

# Zoning Board of Appeals

## Regular Meeting Minutes

Monday, March 30, 2015  
7:00 p.m., City Council Chambers



**NOTE: This was a postponement of the March 23, 2015 meeting**

City of South Haven

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

### 2. Roll Call

Present: Bugge, Paull, Wheeler, Wittkop, Lewis  
Absent: Boyd, Miller

### 3. Approval of Agenda

Motion by Bugge, second by Wittkop to approve the March 30, 2015 regular meeting agenda as presented.

All in favor. Motion carried.

### 4. Approval of Minutes – March 2, 2015

Bugge abstained as she was not present at the March 2, 2015 meeting.

Motion by Wittkop, second by Paull to approve the March 2, 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

There were none.

### 6. New Business – Civica Engineering Variance Requests

*Tim Woodhams, representing Civica Engineering of Portage, MI, requested variances from two (2) sections of the zoning ordinance as part of an application to refurbish the building and site at 237 Broadway Street (formerly Save-a-Lot grocery store). One variance is requested from zoning ordinance section 1709 which details landscaping requirements. The second variance request relates to zoning ordinance*

*section 1800, Parking. The ordinance requires 114 parking spaces and the applicant is proposing 66 vehicle parking spaces and 18 bicycle parking spaces.*

Anderson noted that she prepared responses and found that most of the criteria appeared to be met. She also stated that there were a lot of neighbor concerns, which would affect the detriment to the neighborhood portion of the standards in 2205.

Lewis asked how the number of spaces is calculated which Anderson explained is calculated by the usable floor area; just the area of the building that is used by customers. For restaurants that would be one (1) parking space for every seventy-five feet (75') of usable floor area.

Lewis said he saw something about one (1) spot for every two (2) patrons, but maybe that is for occupancy. Anderson said that is based on maximum occupancy load which is unknown for this building for this use at this time.

Bugge pointed out that in the report from the applicant it was suggested there might already be a variance on the property. Anderson said she went through the older computer and paper files but could not find anything.

Motion by Wittkop, second by Bugge to open the public hearing.

All in favor. Motion carried.

Tim Woodhams, Civica Engineering and Investor/Partner in the brewery. Thanked the board for allowing them to come and discuss the proposed project; a brewery in the back half with a small tap room, and the other section for a western themed restaurant with line dancing. The building is a former Save-A-Lot. Woodhams noted that his intent in the responses was to state that the current use would require a variance under the current ordinance to have been in existence and apologized for the misunderstanding. He stated that those two-and-a-half blocks are a challenge when it comes to the zoning, whereas if he were further south, down near the McDonald's, it would be easier. Our property is in the Downtown Development Authority (DDA) within walkable distance of the downtown and we believe the majority of clients will be tourists and walk in from downtown.

Woodhams noted that the hardships faced are similar to what anyone would face in that area. Woodhams said two groups have expressed some concern, the shopping center to the north and the synagogue to the south. "I haven't heard about any other individuals who have concerns; our property is surrounded by a big valley behind it so there are not a lot of adjacent residential uses." Our proposed use is consistent because of the location of the areas noted along this block of Broadway, similar to the Central Business District (CBD). "The redevelopment of our site will see the number of parking spaces remain unchanged from the current use."

Woodhams excused himself and left council chambers for a few minutes, asking Larry Hollenbeck to take his place.

Larry Hollenbeck identified himself as another partner in the property. Stated that he is very aware of the neighbor concerns in the area; has a meeting Thursday night with the board at the synagogue. Stated the developers want to work with the synagogue board on trying to maintain the integrity of their worship area and services. Want to make sure we can provide them with assurance that they will be respecting that. This project was started a year ago when they began to look at the property; they plan an inside venue, not an outside venue; knows the city has noise issues as occur with any resort area. "We won't have open windows and won't be obtrusive from outside. Can't control the motorcycles and loud cars, what happens across the street at Joe's might be something that the city might want to address at some time. We're inside, in a block building, won't be a noise level problem outside."

Woodhams returned to council chambers.

Woodhams: Noted there are sixty-six (66) parking spaces; the calculation according to the zoning ordinance requires one hundred fourteen (114) spaces. The building is 17,250 square feet, under B-3 zoning is going to be non-conforming for that building and that is where our hardship is. Somebody asked if the building would be more appropriate for a strip mall or shopping center; at approximately eighty percent (80%) of usable floor area would require one hundred thirty-eight (138) parking spaces, as opposed to one hundred fourteen (114) spaces as the calculation requires for our use. Woodhams noted that almost six thousand (6,000) square feet of that building is taken up with brewery equipment.

The other issue Woodhams noted is landscaping. "We can't conform to the buffer requirement or landscaping planning requirement; this is a pretty compact parking lot. I've done the best I can with the existing parking lot; we have added an island, landscape with trees and native grasses along the north property line; along the west was able to find a spot to add additional trees and landscaping and in the rear another landscaped island for the site." Stated there are plans to have an outdoor seating area, which will also be landscaped; in the mown grass area we have proposed to add some Douglas firs to soften the block wall for adjoining neighbors.

Wittkop asked if the landscaped island is taking up parking spaces. Woodhams responded that some areas out there are unusable due to trucks coming in and out daily so deliveries and pickups would be scheduled in the early morning so we do not have to double book the space. "The same with the dumpster; we propose to make arrangements to have our garbage picked up at appropriate times."

Bugge pointed out that having the angle parking takes advantage of the space well and asked about the square as you come into the property. Woodhams explained that is the striped entry area and we hope to make a nice patio, maybe stamped concrete and plantings.

Bugge asked about where the other door will be located. Woodhams responded that the plan is to use the existing door for the restaurant and for the brewery to make a doorway and patio where the existing chimney is. "We are also going to have a large bike rack area with the intention to have plenty of room for bikes; maybe could even add more."

Bugge asked Anderson if the trees they are proposing are required under the ordinance to which Anderson responded that they are required and they did add those and it meets the requirement as well as improve the appearance of the property.

Woodhams: Gave consideration to the detriment to the neighborhood issue; were the property to be a shopping center, it would have the same use and same typical hours as the adjacent strip mall. With our proposed uses, the peak hours for parking will not be the same; for example the title company is mostly daytime use. Our uses will be mostly evening, with some daytime hours.

Wittkop asked what the occupancy would be to which Woodhams said they have not gotten to that point in planning yet.

Bugge said you are indicating an outdoor patio contradicts with what Hollenbeck said. Woodhams said outdoor seating would be for dining, not bands or entertainment, due to the noise ordinance in the city. "Our intention is to have a brewery for people to have some dinner and sample our beers."

Bugge asked how many people the patio would accommodate to which Woodhams responded maybe twenty (20) seats. Bugge asked how many parking spaces it would take up and Woodhams responded perhaps three (3) spaces but he would also lose his bike parking. "The demographic for the brewery is the age forty-five (45) and up crowd, mostly husband and wife or a small group; they stay a while and move on. That's the crowd we anticipate." Woodhams stated he does not see the brewery being open past 10:00 p.m.

In response to Bugge's question about the hours of the restaurant in the summer, Woodhams does not know what the restaurant hours would be. Anderson said we are getting off track of the variance request but last call is typically 1:30 a.m.

Condition 4. Woodhams noted that every building in that area does not meet the requirements of the zoning ordinance; not the strip mall; not the synagogue; not the Vineyard and certainly not that across the street. Unless approved we will not have similar property rights.

Condition 5. Woodhams noted that a new development could reasonably be expected to conform, however this is the redevelopment of an existing property

clearly built before the existence of the B-3 zone, which he believes was started in the 1950s.

Lewis noted the grocery store used to share that parking lot with a furniture store to the north.

Condition 6. Woodhams stated that both are not the result of the current owners, and that his development is in the same situation as the rest of the neighbors on that stretch of Broadway.

Condition 7. Woodhams said there is not a reasonable use that would fit within that property that would have adequate parking to conform. "Our use is one of the lesser intense uses parking wise for that piece because of the large component of the brewery we are proposing. Shopping would even require more parking than we propose."

Condition 8. Woodhams noted that it is understood that the applicant is asking for the minimum variance.

Woodhams concluded that one of the reasons the applicants think this is the correct use of this property is that "we anticipate this being a walking destination for the tourists in this area, unlike a shopping center where people would likely be driving in."

Lewis explained the requirements for those speaking, noting that Anderson will act as time keeper.

Attorney Drew Taylor, representing Tom DeGroot, adjacent property owner. Mr. DeGroot, the owner of the strip mall, is concerned that the change of usage from grocery store to brew pub and restaurant will increase the use of the property with heavier use during certain times, that his parking lot will become the overflow for the new use. The applicant is requesting sixty-six (66) parking spaces out of the required one hundred fourteen (114) which is basically less than sixty percent (60%) of the number of spots required under the ordinance, patio removal would add three (3) additional spots, and there are other uses that would be more conforming than a restaurant and brew pub, according to Taylor. "There are two ways to go about the parking; one is the maximum occupancy for the restaurant, which hasn't been determined at this time. So it would be premature to approve this based on that."

Barry Fidelman, President of First Hebrew Congregation. Stated he is trying to limit this to strictly parking situation. Has the unique situation of being the representative of two (2) entities as he is also a resident of River Terrace Apartments directly across the street from the considered development. There is a resident petition going around the building, according to Fidelman. "The street is already very busy, and these people are migratory, they go from Joe's, to Idler and other bars, and many of the residents are using walkers or wheelchairs." Fidelman cited issues such

as the sidewalk being littered with broken bottles, etc. "Parking is a serious issue for the synagogue. We have five bars near us; no other church has even one. Our patrons cannot park on Church Street for our worship services, because of overflow parking from Joe's, whose patrons and employees are parking on Church Street." Fidelman stated that he thinks this proposal will be tremendously successful and it will be a nightmare. "We ask that you protect us."

Steve Tolen, Synagogue Board member. Stated that the parking at the synagogue is very limited; there is not very much. This looks like this could be a busy business; parking is not enough as it is. The regulations are in place for a reason. A certain number of parking spots are needed for a business; if this is approved it will make parking worse. Stated the proposed hours conflict with the Synagogue's Sabbath, which starts Friday night at sundown. "So in the summer 9:00 or 9:30 p.m. is when we need parking for the synagogue. So we ask that you deny the variance."

Bugge asked how many people attend when your services in the summer are as late as 9:00 to 9:30 p.m. to which Tolen noted it really varies from thirty (30) to sixty (60). Bugge asked how late the services last and was told from an hour to an hour and a half. Tolen clarified, "That's Friday and Saturday. The Sabbath runs from sundown on Friday night to Saturday night." Tolen explained in the fall the high holiday services vary and there are many more people who come to that service; they can start in the morning and end at night. Wittkop asked if there is any off street parking. Tolen said there is very little but what there is exists behind the synagogue. Tolen noted he grew up here and there has always been a grocery store there as long as he remembers and parking has never been a problem in his memory.

Remie Ruben, First Hebrew Congregation Board member. Stated that their concern is the parking and the fact that our people have to walk from the City Hall area and from over by the Congregational Church. If they reduce the parking by sixty percent (60%) it will be a big impact on us. If it is a successful business, the lot will be jammed. Motorcycle parking can be a problem, but the impact is the noise that goes on during our services. Noted that the outside activity on the patio could impact the synagogue with noise.

Woodhams: Stated he has heard the concerns and they are understandable; parking is a premium in the downtown area. This property is downtown, in the DDA but zoned B-2. Our parking percentages are roughly sixty percent (60%) of what the zoning ordinance requires. The ordinance states the calculation for determining the number of parking spaces is one or the other, not both, and we are properly calculating our parking.

Woodham provided a little research for the gentlemen the attorney represents. His building is a shopping center which generally requires about eighty percent (80%) usable floor area. They need one hundred sixty-eight (168) spaces which puts them at forty-three (43%) of their parking requirement. We exceed their existing use, we could nickel and dime, and we would be down to forty-seven percent (47%) if we

were proposing a shopping center. Clearly the synagogue has parking challenges; the synagogue was built over sixty (60) years ago; they are welcome for their members to use our parking lot on Saturday mornings, on Friday nights if there are spaces available, or even the handicap spaces. "The church members are more than welcome to use those."

Woodhams stated, regarding the motorcycle issue, "That's an enforcement issue, in my opinion, at the city level. There is a Friday night bike night across the street. That is not our demographic but it is bike night. They are parking on the side walk, in no parking zones and on the curb line. Your police officers could solve that problem fairly simply."

The last item Woodhams wanted to address is that he understands from the existing owner, Mr. Keckler, they have done quite a bit of towing of the vehicles of patrons of the property owner to the north; they have been being towed for a number of years. As a quick note, their upper level is about 13,900 square feet allowing eighty percent (80%) usable floor space, would need three (3) times as many spaces. It's a busy strip mall with limited parking. "Thank you for your time and I am glad to answer questions."

Motion by Wittkop, second by Wheeler to close the public hearing.

All in favor. Motion carried.

Lewis suggested splitting this up into two (2) motions to make it simpler. Anderson reminded that it takes four (4) votes to approve a variance.

Bugge thinks that there are some legitimate concerns here; unfortunately incompatibility of the use is not what we are concerned with. Both uses are permitted in this area; houses of worship and bars. That is just the way it is. Parking certainly is a real concern in this area; it's a problem throughout, the question is whether this will just exacerbate an issue that exists. There are some uses that would not require the amount of parking, the degree of variance that these particular uses. Such as a showroom type of situation, or not as much usable square feet which would cut down the amount of parking needed. With the bridge going up, it is going to be interesting. Noted that she is expressing her concerns; she is really torn. Thinks people would enjoy those uses; they are good uses for the downtown. "The parking is really a concern."

Lewis said he does not see something like a showroom going in there. A restaurant/tap room he can see as a successful business. "This parking is a pre-existing condition."

Wittkop said there is only one other restaurant that has enough parking and that is Lakeside Entertainment. Wittkop wondered when this ordinance was passed, requiring so many spaces for seventy-five (75) square feet, whether it took into

consideration existing conditions. Wittkop asked when the parking requirement changed. Anderson said she would have to dig into the historic files; the ordinance history goes back a long ways and regulations do change.

Wittkop wonders if we are overbilling on parking; the Meijer's reduced their parking area when they came in. "Is our ordinance in agreement with reality?" Bugge said she thinks it depends on the use and that Wittkop is comparing apples to oranges. Wittkop said he is talking about parking to parking; some want more than truly needed and others do not want as much.

Lewis said if everyone rode their bike it would be the same deal. Bugge noted that Mr. Fidelman pointed out that people go, walk, from one bar to another, that is another side of it; there are several issues.

Paull said one of the more practical aspects of parking exists on Friday nights when both establishments will be at their busiest and most participatory, both activity and people. Allowing one of them to have somewhere less than two-thirds (2/3) of their necessary parking does not make sense. "To me, there is a very distinct incompatibility between the two neighbors." Paull stated he is very torn; he likes the idea; this is a very useful kind of adaption of an existing property and building. But in this case, since it is next door to a synagogue brings a number of complications. It's a state regulatory issue of establishing of drinking establishment next door to a synagogue. Bugge said that is out of our hands. The biggest incompatibility is that both locations share the busiest times so the parking variance does not make sense to me.

Wheeler asked if both uses are permitted to be there, how much does one party's concern trump the other's? Bugge agreed, noting, "Regardless of the use of the property on the corner, the new owner of this property is coming in for a variance on this property. Is it appropriate for the use that is being proposed? Lewis asked, "Regardless of what's around it?" Bugge responded, "Yes, they are both permitted uses."

Lewis noted he is torn with this because he does not see, short of razing the building and starting from scratch with a very small building, what can be done with this property. Wittkop says he is torn that they are providing more parking than anyone else in the area, which he feels is a humungous amount for a bar.

Motion by Wittkop to grant a variance for parking to sixty-six (66) reduced from the required number, as it seems to be appropriate for the use of the facility; it is a pre-existing condition that has gone on longer than most of us remember.

Lewis suggested adding that other uses would have required more spaces than one hundred fourteen (114) as required now. Wheeler wants to add, "Such a variance will provide a sustainable property right as enjoyed by other property owners in the vicinity." Wheeler seconded the motion as amended.

Anderson suggested they add the standards from Section 2205 and note that the variance meets those standards. Paull doesn't think it is detrimental.

A Roll Call vote was taken.

Ayes: Wheeler, Wittkop, Lewis

Nays: Bugge, Paull

Motion failed.

Motion by Bugge, second by Wittkop, to grant the variance for landscaping, which meets all standards except number seven (#7).

A Roll Call vote was taken.

Ayes: Paull, Wheeler, Wittkop, Bugge, Lewis

Nays: None

Motion carried.

Applicant withdrew his application from the Planning Commission meeting scheduled for April 2, 2015.

## **7. Member Comments**

There were none.

## **8. Adjourn**

Motion by Bugge, second by Wheeler to adjourn at 8:15 p.m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom  
Recording Secretary