

Zoning Board of Appeals

Regular Meeting Minutes

Monday, April 27, 2015
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, Miller, Paull, Lewis
Absent: Wheeler, Wittkop

3. Approval of Agenda

Motion by Paull, second by Bugge to approve the April 27, 2015 regular meeting agenda as presented.

All in favor. Motion carried.

4. Approval of Minutes – March 30, 2015

Motion by Bugge, second by Boyd to approve the March 30, 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

None at this time.

6. New Business –Variance Requests

- a) *Sue Whitener of Saline, Michigan is requesting a side yard variance to allow a balcony to extend three (3) feet further into the north side yard than allowed in zoning ordinance section 1722-1. The property of the variance request is 721 North Shore Drive. The parcel number is 80-53-840-008-00.*

Anderson explained this is a request for a second story balcony in a fifty foot (50') wide lot in a neighborhood with sixty-six foot (66') lot width minimums. The applicants made their house narrow but when they decided to do a balcony they wanted to extend three (3') further into the north side yard than allowed by the ordinance. Anderson noted that while there were

some issues that had to be dealt with during construction, there are currently no outstanding issues. Anderson also noted that she received one letter in regards to this variance which she already provided to the board.

Bugge asked Anderson for confirmation that plans submitted to Anderson for site plan review were inconsistent with the original site plan. Anderson responded, "Yes, the decks and the balcony were not on the original site plan." Anderson stated that those amenities were on the construction plans, but not on the site plans.

Boyd asked about another variance granted in June 2013. Anderson said that was in a different zone and on a lot that would have to have variances to do anything. Bugge asked if the other variance has any resemblance to this request. Anderson said that was a very unusual situation and not really like this one.

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

All in favor. Motion carried.

Rich Bloem, Contractor/Applicant's Representative: Asked if the board had any questions.

Paull asked Anderson for clarification of lot width to which Anderson responded, "The zone requires sixty-six foot (66') wide lots but this lot is only fifty feet (50') wide." Anderson also pointed out that the south setback is larger than required.

Bugge asked why the balcony was not on the site plans. Bloem said the balcony was on the architectural drawings and the site plan only showed the foundation footprint. After explaining that the site plan should indicate any porches, decks and balconies Bugge noted, "You took a chance on submitting that site plan without the balcony." Bloem explained the requirements for what to include on a site plan can vary from township to township. Bugge suggested that Bloem be more careful about that in the future.

Boyd asked if there are any other bedrooms with balconies to which Bloem responded, "No, this is the only balcony off a bedroom."

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

All in favor. Motion carried.

Miller asked about the letter Anderson referenced, whether it was in favor or opposed. Boyd pointed out that a paper copy of the letter has been provided and that Anderson had stated there were no outstanding issues.

Motion by Boyd that this variance be approved seeing that it is a fifty foot (50') wide lot in a zone that usually has sixty foot (60') wide lots and that the applicants were trying to be good citizens by complying with the ordinance as much as possible.

Second by Miller.

Bugge said she has some issues with this request, noting that a balcony is not a property right; that the need for a variance is a self-created hardship and the setback is not unnecessarily burdensome, so she has concerns about granting this.

Miller pointed out that given one foot (1') is permissible and four feet (4') is impermissible without a variance and that a one foot (1') balcony serves no useful purpose and is probably almost as expensive as a four foot (4') balcony, he has no problem with "giving the folks a balcony so they can sit and look at the lake."

A roll call vote was taken:

Yeas: Miller, Paull, Boyd, Lewis

Nays: Bugge

Motion carried.

b) Joe Wiltgen, representing JWILCO, is requesting a rear yard variance for a proposed shopping center at 330 Blue Star Highway. The rear yard proposed will be 17 feet where 25 feet is required in zoning ordinance section 2405. The applicant will also need a front yard green belt variance per zoning section 2406.1.c. The parcel number for the property is 80-53-552-016-01.

Anderson said this property is the one that currently has the car wash; the applicant has been trying to develop a plan that will work on this property, which is not very deep. The original plan that was submitted required front, rear and side setback variances. The building was very large for the property. The applicant went back and redrew it so the *variances to the* side setbacks are no longer required. Anderson noted that the overlay makes for more strict landscaping requirements and the Planning Commission sub-committee knew this would be a difficult area when they were working on the overlay zone. Anderson stated that the applicant is adding planting all the way around the property and a fence replacing what is there. The required greenbelt along the street will not be possible due to the county right-of-way being deeper than had been realized. Anderson noted that next door to the applicant's property, the car lot cars are actually parked in the county right-of-way. The applicant has added some green plantings in the front, but if he had to meet the greenbelt requirement, he would not be able to provide the required parking.

Paull asked if the city has a requirement for a greenbelt that is unworkable. Anderson noted there are a few lots this stretch of street and at the time we worked on this we thought about doing this as different overlay or a separate zone; we didn't realize at the time how much parking is occurring in the county right-of-way in these properties. Anderson stated that several of the businesses along there would be in the same situation. Paull asked how many there were. Anderson said about three, including the laundromat and the car dealership. Lewis said maybe it's a problem for any of those businesses in that immediate area.

Boyd asked for clarification, "In the process of Mr. Wiltgen doing this plan, he has already shrunk the plan?" Anderson said yes, he did forego the *variances to the* side setbacks by redesigning the plan so it fits well.

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

All in favor. Motion carried.

Joe Wiltgen, 519 Virginia Avenue: Stated he would answer any questions.

Paull said. "We have a letter concerning litter and trash; how are you going to deal with that?" Wiltgen said, "There won't be that problem anymore; the new plan has a dumpster up front and an enclosure."

Bugge pointed out that the fence is dilapidated to which Anderson responded that there will be a green belt and a six foot (6') high fence. Bugge asked if there is something in the ordinance that states they have to keep the fence in good repair to which Anderson stated that Code Enforcement can make someone remove, replace or repair the fence and can also issue citations.

Paull asked about the green space requirements. Wiltgen responded that he has more than anyone, referring to the green on the county right-of-way in front of his lot, and will be adding more plus the driveway will be shrunken down. Wiltgen said the Cook Street side will have added greenery and also the rear lot line.

Bugge asked about the five foot (5') wide sidewalk in the back and what type of business Wiltgen is anticipating occupying the building. Wiltgen said he expects retail businesses or offices, noting that different uses have different needs. Bugge asked about access doors in the rear to which Wiltgen said, "Per code we have to have them," and noted that deliveries will be in the front during the morning business hours.

Bugge asked how much square footage Wiltgen took off the original plan. Wiltgen said he went from four (4) units in the building to three (3) units. Bugge asked why he was concerned with making smaller retail spaces. Wiltgen responded that you have to build to accommodate different types of businesses and there is a point where the units could just be too small, noting, "If you can't make any money by renting it you might as well not put it up."

Motion by Boyd, second by Miller to close the public hearing.

All in favor. Motion carried.

Miller noted that there was anticipation of businesses occupying that property and that the ordinance was crafted to accommodate businesses. Miller also stated that the letter in opposition is very sincere but the litter problems have been inherent with the nature of the current business, something that is in the past. Miller suggests that it appears this is an excellent use of the land as anticipated by the overlay zone as drafted.

Lewis stated that he does not have any real issues with this request whatsoever. Lewis also sees the right-of-way from Blue Star as a problem and understands why it was a surprise to Anderson, noting that the green space at the front does meet the intent of the ordinance, even though it is not on the applicant's property. Lewis also pointed out that the neighbors to the west will not have cars running by their backyard and the trash will not be loose items being moved from car and trunk to the trash can but bagged in the businesses and placed in the dumpster.

Motion by Boyd to approve the variance as requested because of the lot being very shallow for what would normally be used for a business; the right-of-way from Blue Star is prohibitively wide to not meet the letter of the law; the applicant is adding green space; and any commercial user would have to ask for this variance. Second by Miller.

A roll call vote was taken:

Yeas: Miller, Paull, Boyd, Bugge, Lewis
Nays: None

Motion carried.

Bugge noted the upkeep on this property has been very poor; landscape was not being maintained. These things need to be taken care of because the whole intent of this overlay zone was to make things look nicer. Boyd commented that since the applicant was planning to bring in the wrecking ball that he did not think he would have done a lot of maintenance.

7. Other Business

a) An interpretation of a section of the sign ordinance has been requested.

Anderson explained that one of the responsibilities of the Zoning Board of Appeals is interpretation; what text means; what the use of a zone is, etc. This interpretation is final and has the effect of law. The Planning Commission will then, at their next look at the ordinance, clarify the ZBA decision in the ordinance.

Anderson noted that she received a complaint about an alleged zoning violation involving a free-standing "For Rent" sign. Anderson looked at the Zoning Ordinance; under general sign provisions the ordinance defines a real estate sign as "a sign for sale, rent or lease". The complainant said she knew this but rental signs were a different story. Anderson pointed out that real estate signs were permitted under Permitted Signs in that residential zone, so she could not understand what the issue was here. Anderson told the complainant that she had to take this to the board of appeals since she, as Zoning Administrator, cannot change or add to the ordinance. Anderson said she later spoke with board member Dave Paull, knowing that he had a history with the city, who said he thought the rental ordinance may have been where that sign provision came in. Anderson noted staff did some research on the rental ordinance which has since been repealed. This led to a finding that residences with up to that residences with up to six (6) units were required to have a sign on the wall. The ordinance was not clear what sign that might be.

Paull said, "One of the issues we need to be fairly clear about is distinguishing between temporary real estate signs, properties for sale or for rent and those signs which advertise short-term temporary seasonal rentals." He thinks this is where the complainant is coming from. "The sign in question was for a temporary, seasonal, short-term rental. I've been driving around my neighborhood and noticing there were a few others; for short-term, temporary, seasonal rentals. These are not temporary signs for the long-term rental of a house. Paull said back when we worked on the rental ordinance we tried to differentiate between these two types of rentals so the signs wouldn't be up all season long. We wanted the short-term rental signs to be regulated more, in size and in location, so as not to be

intrusive in a residential neighborhood. A short-term rental is a business stuck in the middle of a residential area. I believed then and I believe now, that is not appropriate in a residential neighborhood.”

Boyd asked, “Historically the rental ordinance doesn’t exist?” Paull responded that the rental ordinance was passed by City Council and shortly thereafter it was repealed. Boyd asked if there are sign size restrictions to which Anderson responded, “Yes, the freestanding sign cannot be larger than six (6) square feet, must be five feet (5’) from the property line and a maximum of six feet (6’) in height. Boyd said, “So it is the “Vacation Rental by Owner” (VRBO) sign we are trying to regulate.”

Paull proposed that the board tell the Planning Commission to create new ordinances regarding the control of those particular signs. Boyd stated that he likes that idea.

Bugge pointed out that the board is being asked to interpret the ordinance as written now, and until the Planning Commission adopts new text, we have to interpret the existing ordinance.

Anderson clarified, “You have to make an interpretation tonight and may also recommend something to the Planning Commission. “Are rental signs allowed to be free-standing or is there evidence in the ordinance that they have to be up against the wall?”

Miller asked if signage for short term rentals usually says weekly or monthly, how do you determine how much wording can fit on what size sign?

Bugge said we have definitions already in the ordinance, the first one is real estate sign: located on the property that is for sale, rent or lease. Then what was brought up was a temporary sign, any sign that is not constructed or intended for long term use and not permanently affixed to a structure. The way the ordinance stands right now, there is no distinction between signs advertising properties for sale, lease or rent. She mentioned the phrase, “unless allowed elsewhere in this ordinance”.

Motion by Bugge, second by Paull that real estate signs, as defined, may be freestanding on residential properties, and to suggest that the Planning Commission look at a third category for signs which advertise short-term temporary seasonal rentals.

Lewis noted this was quite a problem when we did the sign ordinance; at the time we did not have a rental ordinance, and Sec. 2008 permitted temporary signs. Paull noted that these weekly rental signs tend to be more permanent than temporary. Boyd said it was a slippery slope then and still is and will remain, noting, “Perhaps encourage the Planning Commission that restrictions on size and how many, things like that, remembering that tourism is our industry and part of tourism is short term rental by owner.” Paull commented that the house next door to him, which is typical, has a sign which leans up against the front wall all year long, and stated that he has not seen one person driving by looking for signs like that and picking up their cell phone or searching for the nearest phone booth. Paull noted that pulling people off the streets is not the type of tourism we want to encourage.

Boyd said in another community he has seen signs where the temporary sign can be removed from a more permanent sign. Bugge said these temporary signs are never in need of removal for short-term rentals.

Miller asked about the definition referred to in the motion which Bugge then read: "Real estate sign: A sign advertising the real estate upon which the sign is located as being for sale, rent, or lease." Miller said, "Let's interpret for allowing the signs for now and assign this to the Planning Commission."

All in favor. Motion carries.

8. Member Comments

Anderson: The May meeting is moved up a week, due to Memorial Day, to May 18th. We will be in the basement, due to conflicting with the City Council meeting on that date. We have two applications and possibly expect another tomorrow.

There were no other comments.

8. Adjourn

Motion by Paull, second by Boyd to adjourn at 7:55 p.m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom
Recording Secretary