is now the only difference is to add 6' for storage. She stated that none of her neighbors had any objections to her request.

Applicant stated that the alternatives that were presented would not work because they would:

1. Eliminate green space,
2. Repairing the structure would cost more than demolishing and rebuilding,
3. A rebuilt structure would last longer than a repaired one.

Boyd clarified that the applicant was seeking to rebuild but come forward an additional 6'.

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Applicant stated yes. They wanted to go forward with the additional 6' because right now it is all driveway space. Moving it back would take away her back yard and add more concrete to her front yard.

Lewis stated that the 3' setback is meant to allow for maintenance such as painting. Nonconforming structures must seek neighbor's permission to access their property for maintenance items, and while the current neighbor might be ok with that, who knows what will have in the future.

Owner expressed confusion as to why it would be ok to repair what she already has but not tear down and rebuild in the same spot.

Moved by Lewis, seconded by Stimson to close the public hearing.

Voted Yes: All. Motion carried. Public hearing closed.

McAlear stated that he empathizes with the applicant's situation.

Stimson stated that if there were no other options, her vote would be different.

Moved by Stimson, seconded by McAlear to deny the variance request at to rebuild the garage at the same distance of 10 inches from the side lot line where 3 feet is required by section 402-2

Boyd reminded board that a yes vote was to deny.

A Roll Call Vote was taken:

Yeas: Runkle, Stimson, Lewis, McAlear, Bettis-Cooper, Boyd

Nays: Stegeman.

Motion carried. Variance request denied.

- e) 1365 Monroe Blvd: DeBest, Inc. and Hope Reformed Church request a fourth driveway on their already nonconforming lot with three (3) driveways where only one (1) driveway is permitted by zoning ordinance section 1716-3.**

Chairperson Boyd reviewed the request: The applicant is requesting a dimensional variance to construct a second driveway on a single parcel, which provides relief from zoning ordinance section 1716-3. The parcel, where Hope Church and the Parsonage are built, is 5.3 acres and zoned R1-B. The applicant's reasoning for the additional driveway is to provide barrier free access to the Parsonage.

It was noted that the applicant already constructed the driveway by removing topsoil without a variance approval and without a driveway permit from the city engineer to work in the right-of-way.

Staff reviewed the following findings with the board:

1. The parcel is already non-conforming with three driveways on one lot.

2. Engineering looked at traffic impact and did not recommend allowing a fourth driveway.

Staff stated that they did not see how the request meets the criteria to all for a variance.

City Attorney clarified that there was alternative option, regarding splitting the lot that isn't allowed for in the code so there are only two alternative options available to the applicant.

Moved by Stimson, seconded by Runkle to open the public hearing.

Voted Yes: All. Motion carried. Public hearing declared open.

Ken Maxwell, Chairman of the Property Committee for Hope Reformed Church was present on behalf of the applicant to discuss why the church needed the extra driveway. He stated that the church recently did a major remodel project and the Pastor is now living in the parsonage. There are many elderly parishioners who visit the Pastor in his home. Recently one of the parishioners fell and got hurt so the church felt it they needed to have a driveway that they can use to drive up and get out at the front door.

McAlear asked applicant if the church is barrier free. Applicant confirmed.

Stimson stated that there is nothing in the plans to change the house to be accessible so they would have an accessible drive but not house. She further stated that the issue is that they have three drives already that can cause problems with traffic, bicyclists and pedestrians and adding one drive would only make that worse.

Boyd questioned why the church would want a driveway because of the handicap but the home itself isn't accessible.

Lewis expressed his empathy with dealing with the aging population and spoke to his experience with elderly parents that can walk, but not very far. He stated that he has no problem with the driveway for this purpose.

Brian DeBest, the contractor for the applicant spoke to the reasons why he felt the alternative were not acceptable:

1. He felt that constructing a driveway that would be parallel to the sidewalk would be more detrimental to pedestrians that crossing the sidewalk.
2. While there are 3 driveways already, only one driveway is on Monroe.
3. Stated that they didn't believe it was that busy of an area except during church services.

DeBest questioned why the old Canonie property has 5 drives.

The board explained that that property was split into separate parcels and that was all done legally with the ordinance.

Stimson stated that she respectfully disagreed with the contractor and that it was a very busy area. She further stated that the engineer's determination on whether it is safe or not should be a factor.

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Staff stated that this issue is that the parcel is in a residential zone and the code only allows for one driveway.

McAlear pointed out a letter from the engineer that was included with the agenda packet about his findings regarding the driveway request.

Board took a minute to review the letter.

Lewis questioned if they considered making a turn around. DeBest stated it would take up green space.

Boyd asked staff to have the engineer present for future meetings to help answer questions the board might have.

Maxwell stated that he felt there was going to be very occasional use of the driveway.

Stimson stated that if they church patrons have another way to get out, they will use it. She stated she was going to lean on the engineer's recommendations.

Moved by Runkle, seconded by Lewis to close the public hearing.

Voted Yes: All. Motion carried. Public hearing closed.

Boyd stated he felt the board should consider tabling the item until they could hear from the engineer.

McAlear asked to the last paragraph of the engineering study to be read aloud.

Boyd read the following:

In addition, it should be noted that the engineering department only permits new driveways to residential parcels if they provide access to parking spaces or other site uses that are in compliance with the Zoning Ordinance. Section 1800.1 of the Zoning Ordinance requires off street parking spaces to be located within a rear yard or within a side yard. The proposed driveway does not provide access to any new parking spaces that are in compliance with the ordinance. In addition, parking is likely to occur in the front yard of the parsonage house along the proposed loop driveway.

Moved by Stimson, seconded by Runkle to deny a variance request at 1365 Monroe Blvd for a fourth driveway on their already nonconforming lot with three (3) driveways where only one (1) driveway is permitted by zoning ordinance section 1716-3.

Boyd reminded board that a yes vote was to deny.

A Roll Call Vote was taken:

Yeas: Stegeman, Stimson, McAlear, Runke, Bettis-Cooper, Boyd

Nays: Lewis.

Motion carried. Variance request denied.

7. Other Business – None

8. Commissioner Comments

- McAlear: Chairperson Boyd runs a great meeting.
Stimson: Some decisions tonight were not what the citizens want but they followed the law and that makes her very happy.
Stegeman: Disappointed in the decision regarding the garage. Many houses in town were rebuilt one wall at a time. Not a proponent for not letting her rebuild and costing her more money for no reason.
Lewis:
Runkle: Agreed with Stimson. A lot of time and hard work was put into creating the ordinances and we need to stick with it.
Boyd: Welcome to new member. Thanked her for asking the clarification question in the beginning.

Levin noted that there is a training session for the board members on April 28, 2017.

9. Adjourn

Moved by McAlear, seconded by Lewis to adjourn.

Voted Yes: All. Motion carried. Meeting adjourned at 8:44 p.m.

RESPECTFULLY SUBMITTED,



Amanda Morgan
Temporary Recording Secretary