

Zoning Board of Appeals

Regular Meeting Minutes

Monday, June 22, 2015
7:00 p.m., 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, Stegeman, Wheeler, Lewis
Absent: None

3. Approval of Agenda

Motion by Bugge second by Wheeler to approve the June 22, 2015 regular meeting agenda as presented.

All in favor. Motion carried.

4. Approval of Minutes – May 18, 2015

Motion by Bugge second by Miller to approve the May 18, 2015 regular meeting minutes as corrected.

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. Haraldur and Grace Borgfjord, 9802 Sunnywood Drive, Kalamazoo, are seeking two variances for a proposed residence at 302 Michigan which will have 46.5% lot coverage where 40% lot coverage is the maximum allowed. The residence will also have a rear yard setback of 16 feet 3 inches for a portion of the building where the minimum allowed is 25 feet.

Anderson noted that the Borgfjords made some adjustments to the previously submitted variance requests; the neighbors were re-noticed and the request was published.

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

All in favor. Motion carried.

Grace Borgfjord distributed handouts to the board which she stated are numbered to follow her presentation.

Borgfjord stated that the board got four letters including one today.

Borgfjord spoke to the first letter from Mr. Nulty, noting several points made by Nulty, including that Nulty states he built the home, he did not say it is not his home but is a rental. Stated Nulty's letter says all ordinances were complied with, but stated that the driveway to the unit is less than fifteen feet (15') and referenced pictures #1 & #2, stating that this truck encroaches on the sidewalk and neighbors have said that anyone that rents that unit hang over the sidewalk. Borgfjord noted that Mr. Nulty said the Borgfjord requests are not in order.

Boyd interjected and asked whether the applicant plans to give a dissertation on every point in each letter received. Borgfjord said she just wanted to present her side.

Borgfjord referenced a meeting on previous other business; this board contemplating complaints about a free standing "for rent" signs. Borgfjord stated that it is interesting that Mr. Paull said the difference was between real estate signs and temporary seasonal rentals. Borgfjord stated that Paull said when he worked on the ordinance he tried to differentiate between short-term rental and regular rental signs.

Chair Lewis questioned how the rental sign issue pertains to this matter to which Borgfjord responded that she just wants to explain her position.

Wheeler asked if Borgfjord's point is that the letter writer has no standing to oppose her and Borgfjord said yes.

Borgfjord explained about the ADA (Americans with Disabilities Act) requirements and how the Borgfjords could build the house to the correct coverage and come back next year if they have the need for it and add ramps as required. Borgfjord also explained that they thought about putting a detached garage in the southeast corner but decided that putting a two-car garage so close to the property lines would be not as nice for the neighbors. "We thought this would be nicer for the neighbors."

Borgfjord explained that their current house is ADA, she was able to care for her mother during her final days and that she has an older brother who has cerebral palsy who does quite well usually but after his surgery, during his recovery, he stayed with the Borgfjords who cared for him. Borgfjord stated, "We value being able to build a house like this to be able to do this."

Miller noted that the plan shows one level at seventeen hundred twenty (1720) square feet and asked if the Borgfjord's reason for not having a second floor was because the person with disability would not be able to use the second floor. Borgfjord responded, "Yes, that is

the reason.” Discussion ensued regarding building a house with a smaller footprint and a second floor which could be accessed via elevator.

Paull asked, “Given the fact that you desire to have a completely barrier-free home, why do you have a lot that is too small for such a home? There are many sites in the city that are larger that would accommodate such a home. Why did you buy a lot that is too small?” Borgfjord said she and her husband wanted to be close to town with the ability to walk to town, noting, “We wanted a place closer to town and there is not much for sale that close; it’s always been my dream to live in a walkable neighborhood.” Paull replied that he could walk to town and he lives on the north side.

Pat Gaston, 97 Superior Street. Stated she is opposed to the variances; that she understands what the applicants want but Gaston lives in the city and built here, noting, “I don’t know, I could be wrong, but I don’t know of any variance that has been granted on an empty lot building in this town. If you have an empty lot, you know the zoning code and build to that specification. I know these are responsible intelligent people and when they purchased the lot they knew the zoning code. We built a home in the past ten (10) years; we were told that we were too big and too high, we lived by the zoning code.” Gaston stated that in the past, some people have ignored the zoning code, built over the lot requirements and had to slice off a part of their home because they over-built on the lot. Gaston believes that if you allow this variance, you are allowing them what they want but taking away from the neighbors. “The neighbors expect you to go by the site ordinances. I understand what they want, but we have a code, we should abide by the code. This is not some weird house built forty (40) years ago and they want to build a little thing here.”

Lewis noted that the city did have one empty lot which the ZBA had to grant a variance on; otherwise the house would have been one foot (1’) wide. Anderson explained that it was a fifty foot (50’) lot with twenty-five foot (25’) setbacks.

Brian Pennings, Pennings & Sons, 5829 West KL Avenue, Kalamazoo, MI 49009: Stated that as the builder he has a vested interest in seeing this go through. Noted that the applicants’ main desire is to be a resident in the City of South Haven; they realize they are getting toward retirement age and planning for future eventualities. Pennings noted that building a house that is ADA compliant does require building a house that is larger. “Could we build a smaller house? Yes, we could, but not with the addition of the ADA compliance.” Pennings noted that the ramps have been granted in the past. “We are trying to make the house livable without the need to add ramps. Want to put in a driveway that can be parked on without hanging over the sidewalk. We have taken less space in the rear to offset that.”

Lewis pointed out that city code only requires that enough space be provided to park two (2) vehicles and added, “Last time you requested 50% lot coverage, that was reduced in this request but added nine feet (9’) of setback variance.”

Pennings explained that the previous house was designed based on an incorrect idea of the rear and side setbacks. “We widened the house and were able to take less lot coverage, but that encroaches into the rear set back.”

Bugge noted the applicants “did not have a back yard on the first one.”

Bugge pointed out that handicap accessible ramps are not variances. Anderson explained, "That is correct; they are approved administratively, due to requirements we have to follow. They have to be certain sizes; cannot come straight out from the door to the sidewalk; have certain curves; cannot be enclosed and is the one structure allowed in the front yard."

Penning asked, "If we were to design a new home with the ramp encroaching on the front yard that would be acceptable?" Anderson said as long as there is no other reasonable place to put it a ramp may go in the front yard and can be approved administratively.

Lewis asked if anyone else wants to speak.

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

All in favor. Motion carried.

Lewis stated that he is disappointed that the applicants did not try to comply more, noting that Gaston is right, when you start with an empty lot, you build to the criteria.

Wheeler noted that he is having a hard time jumping the "self-created" hurdle. Lewis agreed, giving examples to support his agreement.

Paull: "It's fairly clear that both requests being made are self-created based on what they want and/or need and even given the fact that this is a larger than normal lot for that block, it still doesn't conform. We have requests for non-conformance heaped on each other. If you want a house of this size, there are plenty of lots available, even in my neighborhood, to be able to build a house this size and enjoy it. And you can walk to town; you do may have to cross the bridge." Paull stated that these requests appear to be 'This is what I want, so grant it.'

Bugge agreed and noted there is nothing exceptional about the lot; there is no barrier to building a single-family house; it is self-created; you could build a smaller house; compliance with set-backs would not prevent use of the property and it is not the minimum request possible. "They could build a second floor with an elevator."

Stegeman likes that the applicants are trying to think ahead and not have to have ramps on the outside. If that's what you like in that neighborhood, that's fine, but he would vote to approve their deal.

Wheeler would like the idea of building a ramp in advance – would be more comfortable if the house itself without the ramp were compliant, and building the ramp would make the house non-compliant. Boyd concurred with Wheeler on that point.

Bugge agreed that the first floor could be compliant done on a smaller scale with a ramp. ~~out of compliance.~~

Miller is in agreement of approving this request along with Stegeman; he does not see where it would affect anyone else in the community; does not see it as being such that a year from anyone would notice the rear yard setback. Miller understands 'you have to stay in the code' but at the same time that is why we have a ZBA, which was implemented at the same time as these stipulations were made. "No one can anticipate all the variances. That's

why we have a ZBA. I think it would affect the neighborhood positively and would not affect the neighbors negatively. What we are here for is to maybe show a sense of reason and common sense.”

Wheeler has a quick question about the letter from the property owner at 306 Michigan. “Were they for/against or with condition?” Bugge said they wanted to shift the side setback and produced the letter for Wheeler to read.

Motion by Bugge, based on criteria that we have to judge zoning variance requests by in the Zoning Ordinance, that these requests be denied as the request does not meet #3, #4, #6, #7 or #8. Second by Paull.

A roll call vote was taken with a yes vote denying the variance:

Yeas: Bugge, Paull, Wheeler, Boyd, Lewis
Nays: Miller, Stegeman

Variance denied.

7. Election of Officers 2015-16

Bugge nominated officers “as they are now” with Lewis as Chair and Paull as Vice Chair. Second by Boyd.

All in favor. Motion carried.

Both Lewis and Paull thanked the board.

8. Commissioner Comments

Anderson: Thanked the board for the date change for the next meeting, which will be held on Monday, July 20, 2015 at 7:00 p.m.

There were no other comments.

9. Adjourn

Motion by Paull, second by Bugge to adjourn at 7:37 p.m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom
Recording Secretary