

Zoning Board of Appeals

Regular Meeting Agenda

Monday, August 24, 2015
7:00 p.m., City Council Chambers



City of South Haven

1. **Call to Order**
2. **Roll Call**
3. **Approval of Agenda**
4. **Approval of Minutes** – July 20, 2015
5. **Interested Citizens in the Audience Will be Heard on Items Not on the Agenda**
6. **New Business** – Phillip Freeman of South Haven, MI is requesting a variance from Zoning Ordinance Section 2406 (Overlay Zone Landscaping) for his property at 807 Lagrange Street. The zoning ordinance requires landscaping on all sides which the applicant states is not possible with the property configuration. The parcel number for the property is 80-53-480-006-00.
7. **ZBA Rules of Procedure, as amended**
8. **Commissioner Comments**
9. **Adjourn**

RESPECTFULLY SUBMITTED,

Linda Anderson,
Zoning Administrator

Zoning Board of Appeals

Regular Meeting Minutes

Monday, July 20, 2015
7:00 p.m., City Hall Basement



City of South Haven

1. Call to Order by Vice Chair Paull at 7:00 p.m.

2. Roll Call

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

Motion by Bugge, second by Wheeler to excuse Lewis.

All in favor. Motion carried.

3. Approval of Agenda

Motion by Bugge, to approve the agenda, swapping the order of Items 6a. and 6b. in the absence of the applicant for item #6a.

Paull said the reversing of the order can be done administratively.

Motion by Bugge, second by Stegeman to approve the agenda as amended.

All in favor. Motion carried.

4. Approval of Minutes – June 20, 2015

Bugge pointed out that on page 4, the second paragraph from the bottom, the words “out of compliance” should be struck.

Motion by Bugge, second by Boyd to approve the June 20, 2015 regular meeting minutes as amended.

All in favor. Motion carried.

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

None at this time.

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6. New Business – Public Hearings

- a. *A request from Alicia and Kevin McMahan of 226 Prospect Street to add a roof to a nonconforming front porch. The porch is 10 feet 4 inches from the front lot line where 25 feet is required. The parcel number for this property is 80-53-767-005-10. This is a variance from zoning ordinance section 1913.*

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

All in favor. Motion carried.

Alicia McMahan, 226 Prospect Street. Stated this request was submitted because their house is set very close to the road; was built in 1956; also sits on the ravine where Prospect intersects with Conger and Church Streets to give a point of reference. Noted that the house is very plain, flat across the front, yellow brick and the existing porch and steps are crumbling. Contractor suggested creating more of an entrance by having a roof (eyebrow) over the door to give better aesthetics to the house as well as protection for the person entering the front door.

Paull questioned whether the applicants are talking about roofing the entire porch to which McMahan responded that they were not requesting a large roof, just a three (3) foot dormer type of structure.

Bugge asked what will support the roof. McMahan explained that the contractor is going to put stone down and pillars that will go up to the roof structure to support the roof.

Anderson noted that this is nonconforming structure. Replacing the steps is considered maintenance as long as the porch and steps do not change in size from the existing porch and steps. The requested roof variance makes the house slightly more nonconforming but the applicants are not moving anything closer to the lot line.

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

Wheeler asked if the applicant needed to state her name and address for the record, which was confirmed and the applicant affirmed that she was Alicia McMahan from 226 Prospect Street.

Bugge noted that the applicant's house is close to the property line; all others on the street are further back. The one next to 226 Prospect is about the same distance away; there is a vacant lot between those two houses. Averaging would result in about a ten (10) foot setback.

Anderson noted that is correct and no averaged setback can be less than ten (10) feet.

McMahan stated that someone has purchased the vacant lot and is planning to build on it after which Paull, the Chair, noted that the applicant needs to gain permission from him to speak now that the public hearing is closed.

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Motion by Boyd to approve the roof structure to go over steps at 226 Prospect. Second by Stegeman.

Bugge would like to offer an amendment to the motion stating that it cannot be enclosed. Paull asked what Bugge means by enclosed. After discussion Paull asked if the motion can be worded to define the roof structure as open-sided.

Motion by Bugge to approve an open sided roof structure at 226 Prospect. Second by Wheeler.

Boyd opposed the motion to approve an open sided roof structure.

After discussion, Paull called for a vote on the amended motion.

Ayes: Wheeler, Bugge
Nays: Boyd, Miller, Paull

Motion failed.

Paull called for a vote on the original motion by Boyd, to approve the roof structure to go over steps at 226 Prospect, with a second by Stegeman.

Ayes: Boyd, Miller, Paull, Stegeman, Wheeler
Nays: Bugge

Motion carried.

b. Coastal Landscaping, Inc. of South Haven requests a variance to construct accessory structures and landscaping on a parcel without a principal structure as is required in zoning ordinance section 1708-6. The subject properties are located at 53, 55 and 57 North Shore Drive and at 97 and 99 Esplanade. Parcel numbers are:

*80-53-803-001-10
80-53-803-001-20
80-53-803-001-30
80-53-803-001-40*

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

Motion carried.

Paull noted that the applicant is not present.

Anderson explained that this project is something the applicant has been working on for quite some time. First the applicant wondered how big of a house he would have to build to have a pool there. Then the applicant talked to the City Engineer about vacating Walkway A so he could take it over and combine all of the properties; that did not work out. The ordinance, Anderson noted, states that a property cannot have accessory structures without

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a primary or main structure. Anderson also noted that the applicant is looking at putting a gazebo with a kitchen, a pool and some other items including extensive landscaping.

One thing that bothers Anderson, the only thing, is that if the property would ever be sold (separate from the property on which the applicant's house sits) she would want the property cleared of all accessory structures or sold together with the lot upon which the house sits. Anderson noted that the Zoning Board has only made one exception to the accessory structure rule so far and that was the statue at St. Basil's so it is visible from the lake.

In response to a question, Anderson said the four (4) lots the applicant owns are big enough to put a house on. The Zoning Board of Appeals has to determine whether this is something that meets the standards and the ordinance.

Boyd asked if the applicant owned all four (4) lots to which Anderson responded that the applicant owns four lots on one side of Walkway A and also owns the single lot with his house on the other side of Walkway A. Every parcel has a separate tax ID. Anderson spoke to the assessor regarding combining the four (4) lots and the lot with the house on it, but a public walkway does not allow them to be combined into one parcel number.

Miller asked the definition of principal structure. Anderson said single family homes are the most common principal structure in this zone. That single family home would be the primary structure; anything else is a secondary structure or accessory structure, such as a shed or a pool.

Bugge stated that the walkway is an impediment to combining the lots.

Boyd asked how the tax assessor will be able to divvy up the improvements on each lot. Anderson said the four (4) lots will be combined, noting that if a single owner has more than one adjacent parcel and is going to improve any one of those parcels, they should combine them but the zoning ordinance considers them as one parcel if there is one owner. It was clarified that the house is on one parcel and only the other four will be combined.

Boyd asked if the applicant was expected to be here to which Anderson responded, "Yes, not the owner, because the owner is out of town, but she expected them to be represented by Coastal Landscaping, who submitted the applicant; they obviously forgot."

Miller said he feels this is a good use of the property. What we have here is a collective and arbitrary ordinance which is perfect for the Zoning Board of Appeals to review. It would be difficult to imagine a better use of the property in the light of the neighborhood and the property; it is a win-win as far Miller sees it.

Wheeler noted that on one hand he sees this as self-created and on the other hand the walkway is burdensome in developing the property.

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

All in favor. Motion carried.

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Motion by Miller to move his comments to a motion.

Paull noted that there is uniqueness to this request, due to a strip of public land that is dividing this primary structure property from the rest of the applicant's properties. This is the only standard that actually applies to this request.

Bugge feels this is a unique situation; the uses are allowed but the walkway is an impediment to such development. Anderson's concerns are well taken regarding keeping the properties together or eliminating the accessory structures if the combined four (4) lots are sold.

Motion by Bugge to approve the variance provided that a revocable deed restriction approved by the city attorney be applied so parcels cannot be sold separately and that the accessory uses be removed from the non-primary parcel if sold separately from the property on which the applicant's house stands.

Stegeman asked about abandoning the walkway. Anderson explained that the applicants talked to the city engineer about vacating that so they can purchase it; the city engineer said there are utility right-of-ways underneath the walkways so the walkway cannot be vacated. Bugge noted that the walkways also provide firefighting access for some of those houses.

Stegeman seconded the motion as made by Miller.

Paull stated, "This is well reasoned but I am not sure, legally, that we are on very strong ground." Boyd thinks this is a shot across the bow. Bugge said this is not a street just a narrow strip. Paull noted, "We are trying to enforce a deed restriction and on shaky ground legally without the owner being here. You can pass the motion but we need to get an attorney's opinion."

Anderson said the motion could be approved conditionally. The applicant's attorney would have to write it up and our attorney would have to approve it.

Paull asked if it is all right to put that condition on it. Miller noted it is encumbering a deed. Stegeman stated that he does not quite buy into encumbering the deed. Wheeler asked, "It sounds good but is it necessary?" Paull asked, "Are we placing deed restrictions on five (5) parcels of land that legally we cannot do?" Paull reiterated that he wants an attorney to approve it.

Boyd asked Paull, "You are saying we can approve this conditionally on what the city attorney says? What Bugge said is cloudy." Bugge stated, "No, I am trying to connect the two sets of parcels, keeping them together."

Paull asked if everyone is essentially clear that we are approving this with deed restrictions that have to be approved by the city attorney.

A Roll call vote was taken:

Ayes: Bugge, Miller, Stegeman, Wheeler, Boyd, Paull
Nays: None

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Motion carried.

Paull is somewhat uncomfortable that we are placing deed restrictions without the owner here.

Boyd wants it on record that attendance is highly encouraged by some representative of the applicant: "If I and my fellow citizens can be here the applicant had better be here." Bugge noted it is to their advantage.

Bugge pointed out that the applicant can choose not to use the variance and still use the lots for other things.

Anderson said you could amend your bylaws to say that the applicant or the applicant's representative must be here in order for the ZBA to act on a request; you can do that.

After discussion regarding when and how that amendment can be made the following motion was offered by Boyd:

Motion to amend the bylaws that the applicant or a representative of the applicant must be present for the Zoning Board of Appeals to take action on any request. Second by Stegeman.

Jean Conlisk, 60 Lakeshore Drive. "May I ask why you have said the applicant or his friend should be here? Shouldn't the property owner be required to attend"

Anderson said it was stated that a representative of the applicant or the applicant should be here. That representative can be an attorney, a contractor or another representative chosen by the applicant because the owner may be out of state.

Paull called for a vote on amending the bylaws.

All in favor. Motion carried.

7. Commissioner Comments

None at this time.

8. Adjourn

Motion by Boyd, second by Stegeman to adjourn at 7:48 p.m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom
Recording Secretary



Agenda Item #6 Landscaping Variance Request for 807 LaGrange Street

City of South Haven

Background Information: Phillip Freeman is asking for a variance from the landscaping requirements of the Overlay Zone due to the limited size and triangular lot configuration of his property at 807 LaGrange Street. There is no landscaping proposed for the two (2) ROW frontages but there is a fence and fairly heavy vegetation along the third property line. The existing landscaping would have been adequate for reuse without the application of the overlay zone. Section 2404 of that ordinance (Applicability Matrix) provides that even minor use changes require compliance with landscaping and sign improvements. That section also states that the planning commission may require other discretionary improvements as they feel necessary.

Recommendation: The applicant is asking for a variance from all landscaping. Staff does not believe that is the minimum and that some alternatives are available. It is possible for the applicant to make some landscaping improvements without removing hard surfaces. As examples, the applicant could place large planters along the building and at the property lines to break up the open appearance and help in creating a more attractive street view.

While the fence and natural vegetation may be adequate for the third side, the fence should be repaired (if necessary) and painted and the vegetation groomed.

Support Material:

Application
Application photo
Required greenbelt graphic
Staff Findings of Fact

ZONING VARIANCE REQUEST

CITY OF SOUTH HAVEN

BUILDING DEPARTMENT

539 PHOENIX STREET, SOUTH HAVEN, MICHIGAN 49090
FOR INFORMATION CALL 269-637-0760

NOTE: Incomplete applications will not be processed. A fee of \$300 will be required at the time the application is submitted.

Name: Philip M. FREEMAN Date: August 3, 2015

Address: 18400 72nd St, South Haven, MI 49090 Phone: 303-968-6823

Address of Property in Question: 807 La Grange, South Haven, MI 49090 Present Zoning of Property: B2

Name of Property Owner(s): Philip M. FREEMAN

Dimensions and area of property 228.42 x 161.15 x 161.51 (13,013.60 SQ FEET)

Dimensions of all buildings on the property (also shown on a diagram) 24'-3 1/2" x 24';
20'-6" x 16'-5 1/4"; 15'-1 1/2" x 5'-7 1/4" - (985.87 SQ FEET)

Setback measurements of all structures on the property (also shown on diagram)

Present Zoning of Neighboring Properties to the :

North Residential South B2 East Residential West B2
Access Street *Access Street*
Residential

Which Sections of the South Haven Zoning Ordinance are you requesting a variance from? Please indicate Section and Paragraph numbers. (City staff will help determine which variance(s) are required).

Section(s): Landscape - Section 2406

Under Article XXII, Section 2205 of the South Haven Zoning Ordinance, the Zoning Board of Appeals may not grant a variance from the regulations within the Ordinance unless certain conditions exist. No variance in the provisions of this Ordinance shall be authorized unless the Board finds, from reasonable evidence, that all of the following standards have been met:

- Such variance will not be detrimental to adjacent property and the surrounding neighborhood.
Property has existed in its present state for many years.
- Such variance will not impair the intent and purpose of this Ordinance.
The existing trees provide for the tree cover required. Additional trees would require removal of asphalt and addition of irrigation.

3. Exceptional or extraordinary circumstances or conditions apply to the property in question or to the intended use of the property that do not apply generally to other properties in the same zoning district. Such circumstances shall create a practical difficulty because of unique circumstances or physical conditions such as narrowness, shallowness, shape or topography of the property involved, or to the intended use of the property. See Section 2204(2).

To ADD TREES to the property and have them be out of the cities right-of-way would require removal of asphalt and the addition of irrigation.

4. Such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.

The way the property exists in its present state is similar or the same as other properties in AREA "C"

5. The condition or situation of the specific piece of property or of the intended use of said property, for which the variance is sought, is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation.

The property will be used as a detail shop for cars & trucks. See pictures of the property as it exists today and as it has existed for several years

6. The condition or situation of the specific piece of property or of the intended use of said property, for which the variance is sought, shall not be the result of actions of the property owner. In other words, the problem shall not be self-created.

See pictures of property as it exists today and as it has existed for the last several years

7. That strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome.

See pictures of property as it exists today and as it has existed for the last several years.

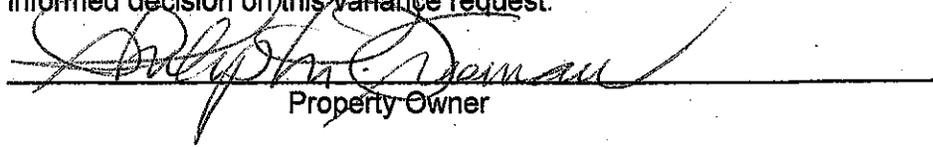
8. That the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the hardship.

See pictures of property as it exists today and as it has existed for the last several years.

9. That the variance will relate only to property under the control of the applicant

Agreed - 809 La Grange, South Haven, MI 49090

I hereby give permission for the members of the Zoning Board of Appeals and City Staff to access and inspect the property in question for the purpose of gathering information to make an informed decision on this variance request.


Property Owner

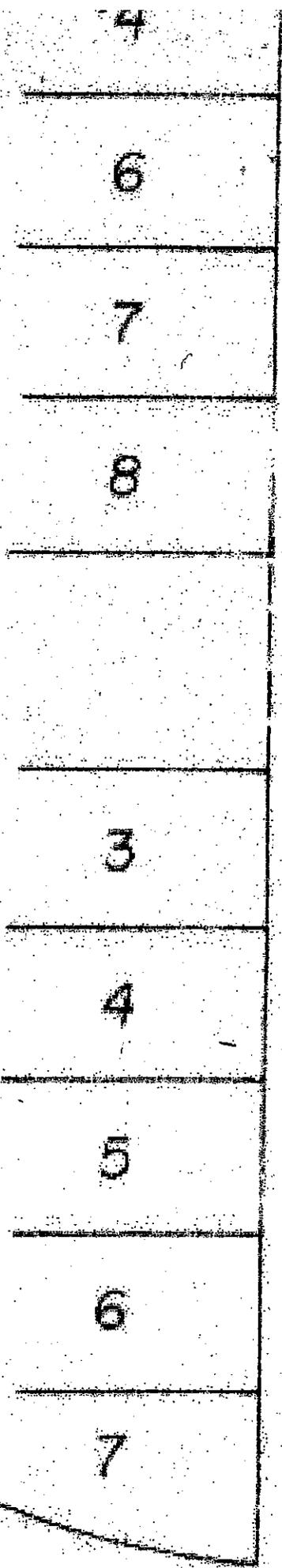
8/3/2015
Date

THE INFORMATION CONTAINED WITHIN THIS APPLICATION IS TRUE TO THE BEST OF MY KNOWLEDGE AND SUBMITTED TO THE ZONING BOARD OF APPEALS FOR THEIR REVIEW. I REALIZE THAT ANY INFORMATION THAT I SUPPLY THAT IS NOT CORRECT COULD VOID ANY DECISION BY THE BOARD. I ALSO ACKNOWLEDGE THAT IF THE VARIANCE IS GRANTED BY THE BOARD, THE WORK WITHIN THE REQUEST MUST BE CARRIED OUT WITHIN ONE YEAR OF THE PUBLIC HEARING OR THE VARIANCE BECOMES NULL AND VOID.


Applicant Signature
Glen Bodfish

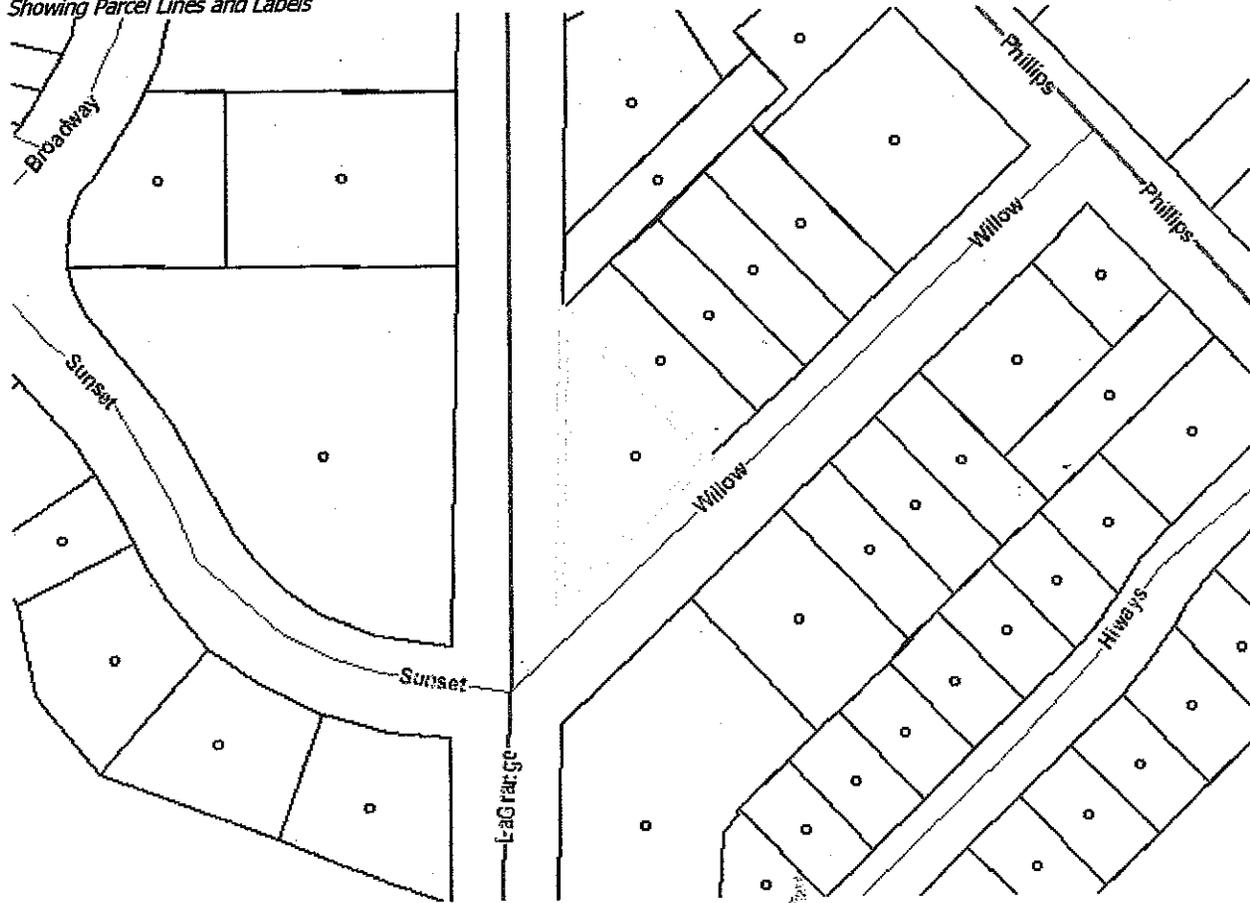
8/3/2015
Date

LaGrange



BASE MAP

Showing Parcel Lines and Labels



BASE MAP

This Base Map consists of the Township Roads, Lakes, and Rivers.

One can overlay other information on this Base Map or begin a new map.

NOTE: This information can always be viewed by clicking the title of the map. Information about each LEGEND item (below the map) is displayed by clicking each legend item.

-  150 US Feet
-  Rivers-Lakes
-  Municipal Name
-  Municipal Border
-  Railroads
-  Public Roads
-  Property Lines
-  Subdivision Lines
-  Condominiums Lines

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(C)



(D)



Overlay Zone Area C Greenbelt Requirements 807 LeGrange St



STAFF FINDINGS OF FACT

CITY OF SOUTH HAVEN ZONING BOARD OF APPEALS

DATE: August 24, 2015

ADDRESS: 807 La Grange

ZONING DISTRICT: B-2 with Overlay

LOT DIMENSIONS: 228 feet on La Grange; 162 feet on Willow and 161 feet along remaining side

LOT AREA: .3 acres (14,520 sq. feet)

LOT COVERAGE: 7%

REQUIRED SETBACKS: Right-of-way setback – 25'; Rear – 25'

EXISTING SETBACKS: 105' on Willow; 23'6" on La Grange; 5'1" on remaining side

PROPOSED SETBACKS: No change to building proposed

VARIANCE REQUEST: Phillip Freeman is asking for a variance from the landscaping requirements of the Overlay Zone due to the limited size and overall lot configuration. There is no landscaping proposed for the ROW frontages but there is a fence and fairly heavy vegetation along the other side.

DIMENSIONAL VARIANCE STANDARDS

City of South Haven Zoning Ordinance Section 2205:

1. Such variance will not be detrimental to adjacent property and the surrounding neighborhood.

This is an area of mixed commercial uses abutting up to residential neighborhoods and will likely remain so. If the variances are denied it would not change the property as it now stands and has so for many years. Staff does not find undue detriment to the neighborhood.

2. Such variance will not impair the intent and purpose of this Ordinance.

It is the intent of the B-2 zoning district to provide area for those businesses which serve a larger area than the immediate neighborhood. The Corridor Overlay Zone was "established to enhance the quality and compatibility of development, to establish consistent design guidelines, to encourage the most appropriate use of lands, to promote the safe and efficient movement of traffic and preserve property values along the M-43/I-196 Business Loop". The subject property lies in the overlay area C. Because the site fronts on a main corridor of the overlay area, some attempt should be made to have at least minimal compliance. Failure to have even potted plantings along the building sides or ROW will impair the intent of the B-4/Overlay zoning district.

3. Exceptional or extraordinary circumstances or conditions apply to the property in question or to the intended use of the property that do not apply generally to other properties in the same zoning district. Such circumstances shall create a practical difficulty because of unique circumstances or physical conditions such as narrowness, shallowness, shape or topography of the property involved, or to the intended use of the property. See Section 2204(2).

This property has certain issues that do create a hardship on compliance. The lot is triangular with access points on both Willow and La Grange Streets. There is no unpaved area for landscaping other than the city owned parkway. When the greenbelt areas are applied to the property there is little maneuvering room for

vehicles. (See attached greenbelt requirements graphic.) Adding this greenbelt would also require extensive hard surface removal which could meet the definition for a practical difficulty.

4. Such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.

Financial return is not at issue in this case. Any return at all depends on some level of variance being granted. Staff believes that the property owner would be deprived of a property right by the ZBA allowing no alternative to demolition of a large portion of the site.

5. The condition or situation of the specific piece of property or of the intended use of said property, for which the variance is sought, is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation.

This is an unusual situation. Staff does not recommend amending the zoning ordinance to accommodate this situation.

6. The condition or situation of the specific piece of property or of the intended use of said property, for which the variance is sought, shall not be the result of actions of the property owner. In other words, the problem shall not be self-created.

The problem is not self-created except in terms that the applicant purchased the property expecting to operate his auto repair business without modification to the property. This would have been true without the application of the overlay zone. Section 2404 of that ordinance (Applicability Matrix) provides that even minor use changes require compliance with landscaping and sign improvements. That section also states that the planning commission may require other discretionary improvements as they feel necessary.

7. That strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome.

Strict compliance would prevent any business from utilizing this property without major demolition. Whether that is unnecessarily burdensome is a decision for the ZBA.

8. That the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the hardship.

The applicant is asking for a variance from all landscaping. Staff does not believe that is the minimum. It is possible for the applicant to make some landscaping improvements without removing hard surfaces. As examples, the applicant could place large planters along the building and at the property lines to break up the open appearance and help in creating a more attractive street view.

9. That the variance will relate only to property under the control of the applicant.

The variance request only involves the property owned by the applicant.



Agenda Item #7 Amendment to Rules of Procedure

City of South Haven

Background Information: At the July meeting, the ZBA unanimously decided to amend the Rules of Procedure to require that the applicant or a representative be present at the time of a hearing. Failure to appear shall result in the ZBA tabling the request. The amended Rules are attached. No further action is required at this time unless other amendments are desired.

Support Material:

Draft revised Rules of Procedure

CITY OF SOUTH HAVEN
ZONING BOARD OF APPEALS

RULES OF PROCEDURE

1. AUTHORITY

These Rules of Procedure are adopted by the City of South Haven Zoning Board of Appeals (hereinafter referred to as the ZBA) pursuant to Public Act 33 of 2008, as amended, (the Michigan Planning Enabling Act), The City of South Haven Zoning Ordinance, as amended, and Public Act 267 of 1976, as amended (the Open Meetings Act).

2. OFFICERS

2.1 Selection. At the first regular meeting of the ZBA following the regular appointment of members in May, the ZBA shall elect from its membership a chairperson and vice-chairperson who shall serve for the following year and who shall be eligible for re-election.

2.2 Duties. The chairperson shall preside at all meetings and shall conduct all meetings in accordance with the rules provided herein. The vice-chairperson shall act in the capacity of the chairperson in the absence of the chairperson and shall succeed to the office of chairperson in the event of a vacancy in that office, in which case the ZBA shall select a successor to the office of vice-chairperson at the earliest practicable time.

3. SECRETARIAL DUTIES

3.1 Secretarial duties for the ZBA shall be performed by City staff personnel as designated by the city manager. Such staff personnel shall be responsible for preparation of minutes, keeping of pertinent public records, delivering communications, petitions, reports and related items of business to the ZBA, issuing notices of public hearings, and performing related administrative staff duties to assure efficient and informed ZBA operations.

4. MEETINGS

4.1 All meetings of the ZBA shall be held at the South Haven City Hall, unless otherwise designated by the chairperson, with public notice.

4.2 Regular Meetings. Regular meetings of the ZBA shall be held on the fourth Monday of each month at 7:00 p.m., unless otherwise designated by the chairperson, with public notice.

4.3 Special Meetings. Special meetings shall be held at the call of the chairperson, provided that at least eighteen (18) hours prior public notice is issued; or such meetings may be scheduled in advance during a regular meeting. The notice of a special meeting shall specify the purpose for the meeting, and no other matters may be considered; except that, if all members of the ZBA are present and approve, the ZBA can transact other business that could lawfully be transacted at a public meeting.

4.4 Workshop Meetings. Workshop meetings may be held as needed for the purpose of discussing matters of a general nature which relate to ZBA operations and responsibilities. No official action shall be taken on any matters considered during a workshop meeting, and a quorum shall not be required. Workshop meetings may be scheduled in advance or called by the chairperson during a regular meeting, and at least eighteen (18) hours prior public notice shall be provided.

4.5 Quorum. A quorum consisting of at least five of the seven voting members of the ZBA shall be present at any regular or special meeting in order for the ZBA to conduct business or to take any official action, except to adjourn a meeting if a quorum is not present.

4.6 Voting. An affirmative vote of the majority of those ZBA members present for the conduct of business shall be required for the approval of any requested action or motion placed before the ZBA, except as otherwise required by statute, charter or ordinance. Voting shall be ordinarily by voice vote; provided, however, that a roll call shall be required if requested by any ZBA member or directed by the chairperson. All members shall vote on all issues, except as excused by the chairperson.

4.7 Conflict of Interest. Before casting a vote on a matter on which a member may reasonably be considered to have a conflict of interest, the member shall disclose the potential conflict of interest to the planning ZBA. The member is disqualified from voting on the matter by a majority vote of the remaining members of the planning ZBA. Failure of a member to disclose a potential conflict of interest as required constitutes malfeasance in office.

4.8 Applicant Attendance Required. The applicant or his/her representative shall be present at the meeting when their application is discussed. Failure of the owner or representative to appear at the meeting will cause the ZBA to postpone any action on the request until such time as the applicant or representative is present.

4.9 Hearings. Hearings shall be scheduled and due notice given in accordance with the provisions of the Acts and Ordinance cited in Section 1 hereof; and in addition, the following rules shall be observed:

1. The chairperson shall announce the matter of business to be considered and open the hearing on the matter for receipt of public comment on the subject.
2. The chairperson shall read the public hearing announcement as published in the newspaper and also give a brief description of the hearing subject and any history if necessary. This step may be delegated to another member or to the Zoning Consultant or staff person.
3. The chairperson shall enforce the following hearing rules:
 - a. This is a public hearing designated to receive comments on the above subject. Only comments regarding the subject of the hearing will be accepted.
 - b. All persons wishing to comment shall be given an opportunity.
 - c. Any person wishing to speak shall first be recognized by the chairperson.
 - d. This person shall stand, if able, be recognized by the chairperson, state their name and address, and make comments directly to the chairperson. Any questions shall also be directed to the chairperson.
 - e. Each person shall limit their comments to three (3) minutes.
 - f. Everyone shall have an opportunity to speak before someone is allowed to speak a second time.
 - g. Persons desiring to make comments are requested to be brief and to comment on matters relevant to the subject under consideration. The chairperson has the discretion to request a person to conclude comments that are irrelevant, repetitious of comments made by others, or in excess of time limits.
 - h. Once all public comments have been received or if, at any time during the hearing, a ZBA member feels no other relevant or non-repetitious comments are being presented, a motion to close the public hearing may be made, or the chairperson may advise that such a motion would be entertained.

4. During the course of the public hearing or subsequent deliberations, if the chairperson desires to answer questions, or direct someone else to answer a question, this may be done at the discretion of the chairperson.

5. During the Hearing, the chairperson shall acknowledge any correspondence received. This can be worked in between public comments.

4.9 Open Meeting Provisions.

1. All meetings of the ZBA shall be open to the public and held in a place available to the general public.
2. All deliberations and decisions of the ZBA shall be made at a meeting open to the public.
3. A person shall not be required as a condition of attendance at a meeting of the ZBA to register or otherwise provide his name or other information or otherwise fulfill a condition precedent to attendance.
4. A person shall be permitted to address the ZBA at a hearing under the rules established herein in Subsection 4.7, and to address the ZBA concerning non-hearing matters during general comment periods provided in the agenda for meetings under Subsection 4.9.
5. A person shall not be excluded from a meeting of the ZBA except for a breach of peace committed at the meeting.
6. All meetings of the ZBA shall be noticed and conducted in accordance with the Open Meetings Act.

4.10 Order of Business: Agenda. A written agenda for all regular meetings shall be prepared and followed, and the order of business generally shall be:

1. Call to Order and Roll Call
2. Approval of Agenda
3. Approval of Minutes
4. Public Comments Concerning Items not on the Agenda
5. Communications Concerning Items not on the Agenda
6. Public Hearings
7. Unfinished Business
8. New Business
9. Adjournment

A written agenda for special meetings shall be prepared and followed; however, items 3, 4, 5 and 8 as enumerated above shall be excluded.

4.11. Rules of Order. The rules of parliamentary practice/procedure as contained in Robert's Rules of Order, Modern Edition, shall govern the ZBA in all matters to which such rules are applicable, provided they are not in conflict with these Rules of Procedure, or with state law or City Charter or Ordinances.

5. AMENDMENT

5.1 These rules may be amended by the ZBA by a concurring vote, pursuant to Subsection 4.5, during any regular meeting, provided that all members have received an advance copy of any proposed amendments at least 3 days prior to the meeting at which such amendments are to be considered.

THESE RULES OF PROCEDURE ADOPTED THIS 24th DAY OF AUGUST,
2015.

Chairperson, City of South Haven Planning ZBA