

Planning Commission

Regular Meeting Agenda Thursday, May 1, 2014 7:00 p.m., Council Chambers



City of South Haven

1. **Call to Order**
2. **Roll Call**
3. **Approval of Agenda**
4. **Approval of Minutes** – Regular meeting February 6 and workshop meeting March 6, 2014
5. **Interested Citizens in the Audience Will be Heard on Items Not on the Agenda**
6. **New Business – Public Hearings**
 - a. Request from Gary Barner, of Barner Farms, South Haven, to operate a seasonal farm market at 708 La Grange Street.
 - b. Request from John and Vickie Hannigan to construct an inground pool at their property at 711 North Shore Drive.
7. **Other Business – Site Plan Review**

Joe Wiltgen requests a site plan review for a barge restaurant on the Black River just up river from the Idler Restaurant.
8. **Commissioner Comments**
9. **Adjourn**

RESPECTFULLY SUBMITTED,
Linda Anderson, Zoning Administrator

Planning Commission

Regular Meeting Minutes Thursday, February 6, 2014 7:00 p.m., Council Chambers



City of South Haven

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

2. Roll Call

Present: Heinig, Miles, Peterson, Wall, Webb, Paull
Absent: Frost, Smith

Anderson noted that both Frost and Smith had notified her of their inability to attend.

On motion with second, Frost and Smith were excused.

All in favor. Motion carried.

3. Approval of Agenda

Motion by Miles, second by Wall to approve the February 6, 2014 Planning Commission Agenda as presented on the City of South Haven website.

All in favor. Motion carried.

4. Approval of Minutes – January 9, 2014

Motion by Wall, second by Miles to approve the January 9, 2014 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. Unfinished Business – Discussion of following items from the January agenda:

- A. A zoning ordinance text amendment to add One Family Detached Dwellings to the list of uses permitted in the B-3, Waterfront Business Zone.

Paull questioned the size of lots required for one family detached dwellings in the B-3 zone. Anderson reviewed the proposed requirements for single family homes in the B-3 zone.

Paul pointed out that the proposed addition to the B-3, Waterfront Business zone would not put at risk the zone continuing as a waterfront business district. The Planning Commission sub-committee recognized approximately fifteen (15) single-family homes already in the zone plus another dozen lots that are too small to develop as a waterfront business but could possibly be used for a single family home site under the conditions as stated.

Motion by Wall, second by Miles to recommend to city council the approval of the proposed amendment to Article IX, B-3, Waterfront Business District, Section 901 Use Regulations of the South Haven Zoning Ordinance as follows:

“One family detached dwellings on existing lots when it is documented that the development of any other permitted use is not possible due to lot size or configuration.

Conversion of an existing permitted use to single family homes on individual lots is not permitted without a special use permit from the planning commission. In addition to the standards found in Section 1502 of this ordinance, the applicant shall demonstrate that the conversion is of substantial benefit to the city of South Haven and the waterfront business community.”

All in favor. Motion carried.

B. A request from the City of South Haven Planning Commission to amend the official zoning map to rezone the properties at 515, 519 and 521 Williams Street and 423 and 425 Williams Street from B-3, Waterfront Business Zone to the CBD, Central Business Zone:

Anderson introduced the proposed text amendment, noting that at the January meeting the commission heard public comments on the changes proposed. Since that time, business owners and association representatives have met to discuss the concerns associated with the rezoning proposal as heard at the public hearing.

Anderson explained that staff has had discussions with involved parties; the issues have been resolved and the association no longer objects, provided that the height restriction is removed from the proposed amendment.

Anderson explained that this would change the Old Harbor Village and Old Harbor Inn, including those businesses in the condominium association related to the Old Harbor development, from B-3, Waterfront Business to the CBD, Central Business District with the advantages (opportunity for additional waterside dining and relief from the off-street parking requirements) outweighing the concerns heard. Anderson also recommended that the proposed text change associated with the building height be deleted from the request and noted that this provision was not initiated by the planning commission or the subcommittee. Paull noted that this amendment recognizes what has been and is actually happening in the Old Harbor development. Over time, parking requirements have either been eliminated, granted waivers or were part of the now defunct buy-in parking program. Since there

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actually is no parking available at this time for this area, changing the zoning from B-3, Waterfront Business to the CBD, Central Business District, eliminates the requirement for parking, making the area open to future development and other potential opportunities.

Motion by Heinig, second by Wall to recommend to city council the rezoning of the following properties:

519 Williams Street (C299A)
519 Williams Street (C299A1)
521 Williams Street (C299B)
423 Williams Street, Units #1-8
515 Williams Street, Units #1-19, 30-38, and #61-62
425 Williams Street, Units #20-29 and #39-60

from B-3, Waterfront Business Zone to the CBD, Central Business Zone.

All in favor. Motion carried.

C. Proposed Noise Restriction on Businesses Rezoned from B-3, Waterfront Business District to the CBD, Central Business District.

Anderson explained that as noted during previous discussion, the height amendment has been removed from the proposed text amendment.

Added was the noise provision which was on the agenda at the last meeting, having been added at the last minute. Anderson read the proposed ordinance amendment:

Any business in the CBD located north of Williams Street, including those businesses which extend over the Black River, shall not have amplified sound after 11:00 P.M. This provision includes the use of any loudspeaker, music amplifier, public address system or similar device used to amplify sounds. This sound provision is in addition to any requirements in other City ordinances and that, in case of any inconsistency, the stricter of the provisions will apply.

Anderson explained that staff had correspondence from the Old Harbor Village Association president, stating that the Old Harbor Village Condominium Association will go along with the rezoning proposal if Joe Wiltgen signs an agreement that he understands and will abide by noise restrictions as presented at the last meeting. Signatures were obtained on an agreement between the Planning Commission and Mr. Wiltgen stating that he will abide by all city ordinances. Anderson pointed out that this type of restriction really comes into play with any Special Use application and does not have much bearing on the proposed rezoning.

Paull noted that this particular portion of the amendments came out of discussions with the Old Harbor Village Condominium Association and the owners of the Old Harbor Inn, whose particular concern was trying to run a hotel in a neighborhood that has many sources of noise, particularly bars. The owners of the inn were concerned with keeping the noise at a level that would not disturb their guests. Paull said he believes that this came out of a concern to have the cessation of amplified music at a specific time, 11:00 p.m. Since then, review of the ordinance by staff has shown that the limit for amplified noise in the City Code

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of Ordinances is at 10:00 p.m. Paull stated that passing this amendment would amount to conflict with city code and dereliction of duty by the Planning Commission.

Wall asked the chair for clarification of what is being asked of the Planning Commission. Wall stated that the City Code of Ordinances clearly states that amplified noise shall end at 10:00 p.m. and that the police have the right to go in and reprimand or ticket the establishment which does not comply. We also have two signed agreements stating that the people concerned, John Marple, the manager of Old Harbor Inn and Wiser) have agreed to this. Anderson pointed out that, if a special use permit was being considered, the applicant would be allowed to amplify sound until 11:00 p.m. Wall asked whether the chair was suggesting that the Planning Commission should take the whole issue of noise end time out of the ordinance or just insert the new verbiage.

Anderson interjected that the current City Code requires amplified sound to be turned down at 10:00 p. m. and that this proposal for an 11:00 p.m. end time confuses the issue. Anderson explained that no matter what this amendment might state, the more restrictive ordinance will pre-empt any others.

Anderson asked the chair if Old Harbor Village association president Wiser could be allowed to speak to this controversy. Paull invited Mr. Wiser to the podium.

Wiser explained he is the owner of a large portion of the Old Harbor Inn and asked for clarification of the question. Anderson explained that the City Code of Ordinances stated that amplified noise must cease at 10:00 p.m. and the agreement verbiage regarding 11:00 p.m. being requested is moot because in the case of conflict between ordinances the police will enforce the more restrictive ordinance.

Wiser stated that the condominium association had a concern and wanted to try to restrict the noise. "We didn't really intend to change the ordinance," Wiser explained.

Paull asked if the Wiser would agree to allow the ordinance to stand as it is. Wiser said the association has two conflicts: the timing of the noise and possible conflict with Wiltgen, who Wiser considers a friend.

Wall asked whether we should change the time in the amendment or strike the entire proposed noise amendment.

Anderson suggested an alternative way to handle this, referencing the actual wording of the noise ordinance in the amendment.

Paull agreed that might be an appropriate way to deal with the noise issue, explaining that the type of noise is the real issue.

Wall commented that use of the references to City Code will make it simple for any proposed business as it would point them to the current City Code of Ordinances' conditions for amplified music by reference.

Anderson noted that she would draft language referencing the City Code of Ordinances which will clarify what is being discussed.

Paull called for a recommendation to council.

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Motion by Wall to add in the reference to the City of South Haven Code of Ordinances to this section of the Zoning Ordinance amendment. Second by Peterson.

All in favor. Motion carried.

7. New Business - None

8. Other Business - None

9. Commissioner Comments

Wall: None

Peterson: None

Miles: Ice Breaker was a success; very well attended

Webb: None

Heinig: None

Anderson: We have nothing on the agenda as of yet; unless we get an application in the next few days, there will not be a meeting in March.

10. Adjourn

Motion by Wall, second by Heinig to adjourn at 7:34 p.m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,
Marsha Ransom
Recording Secretary

Planning Commission

Work Session Minutes **Thursday, March 6, 2014** **7:00 p.m., Conference Room B**



City of South Haven

The meeting was called to order by chair Paull at 7:00 p.m. Present in addition to Paull were members Peterson, Smith and Heinig.

Paull introduced the discussion items stating that city council has included in their 2014 goals that the planning commission shall review the noise and vendor ordinances. This meeting was held to begin working on a strategy for completing that task.

After brief discussion of the ordinances, it was decided that the ordinances would be reviewed concurrently by separate subcommittees. The mayor, city clerk and police chief will be included in the discussions to supply history and direction.

Staff will send email sign up lists to all planning commission members and preliminary meeting dates will be scheduled. Staff will also check availability of other officials to be included.

The meeting was adjourned at 8:05 p.m.

RESPECTFULLY SUBMITTED,
Linda Anderson, Zoning Administrator



Agenda Item #3 Review and Discuss Noise and Vendor Ordinances

Background Information:

At their annual goal setting session this week, the city council discussed the need for a review of two (2) city ordinances: the noise ordinance and the vendor ordinance. They have asked the planning commission to begin this review and draft any amendments determined necessary. They have identified some areas of concern which we will discuss at the meeting.

I would like to begin this process with a work session to discuss the ordinances as they read now and to identify any additional problem areas. The planning commission may decide to appoint a subcommittee to work on drafting the initial changes. The planning commission will eventually hold a public hearing before presenting recommended changes to the city council.

It is expected that the project will be completed in July of this year.

Recommendation:

Please review the attached ordinances and be prepared to discuss at the March 6 work session.

Attachments:

Noise Ordinance
Vendor Ordinance

Respectfully submitted,
Linda Anderson
Zoning Administrator



Agenda Item #6a Seasonal Farm Market Special Use Request

City of South Haven

Background Information:

The applicant would like to operate a seasonal produce stand on the former site of the Max 10 store (currently vacant). Venders on private property are permitted to sell their own goods and produce for a period of up to two weeks, twice a year with a permit from the zoning administrator. Since this applicant is seeking to operate for a longer period, a special use permit under section 1510.13 is required.

Recommendation:

Staff recommends approval of the farm stand special use with the following conditions:

1. The setback for any tents or covers shall be at least 25 feet from the property line.
2. The area will be kept clear of all debris
3. Trash bins shall be provided but will need to be removed after hours
4. The stand shall be secured in the after hours.
5. Only one sandwich board sign is permitted on a property

Support Material:

Completed application with narrative
Case Summary

Respectfully submitted,
Linda Anderson
Zoning Administrator

SPECIAL USE PERMIT APPLICATION
CITY OF SOUTH HAVEN
BUILDING SERVICES DEPARTMENT
539 PHOENIX STREET, SOUTH HAVEN, MICHIGAN 49090
FOR INFORMATION CALL 269-637-0760

Date: 3-24-14 Applicant: BARNER FARMS
Applicant Address: 65245 County Road 388 South Haven MI 49090
Applicant Phone Numbers: (269) 214-8828 (269) ~~269~~ 637-1895
Applicant e-mail: learilyriser71@gmail.com
Subject Property Address: 708 Broadway La Grange
(A legal description and survey of the subject property is required to be submitted with this application.)
Zoning District: City of South Haven
Type of Special Use Requested: FARM MARKET
(A scaled site plan for the subject property is required to be submitted with this application.)
Special Use Section Number: 1510.13

Attach a list of the conditions for approval which apply to your request and comment on how your request will meet those standards:

Applicant shall respond to the general standards in Sec. 1502 below and comment on how the requested Special Use Permit will meet the standards:

General Standards - The Planning Commission shall review the particular circumstances of the special use permit application under consideration in terms of the following standards and shall approve a special use permit application only upon a finding of compliance with each of the following standards, as well as applicable standards established elsewhere in this Ordinance:

- a. The special land use shall be designed, constructed, operated and maintained in a manner harmonious with the character of adjacent property and the surrounding area.
- b. The special land use shall not change the essential character of the surrounding area.
- c. The special land use shall not be hazardous to the adjacent property, property values, or involve uses, activities, processes, materials or equipment which will be detrimental to the health, safety or welfare of persons or property through the excessive production of traffic, noise, smoke, fumes, ground vibration, water runoff, odors, light, glare or other nuisance.
- d. The special land use shall not place demands on public services and facilities in excess of current capacity unless planned improvements have already been scheduled for completion.
- e. The special land use is consistent with the intent of the Comprehensive Plan.
- f. The special land use shall meet the site plan review requirements of Article IV.
- g. The special land use shall conform with all applicable state and federal requirements for that use.
- h. The special land use shall conform with all standards in this Ordinance and other applicable City Ordinances, including but not limited to parking (see Article XVIII), signs (see Article XX), and standards particular to the special land use found in the District provisions, Schedule of Regulations, or elsewhere.

Applicant Signature

Gary C. Brown

Date: 3-24-14

A FEE OF \$400.00 MUST BE SUBMITTED WITH COMPLETED APPLICATION.

I am proposing a farm market at 708 M-140 (old max 10 location) I would like to install an 18' x 26' carport. $\frac{2}{3}$ of the structure will be used for an "open" sales floor. The other $\frac{1}{3}$ will be used for storage of bags / boxes and also overnight storage of any unsold product. We will sell strawberries, blueberries, sweet corn, green beans and peppers. For advertising I will use 2 23" x 35" A frame signs; one placed on M-43 and the other placed on M-140. The existing sign is to be utilized by the property owner for the advertisement of renting / selling the vacant building on the same property. Our hours would be from 11-7 seven days a week with an approximate duration of June through early September.

708 La Grange
owner: La Grange Ten LLC
Royal Oak, MI

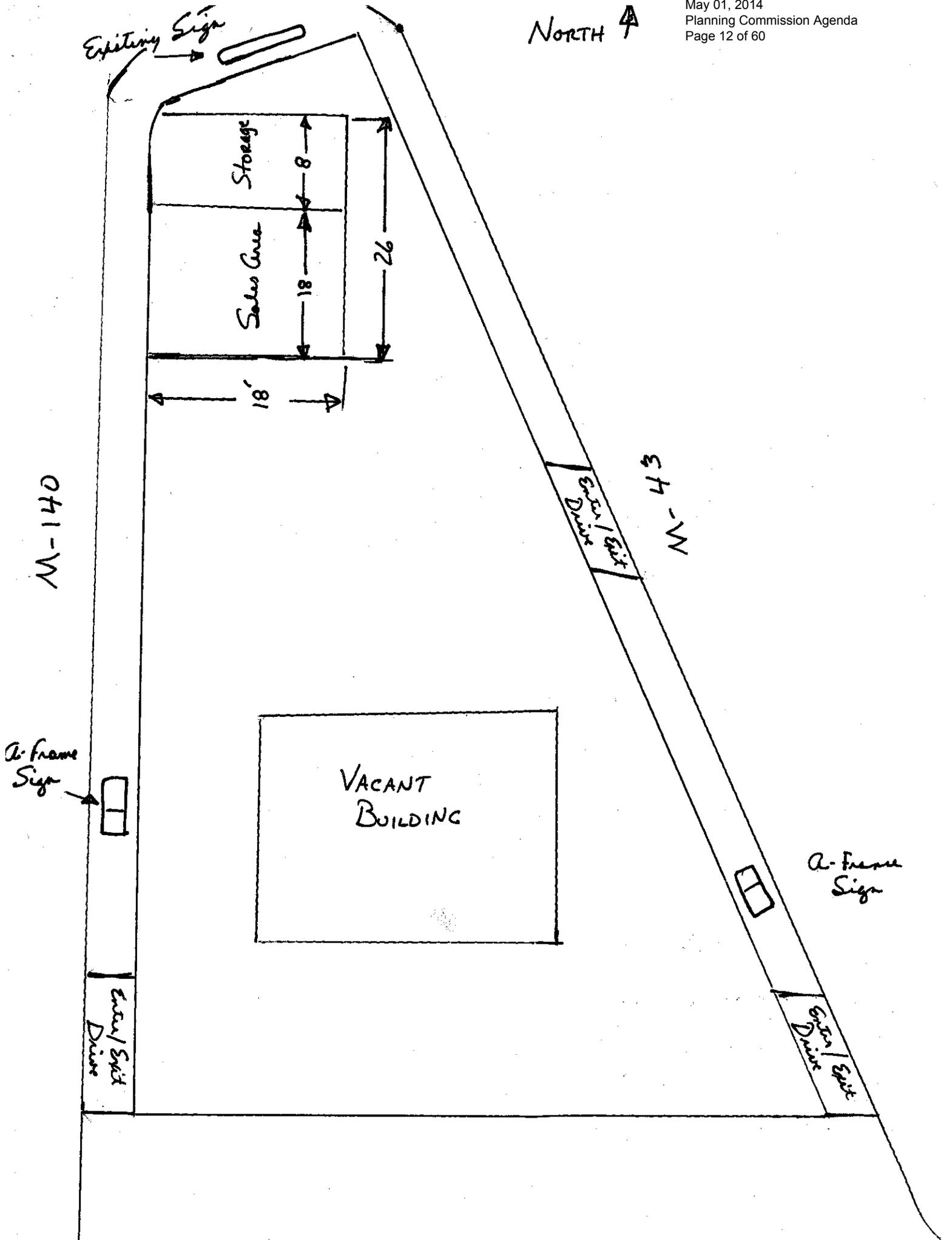
Gary Banner

GARY BANNER

BANNER FARMS

65245 County Road 388
SOUTH HAVEN MI 49090

NORTH 



M-140

M-43

Storage

Sales Area

8

18

26

18

VACANT BUILDING

A-Frame Sign

A-Frame Sign

Entrance/Exit

Entrance/Exit

Entrance/Exit

Google Rated

0 item(s)

America's Trusted Warehouse For In-Stock
 Marketing Displays With Same Day Shipping

Live Chat 800.572.2194

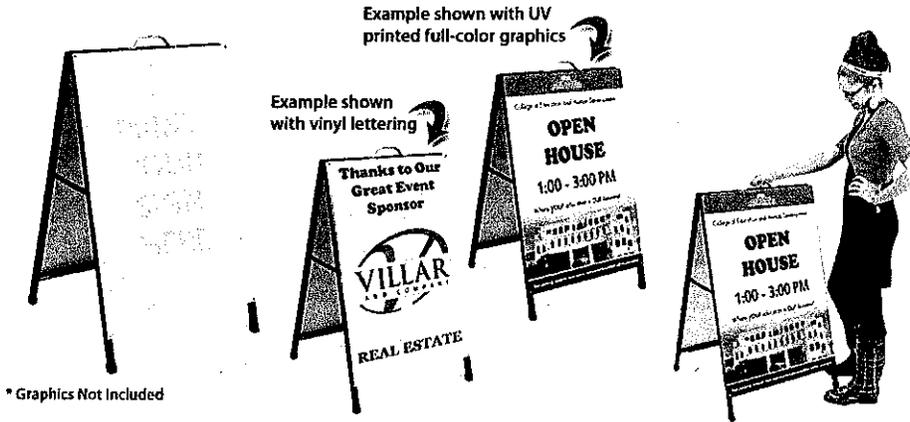
Products | New | Best Sellers | Sale | Free Catalog | Contact Us

Search

A-Board with Glossy White, Steel Panels for Vinyl or UV Digital Print (Graphics Not Included)

Display Products > Outdoor Signs And Displays > Sidewalk Signs > Sidewalk Sign

SKU# ERSBD2435



* Graphics Not Included

- (2) White, glossy steel panels for vinyl lettering or UV full-color prints (printing not included).
- Metal hinges allow the a-frame to fold flat when being carried by the handle.
- Heavy-duty, steel frame construction adds stability.

Description Specifications Ordering Info Images

This a-board features two 23-1/2" w x 35-3/8" h glossy white steel panels for vinyl or UV printed graphics. Simply loosen the screws securing each substrate on the frame, and take the panel to your local print shop to have imprinted with customized text or logos. This outdoor a-board that has two steel panels enables users to display advertisements back-to-back, as the frame is double-sided. Both steel sign substrates have a glossy white finish that will make custom advertisements pop out at your target market. This a-frame display, a-board is constructed with a robust steel frame, making it durable for many years of use. Unlike other sidewalk signs, this unit has panels bolted directly to the frame. This results in a unique design, which differentiates it from other a-frames. This heavy-duty a-board, also called a sidewalk sign, can be used indoors or outdoors. The double-sided design helps to attract both walk-by and drive-by customers coming from either direction. This sidewalk sign, a-board that is double-sided, is sure to command attention no matter where it is placed. By positioning this outdoor sign in highly visible locations, such as storefronts, hallways and entrance areas, it helps lure in potential customers.



An a-frame display is a very effective way to gain the attention of your customers. **Graphics are not included with the unit.** However customers can create their own signage and have your local sign shop add vinyl graphics and lettering. Remove the glossy panels from the a-frame and bring them to a graphic shop to have vinyl lettering or full color graphic applies. Once your advertisement is completed, remove the film from the VHB tape on the frame, attach the board and then tighten all four screws. This sidewalk sign also comes with a hinged top that enables users to easily fold these units flat for easy storage and mobility. The foldable sign can be easily transported from one location to another. This a-frame board is available in many other sizes and colors as well. Get your message out with this sidewalk sign to draw in more potential customers!

Please Note: Dry erase pens or liquid chalk markers will leave ghosting on the board.

Assembly Instructions
 Assembly Instructions

Dimensions:
Overall: 23-3/4" w x 39-3/4" h x 24-1/2" d
Whiteboard Surface: 23-1/2" w x 35-3/8" h
Weight: 17 lbs.

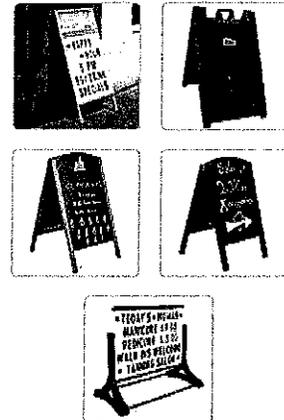
12 IN STOCK

Order in the next 13 hrs 32 mins and this item will ship on Wednesday, April 9, 2014.

Quantity	Price (USD)
1	\$73.16
2 - 4	\$69.04
5 - 15	\$65.60
16 - 40	\$61.83
41 - 103	\$58.05

1 ADD TO CART

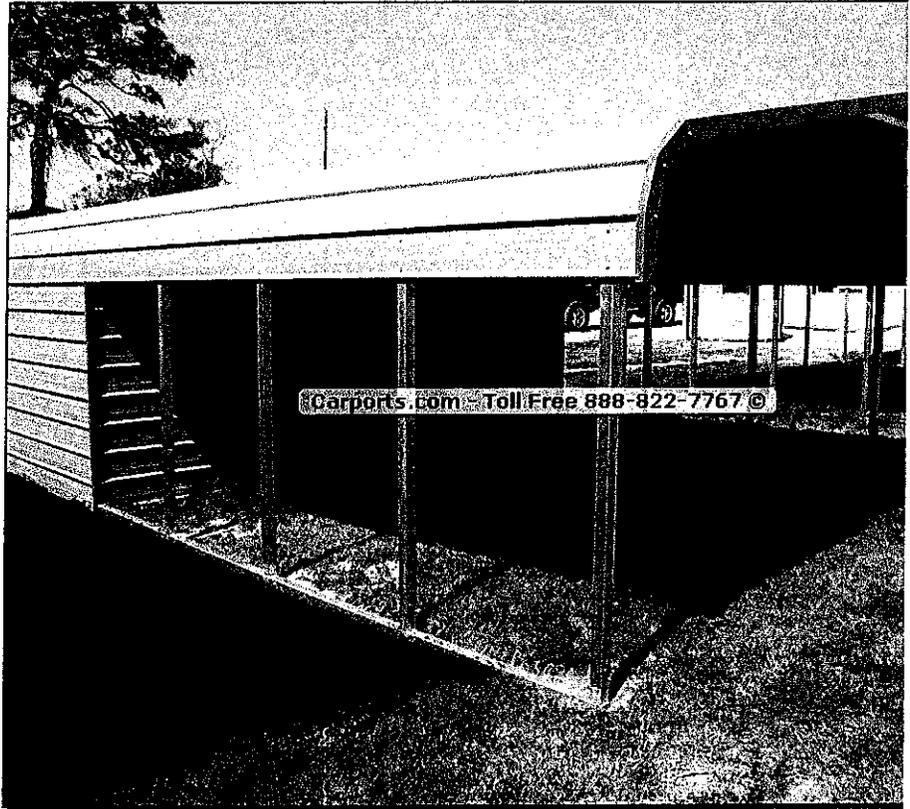
Related Products & Categories

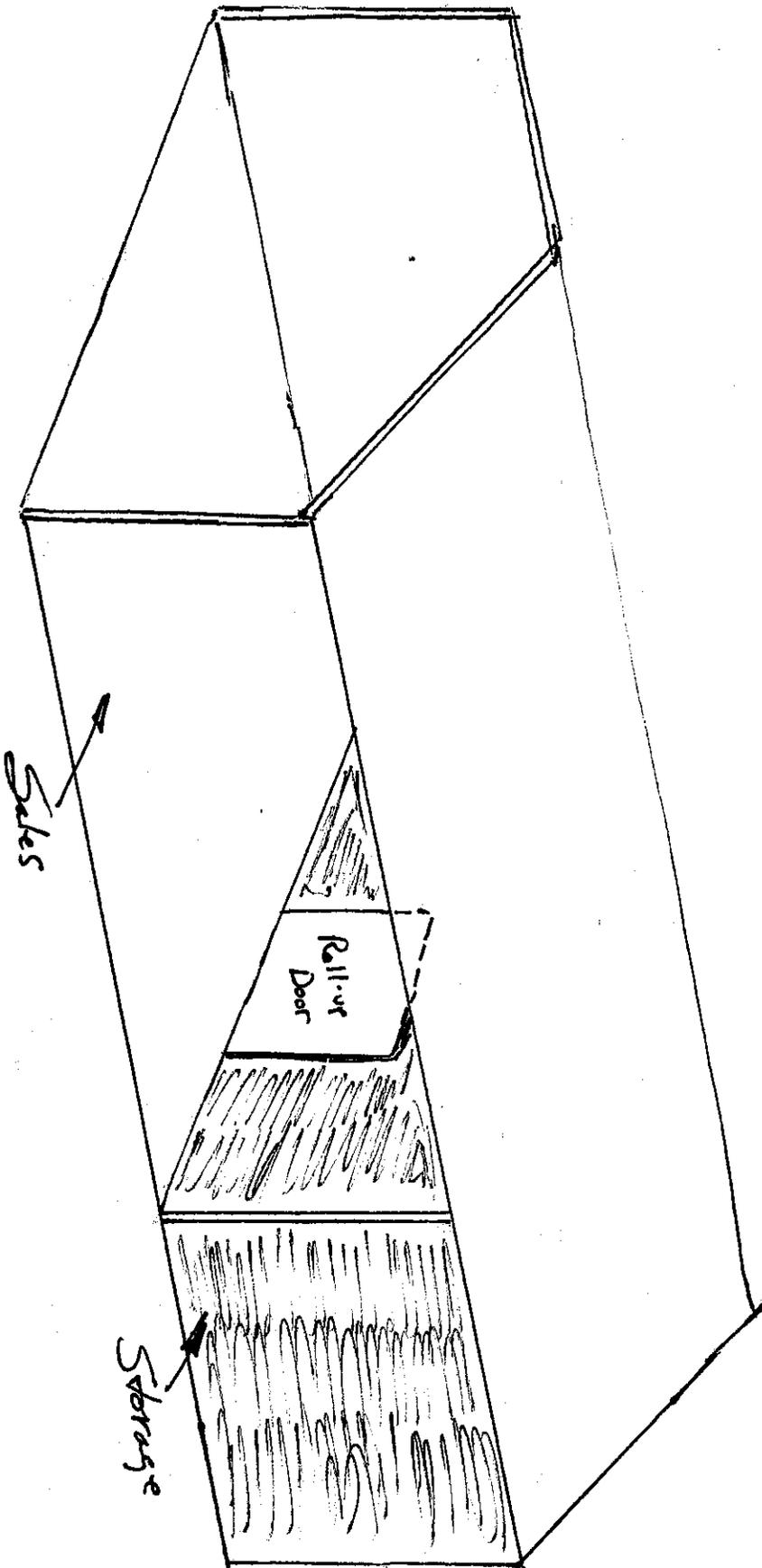


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GENERAL INFORMATION

Case Number.....2014-0004 SLU

Date of Plan Commission.....05.01.2014

Applicant.....Gary Barner

RequestApplicant requests a seasonal farm stand in the B-2 zoning district. This request is supported by ordinance section 1510.13.

Location708 La Grange Street (Former Max 10 site)

Parcel Number80-53-590-050-00

Size.....The sales will take place under a portable awning structure. The property is 0.5 acres in size (21,780 square feet)

Street Frontage.....266' on La Grange; 236' on Phillips

Current Zoning.....B-2 General Business

Proposed Zoning.....No Change

Contiguous Zoning.....North: B-2 and R-1B Districts
South: B-2 District
East: R-1B District
West: B-2 District

Current Land Use.....Vacant commercial property; former Max 10 building remains onsite

Contiguous Land Uses.....North: Residential and commercial
South: Residential and vacant commercial
East: Residential
West: Commercial

Comp Plan DesignationCommercial

CHARACTER OF THE AREA

The Subject Property is located at 708 La Grange Street. This is a busy intersection with a mix of commercial and residential land uses. The character of the area is consistent with the current zoning and future land use classification in its general commercial use.

DEVELOPMENT PROPOSAL

The applicant would like to operate a seasonal produce stand on the former site of the Max 10 store. Vendors on private property are permitted to sell their own goods for a period of up to two weeks, twice a year with a permit from the zoning administrator. Since this applicant is seeking to operate for a longer period, a special use permit under Section 1510.13 is required.

PUBLIC RESPONSE

N/A or describe

EVALUATION

The following provisions of the Zoning Ordinance are followed by a statement (in italics) representing the status of the subject property as it relates to that provision.

Section 1510.13. FARM MARKETS

1. **Locational requirements** - Farm markets are permitted by special use permit on major thoroughfares in the B-2, B-4 and CBD districts for the sale of produce, fruit and farm products only.
2. **Site requirements**
 - a. Minimum lot size of the district. In addition, it is permissible for a farm market to occupy a lot that has another use provided all requirements of this ordinance are met.
 - b. No activity or structure shall be located within twenty-five (25) feet of the public road right-of-way.
 - c. A minimum of six (6) spaces for off-street parking, outside of the public road right-of-way shall be required for the exclusive use of the farm market with additional spaces at the rate of one (1) space for each three-hundred (300) square feet of gross floor area (paving not required).
 - d. Suitable containers for rubbish shall be placed on the premises for public use.
 - e. A storage structure shall be permitted provided it does not exceed two hundred (200) square feet in area.
 - f. Farm markets shall be located no closer than one-hundred (100) feet from any lot line which abuts a residential zone or dwelling unit.
 - g. There shall be at least one access drive which shall be wide enough to accommodate two vehicles side-by-side.
3. **Buffering requirements**
 - a. Shall comply with requirements of section 1709.
 - b. The outdoor storage of trash or rubbish shall be screened in accordance with section 1709.
4. **Performance standards**
 - a. Hours of operation shall be between the hours of 7:00 a.m. and 7:00 p.m.
 - b. Any structure used as a farm market shall not be more than one (1) story high unless it is an existing barn

The proposed market will be in the B-2 zoning district. The existing business on the property is no longer active which provides ample parking for the market. The location of the stand appears to be too close to the property line but there is room for it to be moved back. Trash containers will need to be provided but do not necessarily need to be screened if they are removed after hours. There is access provided for the use.

The hours proposed, 11:00 a.m. to 7:00 p.m. comply with ordinance requirements.

Screening may be waived given the seasonal nature of the proposed use.

Article XV (Section 1502, Basis of Determination):

1. **General standards** - the planning commission shall review the particular circumstances of the special use permit application under consideration in terms of the following standards and shall approve a special use permit application only upon a finding of compliance with each of the following standards, as well as applicable standards established elsewhere in this ordinance:

A. The special land use shall be designed, constructed, operated and maintained in a manner harmonious with the character of adjacent property and the surrounding area.

This is a commercial property and the use will be seasonal. There should be no negative impact on the surrounding neighborhood provided the site is well maintained and free of debris.

B. The special land use shall not change the essential character of the surrounding area.

The subject property is surrounded by other B-2 parcels. The nature of the proposed use is compatible with the B-2 character.

C. The special land use shall not be hazardous to the adjacent property, property values, or involve uses, activities, processes, materials or equipment which will be detrimental to the health, safety or welfare of persons or property through the excessive production of traffic, noise, smoke, fumes, ground vibration, water runoff, odors, light, glare or other nuisance.

There should be no harmful effects on the neighborhood as the use is only farm sales and will not produce dust, fumes or other irritants.

D. The special land use shall not place demands on public services and facilities in excess of current capacity unless planned improvements have already been scheduled for completion.

None expected.

E. The special land use is consistent with the intent of the comprehensive plan.

It is a stated goal of the 2011 Master Plan to, "Embrace the agricultural community as a valuable local industry (examples: Farmer's market, farming supply stores, fruit and vegetable processing and cold storage, agricultural related festivals, spin off industries)" and to "Develop agricultural and historical tourism in the region, supporting farmers market, farm tours, farm stands."

This application helps further that goal.

- F. The special land use shall meet the site plan review requirements of Article IV.

The site plan will need to show the stand moved back from the property line but otherwise is in keeping with the needs of this request.

- G. The special land use shall conform to all applicable state and federal requirements for that use.

The owner will need to show evidence of any such permits, if required.

- H. The special land use shall conform with all standards in this ordinance and other applicable city ordinances, including but not limited to parking (see Article XVIII), signs (see Article XX), and standards particular to the special land use found in the district provisions, schedule of regulations, or elsewhere.

All such provisions will be in compliance with some minor site plan additions or changes.

RECOMMENDATION

Staff recommends approval of the farm stand special use with the following conditions:

1. The setback for any tents or covers shall be at least 25 feet from the property line.
2. The area will be kept clear of all debris
3. Trash bins shall be provided but will need to be removed after hours
4. The stand shall be secured in the after hours.
5. Only one sandwich board sign is permitted



Agenda Item #6b Waterfront Pool Special Use Permit

City of South Haven

Background Information: John and Vickie Hannigan are requesting a special use permit to install an inground pool at 711 North Shore Drive. Details of the proposed pool and location are included in this packet. The applicant will also have a 3-D graphic presentation of the proposed pool and surrounding property at the planning commission meeting.

Swimming pools are permitted on waterfront lots only with a special use permit per zoning ordinance section 1725, which reads:

SECTION 1725, 2-d SWIMMING POOLS

Pools shall be allowed only in side or rear yards except on waterfront lots abutting the Black River or Lake Michigan, where no pool is permitted in any yard without a special use permit. The Planning Commission shall ensure that views of the water from abutting property are not unreasonably obscured by the pool, a fence, or related accessory structures.

Recommendation: Staff recommends that the planning commission review the case summary, visit the site and determine if this application for a special use permit meets the intent of the city and, if it does, include any conditions they feel necessary. Staff has no objection to the approval of this special use permit.

Support Material:

Application
Survey
Site plan
Case study

Respectfully submitted,
Linda Anderson
Zoning Administrator

SPECIAL USE PERMIT ATTACHMENT
CITY OF SOUTH HAVEN
BUILDING DEPARTMENT
539 PHOENIX STREET, SOUTH HAVEN, MICHIGAN 49090
FOR INFORMATION CALL 269-637-0760

Date: April 2, 2014

Applicant: John J. and Vickie A. Hannigan

Project Address: 711 North Shore Drive, South Haven, Mi. 49090

Tax Code: 80-53-840-010-60

Zoning District: R1-B (Section 403, pg. 38)

Type of Special Use Requested: Swimming Pool

Special Use Section Number: Section 1725, pg. 149, see 2.d

Please list the conditions for approval which apply to your request and comment on how your request will meet those standards:

No pool allowed in any yard abutting the Black River or Lake Michigan without a Special Use Permit. The Planning Commission shall ensure that views of the water from abutting property are not unreasonably obscured by the pool, a fence, or related accessory structures.

We request permission to construct a swimming pool in the waterfront yard. Documentation of this request is provided in the Site Plan(s) attached and shall be demonstrated at the meeting with computer aided interactive 3D imagery. Our proposal ensures that views of the water from the abutting properties are not unreasonably obscured by the pool, a fence, or related accessory structures.

Please list the general standards in Sec. 1502 below and comment on how your request will meet the standards:

General Standards A & B

The placement of the requested swimming pool in the waterfront yard maximizes the owner's use while minimizing the visual, aesthetic, view and proximity to the neighboring properties. All development shall be incorporated harmoniously within the site and neighboring properties in mind. The impact of the required fence is substantially minimized by placing it down the slope.

By comparison, locating a swimming pool to either the north or south side yards would, due to the pool's proximity, impact the neighbors more directly

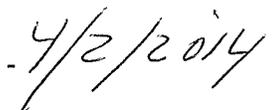
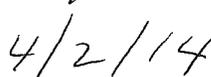
General Standards C - H

There are no additional city ordinances that are foreseen as being directly affected.

Applicant Signature

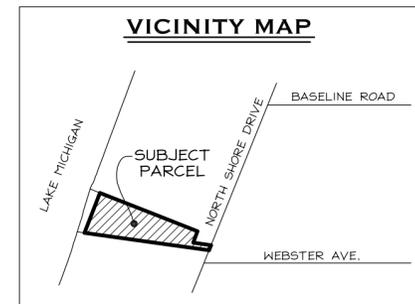



Date:

ALTA/ ACSM LAND TITLE SURVEY

711 NORTH SHORE DRIVE



SURVEYOR'S CERTIFICATE

STATE OF MICHIGAN)
)S.S.
 COUNTY OF VAN BUREN)

THIS IS TO CERTIFY TO KEVIN ALLODI AND JOHN J. HANNIGAN AND VICKIE A. HANNIGAN THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2011 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS (1,2,3,4,5,6,(a,b),8,11(b),13 AND 14) OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON 12-06-13.

EDWARD C. MORSE
 PROFESSIONAL SURVEYOR
 STATE OF MICHIGAN NO. 47966

DATE

FURNISHED DESCRIPTION

COMMITMENT No. 800637102CLT
 REVISION No. 5
 DATED: NOVEMBER 15, 2013

SITUATED IN THE CITY OF SOUTH HAVEN, VAN BUREN COUNTY, MICHIGAN.

LOTS 10 AND 11, SUPERVISOR'S PLAT OF THE NORTH SHORE ADDITION TO THE CITY OF SOUTH HAVEN, ACCORDING TO THE RECORDED PLAT THEREOF RECORDED IN LIBER 3 OF PLATS ON PAGE 83, EXCEPT THAT PART OF LOT 10, DESCRIBED AS COMMENCING AT THE NORTHEAST CORNER OF LOT 10; THENCE N68°25'00"W ON THE NORTH LINE OF SAID LOT 76.00 FEET TO THE PLACE OF BEGINNING OF THIS DESCRIPTION; THENCE S19°49'42"W 20.01 FEET; THENCE N68°25'00"W 174.61 FEET TO A POINT ON AN INTERMEDIATE TRAVERSE LINE ALONG LAKE MICHIGAN; THENCE N20°08'48"E ON SAME 20.01 FEET TO THE NORTH LINE OF LOT 10; THENCE S68°25'00"E 174.50 FEET TO THE PLACE OF BEGINNING, TOGETHER WITH ALL LAND LYING BETWEEN SAID INTERMEDIATE TRAVERSE LINE AND LAKE MICHIGAN, ALSO EXCEPT BEGINNING AT THE NORTHEAST CORNER OF LOT 10; THENCE NORTHWEST ON THE LOT LINE 76.00 FEET; THENCE SOUTHWEST 71.80 FEET TO THE SOUTH LINE OF SAID LOT AT A POINT 76.00 FEET WESTERLY FROM THE SOUTHWEST CORNER OF SAID LOT; THENCE EASTERLY 76.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT; THENCE NORTHERLY 53.60 FEET TO BEGINNING.

TOGETHER WITH AND SUBJECT TO A 24 FOOT DRIVEWAY EASEMENT AND A 20 FOOT YARD EASEMENT AS DISCLOSED IN THE SURVEY BY MITCHELL AND MORSE LAND SURVEYING, JOB No. 05-754(A), ON MARCH 23, 2006.

SCHEDULE B EXCEPTIONS

- 17.) RIGHTS OF OTHERS OVER THAT PORTION OF THE LAND USED AS INGRESS EGRESS AS RECORDED IN LIBER 545 PAGE 40, LIBER 625 PAGE 358, LIBER 1369 PAGE 538, LIBER 1369 PAGE 539 AND LIBER 1427 PAGE 44. **NOT SHOWN HEREON.** THIS EASEMENT TO BE REVOKED WHEN A NEW EASMENT IS RECORDED, BY OTHERS. THE SURVEYOR IS NOT RESPONSIBLE FOR THE RECORDATION OF THE NEW DOCUMENT WHICH WILL OCCUR AFTER THE COMPLETION OF THIS SURVEY.
- 18.) TERMS, COVENANTS, AND CONDITIONS OF DECLARATION OF EASEMENTS AS RECORDED IN LIBER 1427 ON PAGE 45. AS SHOWN HEREON.

- △ REVISION: ADDED YARD EASEMENT 12-18-13
- △ REVISION: REMOVED BEACH ACCESS EASEMENT 12-26-13
- △ REVISION: UPDATED TITLE POLICY INFORMATION 1-2-14
- △ REVISION: CORRECTED DISTANCE ALONG NORTH LINE OF EXCEPTION.
- △ REVISION: ADDED TREES 3-10-14

ZONING CLASSIFICATION

RESIDENTIAL R-1B

SETBACKS

FRONT YARD - 25'
 SIDE YARD - 20' (8' MINIMUM)
 REAR YARD - 25'
 LOT AREA & WIDTH - 8,400 Sq. Ft. 66' WIDE
 MAXIMUM LOT AREA - 35%

SECTION 405. R-1A, R-1B AND R-1C HEIGHT REGULATIONS

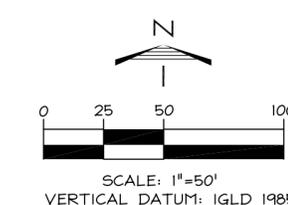
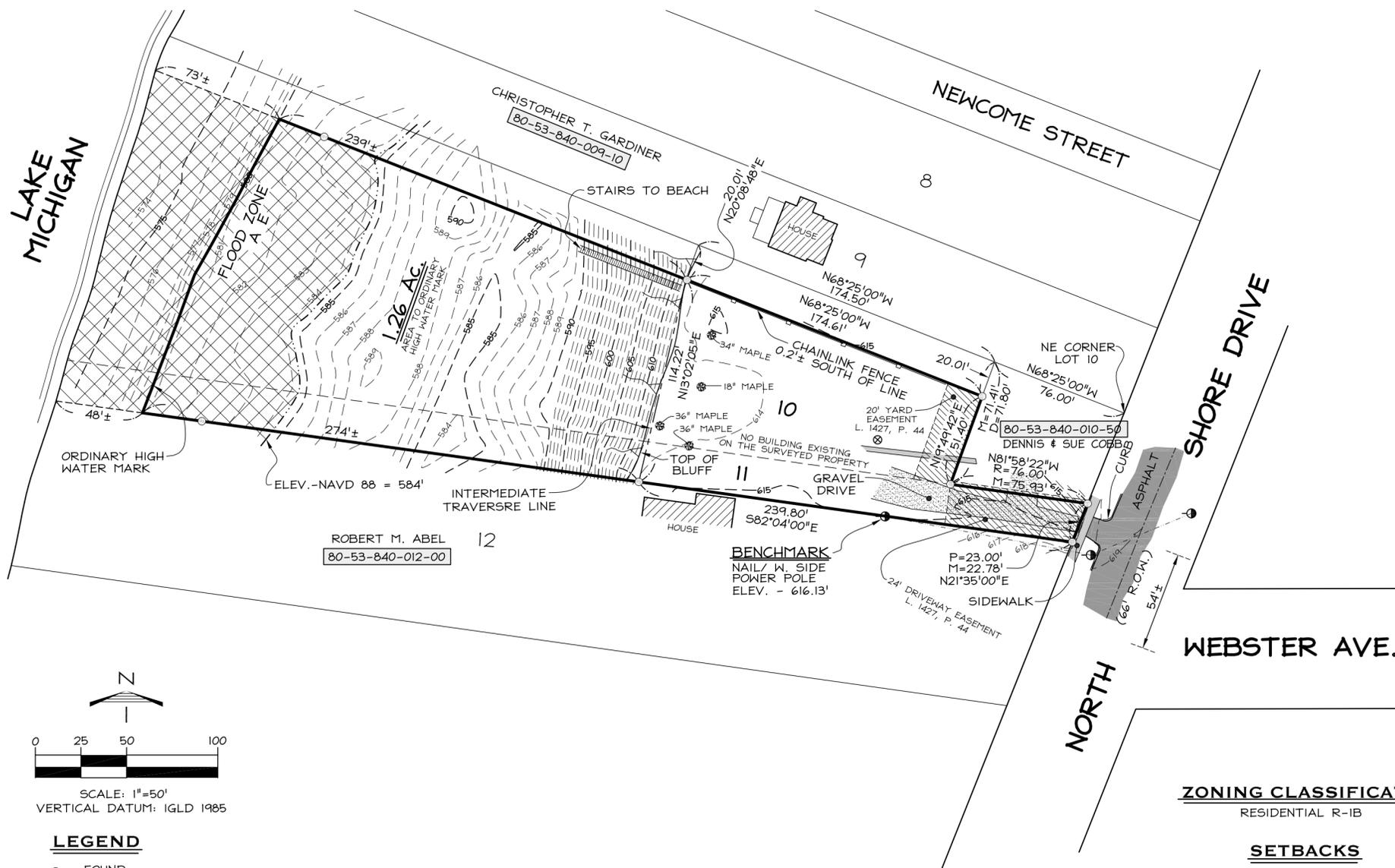
NO BUILDING SHALL EXCEED THIRTY (30) FEET AND TWO AND ONE-HALF (2 1/2) STORIES IN HEIGHT. ALSO, NO BUILDING SHALL EXCEED FORTY (40) FEET FROM THE AVERAGE GRADE TO THE HIGHEST POINT OF THE ROOF SURFACE.

FLOOD ZONE CLASSIFICATION

ACCORDING TO FLOOD INSURANCE RATE MAP #26159C0017C, PORTIONS OF THIS PROPERTY ARE WITHIN FLOOD ZONE A E AS SHOWN HEREON. THE REMAINDER OF THE PROPERTY IS OUTSIDE OF THE SPECIAL FLOOD HAZARD AREA.

UTILITIES

THE UTILITIES SHOWN ON THIS DRAWING ARE TAKEN FROM FIELD OBSERVATIONS ONLY. MISS DIG WAS CALLED AND IT IS OUR UNDERSTANDING THE PARTICIPATING UTILITIES VISITED THE SITE. NO FLAGS OR MARKINGS WERE PLACED ON THE SITE.



LEGEND

- - FOUND
- ⊙ - POWER POLE
- ⊗ - CLEAN OUT

NOTES

- 1.) THE RATIO OF CLOSURE OF UNADJUSTED FIELD OBSERVATIONS IS NOT GREATER THAN 1 PART IN 5,000.
- 2.) BEARINGS ARE REFERENCED TO PREVIOUS SURVEYS IN THE AREA.
- 3.) THE INFORMATION SHOWN ON THIS DRAWING IS INTENDED FOR THE CLIENT ONLY. ANY REUSE WITHOUT WRITTEN VERIFICATION AND ADAPTATION BY THE LAND SURVEYOR FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY OR LEGAL EXPOSURE TO THE LAND SURVEYOR.
- 4.) THIS SURVEY COMPLIES WITH ACT 132 OF 1970, EXCEPT FOR PAPER SIZE.

PREPARED FOR:

JOHN J. HANNINGAN

PREPARED BY:

MITCHELL & MORSE LAND SURVEYING
 A DIVISION OF MITCHELL SURVEYS, INC.
234 VETERANS BLVD.
SOUTH HAVEN, MICHIGAN 49090

PHONE (269) 637-1107 FAX (269) 637-1907

PROJECT NO. 13-1121 DATE 3-3-14

BOOK _____ PAGE _____ REVISION △ 3-10-14

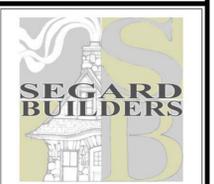
DRAWN BY J. MITCHELL SHEET 1 OF 1



VISBEEN
 ARCHITECTS
 4139 EMBASSY DRIVE SE
 GRAND RAPIDS, MICHIGAN 49546
 p. 616-285-9901 f. 616-285-9963
 www.visbeen.biz
 © VISBEEN ARCHITECTS, Inc.

PROJECT No. :
14.2.01

STAFF CREDITS :
 DRAWN BY:
Paul Fikse
 PROJECT MANAGEMENT:
Paul Fikse



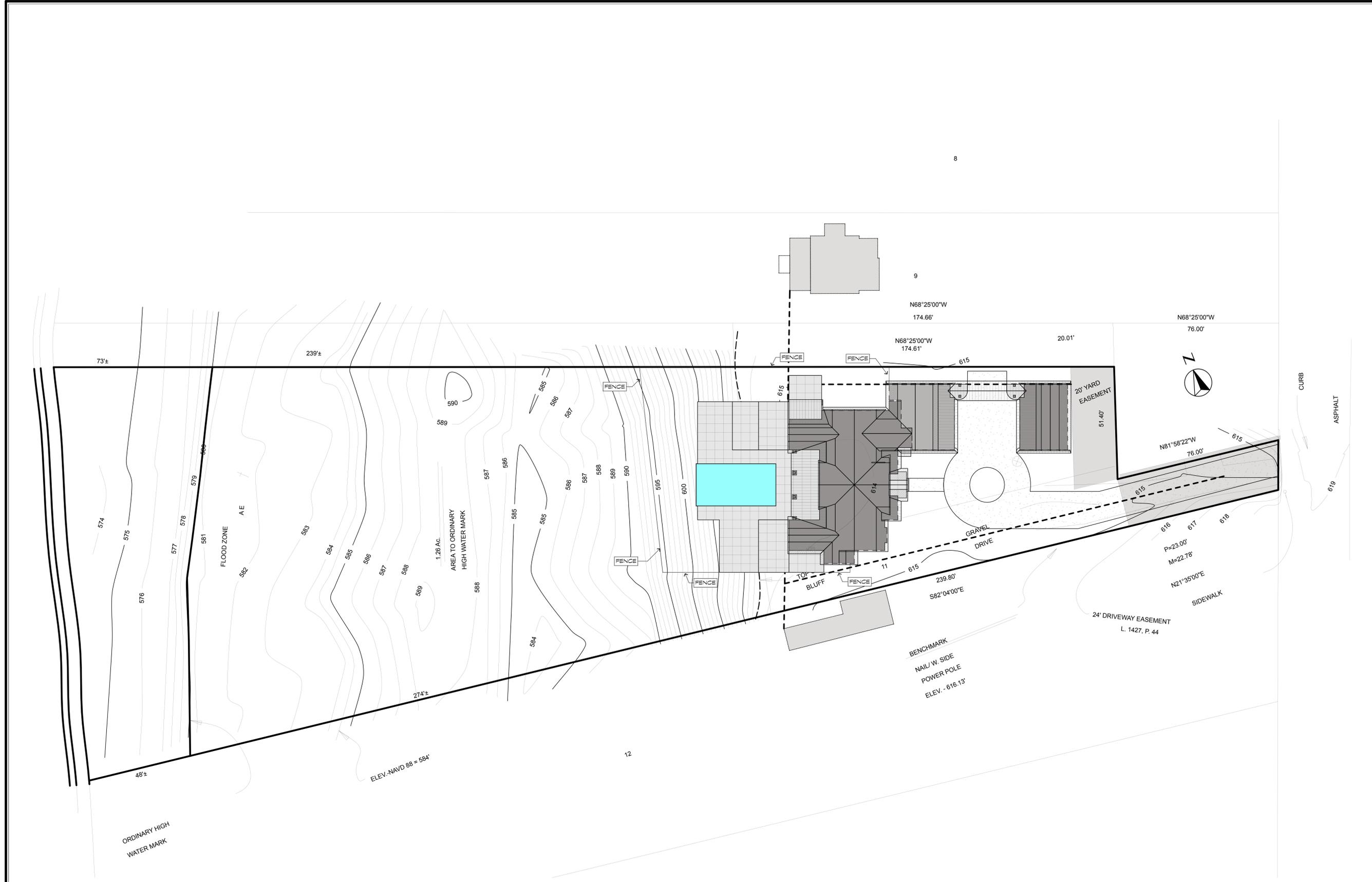
PROJECT :
John & Vickie HANNIGAN Residence
 711 NORTH SHORE DRIVE SOUTH HAVEN MICHIGAN

SHEET TITLE :
SITE PLAN

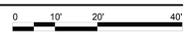
DATE :
4/2/14

ISSUE DESCRIPTION :
DESIGN DEVELOPMENT

SHEET NO. :
AO.1



1 SITE PLAN
 AO.1 SCALE: 1" = 20'



**AGENDA ITEM #6b
HANNIGAN SPECIAL USE APPLICATION
GENERAL INFORMATION**

Case Number.....2014-0003

Date of Plan Commission.....5.1.2014

Applicant.....John and Vickie Hannigan

RequestA special use permit to build an in-ground pool on a waterfront property

Location711 North Shore Drive.

Parcel Numbers.....80-53-840-010-60

Size.....69,696 sq. feet (1.6 ac.)

Street Frontage25 feet

Current Zoning.....R-1B Residential

Proposed Zoning.....No change

Contiguous Zoning.....North: R-1 B Residential
South: R-1 B Residential
East: R-1 B Residential
West: Lake Michigan

Current Land Use.....Single family residential

Contiguous Land Uses.....North: Residential
South: Residential
East: Residential
West: Lake Michigan

Comp Plan DesignationSingle Family Residential

CHARACTER OF THE AREA

The subject property is in an area of single family homes on waterfront lots similar to the Hannigan lot. The character of the area is consistent with the current zoning and future land use classification.

DEVELOPMENT PROPOSAL

John and Vickie request a special use permit to construct an inground swimming pool at the above address on North shore Drive. Swimming pools on waterfront properties require a special use permit according to zoning ordinance section 1725-2d.

PUBLIC RESPONSE

NA

EVALUATION

The following relevant provisions of the Zoning Ordinance are followed by a statement representing the status of the subject property as it relates to that provision.

Article XVII (Section 1725, 2-d, Swimming Pools)

Pools shall be allowed only in side or rear yards except on waterfront lots abutting the Black River or Lake Michigan, where no pool is permitted in any yard without a special use permit. The planning commission shall ensure that views of the water from abutting property are not unreasonably obscured by the pool, a fence, or related accessory structures.

The term "unreasonably" is concerning in this requirement. It will rest on the planning commission to determine whether the view obstruction is reasonable. Staff does not feel that the pool or fence will create an obstruction. The fencing on the lake side is to be placed just down the edge of the bank and will not be highly visible to neighboring properties. The applicant will be presenting a 3-D image of the pool and property at the meeting.

With a final determination pending the applicant presentation, staff finds this application compliant with zoning requirement Section 1725, 2-d.

Article XV (Section 1502, Basis of Determination):

1. **General standards** - the Planning Commission shall review the particular circumstances of the special use permit application under consideration in terms of the following standards and shall approve a special use permit application only upon a finding of compliance with each of the following standards, as well as applicable standards established elsewhere in this ordinance:

- A. The special land use shall be designed, constructed, operated and maintained in a manner harmonious with the character of adjacent property and the surrounding area.

The proposed pool is consistent with the surrounding area. There are other homes in waterfront areas with pools and there is no reason to expect that the pool will be poorly maintained.

- B. The special land use shall not change the essential character of the surrounding area.

The proposed use will have little or no impact on the neighborhood. There are other homes in waterfront areas with pools and there is no expectation that the pool will change the area character.

- C. The special land use shall not be hazardous to the adjacent property, property values, or involve uses, activities, processes, materials or equipment which will be detrimental to the health, safety or welfare of persons or property through the

excessive production of traffic, noise, smoke, fumes, ground vibration, water runoff, odors, light, glare or other nuisance.

No hazardous impacts are anticipated provided the pool is fenced as required by ordinance and state law. Any exterior lighting will need to be dark sky compliant.

- D. The special land use shall not place demands on public services and facilities in excess of current capacity unless planned improvements have already been scheduled for completion.

No additional demands on public services are expected.

- E. The special land use is consistent with the intent of the comprehensive plan.

The 2011 Master Plan does not specifically address swimming pools.

- F. The special land use shall meet the site plan review requirements of Article IV.

The site plan meets all requirements for a project of this type.

- G. The special land use shall conform to all applicable state and federal requirements for that use.

The application shows the fencing as required by state and local law. Since the property is not located in a high risk erosion area, no additional permits are needed for the pool.

- H. The special land use shall conform with all standards in this ordinance and other applicable city ordinances, including but not limited to parking (see Article XVIII), signs (see Article XX), and standards particular to the special land use found in the district provisions, schedule of regulations, or elsewhere.

The application includes all necessary information for a proposal of this type.

RECOMMENDATION

While staff has no reluctance in the approval of the special use request, the planning commission needs to review the case summary, visit the site and determine if this application for a special use permit meets the intent of the city and, if it does, include any conditions they feel necessary.



City of South Haven

Project Review Black River Barge Restaurant

Background Information:

The applicant, Joe Wiltgen, is asking for site plan approval for a restaurant barge over the Black River. As shown on the site plan, the barge, which will be 20 feet by 120 feet, will be located directly upriver from the Idler at Old Harbor Village. This use is permitted without a special use permit or rezoning¹. Water based businesses, as defined, also do not need to provide off-street parking². The planning commission will complete site plan review of the project prior to any construction permits being issued. Staff gathered comments from city departments and those reviews are included in this agenda packet.

At the time of this writing, there is some dispute over whether the barge is to be considered a permanently moored vessel or a watercraft. Letters are included in this review from the harbor master, the applicant's attorney and the city attorney. It appears the city attorney's opinion is that the barge restaurant would be allowed to extend beyond the harbor lines and would further be subject to state building codes..

Recommendation:

If it has been determined that the proposed barge is in compliance with harbor rules, staff has no problem with approving the site plan provided all review comments have been addressed prior to construction. A summary of the comments is listed at the end of the Case Summary.

Attachments:

Completed application
Site Plan
Case Summary
Department of Public Works Review
Building Inspector Review

¹ Section 201.23 defines: *Water based business: any business in which the proprietor, employee(s) or customer(s) physically board a ship, boat, barge or vessel at a marine terminal, including, but not limited to dinner boats, charter boats, passenger service, boat tours, watercraft rentals, and commercial fisheries*

² Section 1800 h-1 reads: *No parking area shall be required to be provided on-site for a water based business downstream of the Dyckman Avenue Bridge over the black river.*

Fire Marshal Review
Electrical Department Review
Harbor Master Review
Police Chief Review
Wiltgen Attorney Review
City Attorney Review

Respectfully submitted,
Linda Anderson
Zoning Administrator

BUILDING/ZONING PERMIT APPLICATION
CITY OF SOUTH HAVEN
BUILDING DEPARTMENT
539 PHOENIX STREET, SOUTH HAVEN, MICHIGAN 49090
FOR INFORMATION CALL 269-277-8573

**Incomplete Forms Will NOT be
Approved or Processed**

Project Address: 518 Williams St. Unit 2 S.H. 49090 Tax ID 80-53-123-200-00
Applicant: Joe Willgen Property Owner: J Wilco Property LLC
Appl. Address: 519 Virginia Ave Owner Address: 519 Virginia Ave
South Haven MI 49090 South Haven MI 49090
Applicant Phone: 269-208-4687 Owner Phone: 269-208-4687
Current Use of Property: Pack Zoning District of Property B-3
Project Description: Barge restaurant

Contractor: Joe Willgen Lic. No. _____

Liability Carrier: _____ Fed ID or SS: _____

Total Value of Construction (Materials and Labor, Building Permit Only): \$ 2,000.00

Is property subject to an association? Yes No _____ (If yes, attach letter from association)

Is property currently served with city water and sanitary sewer connections? (Letter from city engineer req'd.)

I hereby authorize the Zoning Administrator, Building Inspector or other authorized representative of the City of South Haven to enter and inspect the above property for the purpose of inspection of the premises.
AFFADAVIT: I certify and affirm that I am the property or building owner or owner's authorized agent and that I agree to conform to all applicable laws of this jurisdiction. I also certify that this application is accurate and complete. Section 23A of the State Construction Code Act of 1972, Act No. 230 of the Public Acts of 1972, being Section 125.1523a of the Michigan Compiled Laws, prohibits a person from conspiring to circumvent the licensing requirements of the state relating to persons who are to perform work on a residential structure. Violators of Section 23a are subject to civil fines.

OWNER'S SIGNATURE: Joe Willgen DATE: 3-18-14

APPLICANT'S SIGNATURE: Joe Willgen DATE: 3-18-14

All contractors must be registered with the City of South Haven before a building permit may be issued.

HARBOR COMMISSION APPLICATION

CITY OF SOUTH HAVEN

SITE PLAN REVIEW

The Harbor Commission meets the third Tuesday of each month

Application deadline is 15 days prior to the meeting

Applicant Name Joe Wittgen Phone 267-208-4687

Address 519 Virginia Ave South Haven MI 49090

Project Name & Address Barga restaurant
513 Williams St South Haven MI 49090

Brief Description of Project 20' x 120' Barga restaurant, In door & out door dining

of Existing Docks _____ # of Proposed Docks _____ # of Docks being increased (decreased) _____

Will there be any change in the length, width, and/or location of existing docks, slips or other structures? YES _____ NO

Will any portion of the project extend past the City Project Lines? YES _____ NO

	Application Made Yes / No	Permit Received Yes / No	Copy Attached Yes / No
1. Army Corps of Engineers	<u>NO</u>	_____	_____
2. DEQ	<u>NO</u>	_____	_____
3. Flood Plain Management Agency	<u>NO</u>	_____	_____
4. Soil and Erosion Permit	<u>NO</u>	_____	_____

Submittal Requirements

In addition to the requirements for site plan approval as shown on the Plan Application Cover Sheet, Site Plan Submittal Requirements, Site Plan Review Attachment, and any other forms required for the project, the following information must be submitted for any proposed development along the Black River. The drawings must be prepared by or under the supervision of a professional engineer, architect, land surveyor, or landscape architect licensed in Michigan and be signed and sealed by that professional. (Sec. 1402.4)

1. A scaled drawing of the Black River showing the river where the proposed development will be constructed and depicting the following:
 - A. The width of the river.
 - B. A cross section of the river bottom.
 - C. The location of the U.S. Harbor Line and the City of South Haven Project Line (Per Ord. #740)
 - D. Project property lines.
 - E. Length, width, location and type of construction of existing docks, piers, slips and seawalls.
 - F. Length, width, location, and type of construction of the proposed development.
 - G. The current development of the site on the opposing sides of the Black River.

2. When any type of dredging is needed to complete the proposed project, the area downstream of the project site for five hundred (500) linear feet and one hundred (100) linear feet upstream from the project must be sounded both before the project is started and at the time of completion, prior to issuance of the Certificate of Occupancy of the project. These soundings must be reported in written form to the City of South Haven for its review. Once the project is completed, the developer will be liable for any debris or spoils that have been found due to the development of the project. If the proposed project includes dredging provide the following:
 - A. Pre-construction soundings report.
 - B. Proposed disposition of dredging spoils.

Applicant's Signature Joe Wittgen

Date 3-18-14

SITE PLAN SUBMITTAL REQUIREMENTS
CITY OF SOUTH HAVEN
BUILDING DEPARTMENT
539 PHOENIX STREET, SOUTH HAVEN, MICHIGAN 49090
FOR INFORMATION CALL 269-637-0760

PROJECT ADDRESS: 515 Williams st Unit 2 TAX ID: 80-53-124-200-00
DATE APPLICATION RECEIVED: 3-18-14 APPLICANT: Joe Wilgus
PROJECT DESCRIPTION: Barge restaurant

REQUIRED DOCUMENTS:

- 1. SURVEY AND LEGAL DESCRIPTION OF PROPERTY**
 - INCLUDE ANY DEED RESTRICTIONS AND EASEMENTS
 - TAX ID NUMBER
- 2. LOCATION MAP**
 - SMALL SCALE SKETCH OF PROPERTIES, STREETS AND USE OF LAND WITHIN 1/2 MILE
 - INCLUDE DRIVEWAY LOCATIONS ACROSS THE STREET
- 3. SITE PLAN INCLUDING:**
 - SCALE OF LESS THAN 1:200
 - FIFTEEN (15) COPIES, TWO (2) SEALED
 - DATE OF DRAWING, NAME, ADDRESS, AND SEAL OF PREPARER
 - DIMENSIONS OF LOTS, PROPERTY LINES
 - EXISTING STRUCTURES (LABEL EXISTING)
 - PROPOSED STRUCTURES AND ADDITIONS (LABEL PROPOSED)
 - BUILDING SETBACKS, FRONT, REAR, BOTH SIDES
 - AREA COVERED BY STRUCTURES (IN SQUARE FEET)
 - DIMENSIONS, LOCATION AND PAVING MATERIAL OF DRIVES, PARKING AREAS, SIDEWALKS AND CURBING
 - PARKING SPACE STRIPING, NUMBER OF PARKING SPACES REQUIRED, NUMBER PROVIDED
 - FIRELANE LOCATION, RADII AND DIMENSIONS
 - STORM DRAINAGE SYSTEM AND STRUCTURES, DIRECTION OF FLOW
 - RETENTION BASIN AND CALCULATIONS
 - LOCATION AND SIZE OF WATER, SEWER, ELECTRIC, GAS AND OTHER UTILITIES
 - LANDSCAPING DETAILS
 - SIGNS AND ON-SITE LIGHTING, LOCATION AND DETAILS
 - EASEMENTS
 - EXISTING MAN-MADE FEATURES
 - EXISTING NATURAL FEATURES
 - TOPOGRAPHY AT 2 FOOT INTERVALS
 - WETLANDS, HIGH RISK EROSION AREAS OR FLOODPLAIN AREAS
 - DIMENSIONS AND LOCATION OF ANY REQUIRED OPEN SPACE
 - ZONING DISTRICT(S)
 - VARIANCES TO BE REQUESTED, IF ANY
- 4. BUILDING ELEVATIONS (SKETCH)**
 - SHOW HEIGHT OF BUILDING
 - SHOW NUMBER OF STORIES
- 5. LETTER OR MEMO EXPLAINING:**
 - OBJECTIVES OF THE PROPOSAL
 - COMPLETION SCHEDULE OF PROJECT PHASES

DATE ACCEPTED: _____

BY: _____

Note: These are a summary of the requirements for new and major construction projects. Smaller projects are required to include details related to the changes being made, and applicants may not be required to include all of the items listed here.

In any case, items 1 through 5 shall be included in the application.
For complete details see the South Haven Zoning Ordinance Section 1405, Final Site Plan Submittal Requirements.

LIBER 810 PAGE 376

ARTICLE II

LEGAL DESCRIPTION

The fee areas and easement areas which are dedicated to the Condominium established by this Master Deed are described as follows:

All that certain piece or parcel of land situate and being in the City of South Haven, County of Van Buren, State of Michigan and more particularly described as follows:

A parcel of land being part of lots 1 and 2, block 14 and lot 3, block 15 in Hale Conger and Company's Addition to the Village (now city) of South Haven, also part of the vacated center street lying between said block 14 and 15 being described more particularly as:

A. 601
C-300.2

Beginning at a point found by commencing at the southwest corner of lot 1, block 14 in Hale Conger and Company's Addition to the Village (now city) of South Haven; thence S.61°-56'-35"W., on the south line of said block, 8.25 feet; thence N.19°-03'-10"W., 27.22 feet to the place of beginning of this description; thence N.19°-03'-10"W., 60.00 feet; thence N.65°-44'-53"E., 38.00 feet; thence N.19°-03'-10"W., 14.74 feet; thence N.70°-56'-50"E., 5.86 feet; thence N.24°-20'-00"W., 24.33 feet to the United States Harbor Line; thence N.56°-52'-30"E., on said harbor line, 12.55 feet; thence continuing on said harbor line, N.70°-27'-50"E., 378.00 feet; thence South 54°-03'-45" East, 31.81 feet; thence South 46°-09'-00 West, 15.89 feet; thence N.30°-37'-30"W., 24.38 feet; thence S.65°-32'-50"W., 31.06 feet; thence S.26°-18'-25"E., 3.97 Feet; thence S.72°-05'-20"W., 100.68 feet; thence S.19°-32'-10"E., 30.73 feet, thence S.72°-05'-20" W., 15.00 feet, thence N.19°-32'-10"W., 30.73 feet, thence S.72°-05'-20"W, 39.00 feet, thence S.68°-32'-10" W., 50.24 feet, thence S.20°-49'-00" E., 27.64 feet., thence S.69°-53'-50" W., 152.53 feet, thence S.19°-03'-10" E., 23.00 feet, thence S.65°-44'-53" W., 5.82 feet, thence S.19°-03'-10" E., 36.52 feet, thence S.65°-44'-53" W., 38.00 feet to the place of beginning.

JOE'S BAR & GRILL

City of South Haven
539 Phoenix St.
South Haven, MI 49090

Linda,

In response to your March 5th email, Jwilco Properties LLC, owns 142' of dock on the Black River at 515 Williams St. Unit 2. Jwilco Properties LLC is sole owner of proposed riverside restaurant and the completion goal is mid-June 2014.

Thank you,

Joe Wiltgen

NOTES:

Boat will be secured to four pilings

All shore utilities will connect to the vessel underneath the existing dock in conduit certified for wet conditions. Service equipment will be located adjacent to the aft of the vessel on the starboard side.

Water Service:

- * Water service piping to be constructed as per Michigan Plumbing Code.
- * Flexible tubing will be used to accommodate river level fluctuations.
- * A reduced pressure principle backflow preventor will be installed.

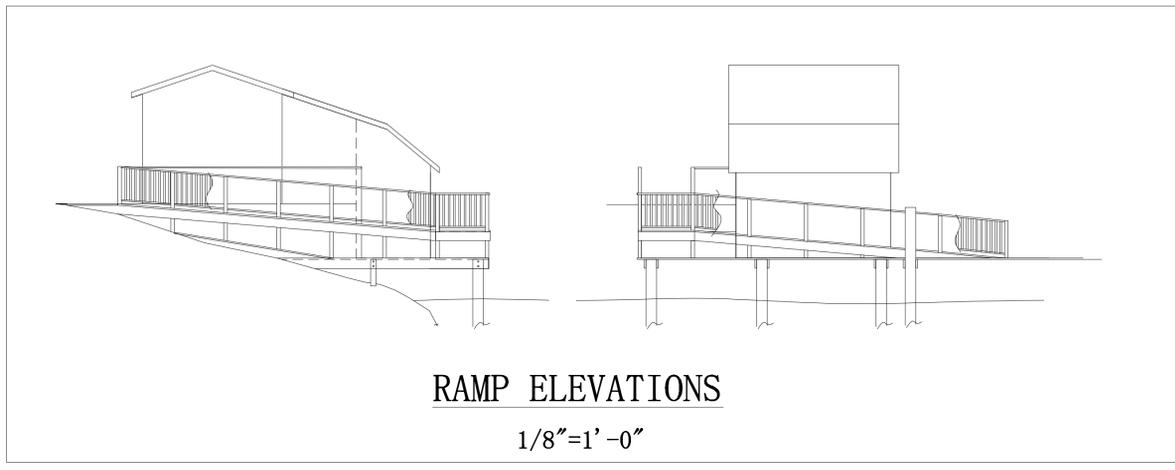
Sewer Service:

- * Sewer service piping to be constructed as per Michigan Plumbing Code.
- * Flexible tubing will be used to accommodate river level fluctuations.
- * Sanitary waste will be collected on the barge into an ejector pump and pumped from the barge.

All electrical service wiring will be installed according to National Electrical Code; Article 553; Floating Buildings

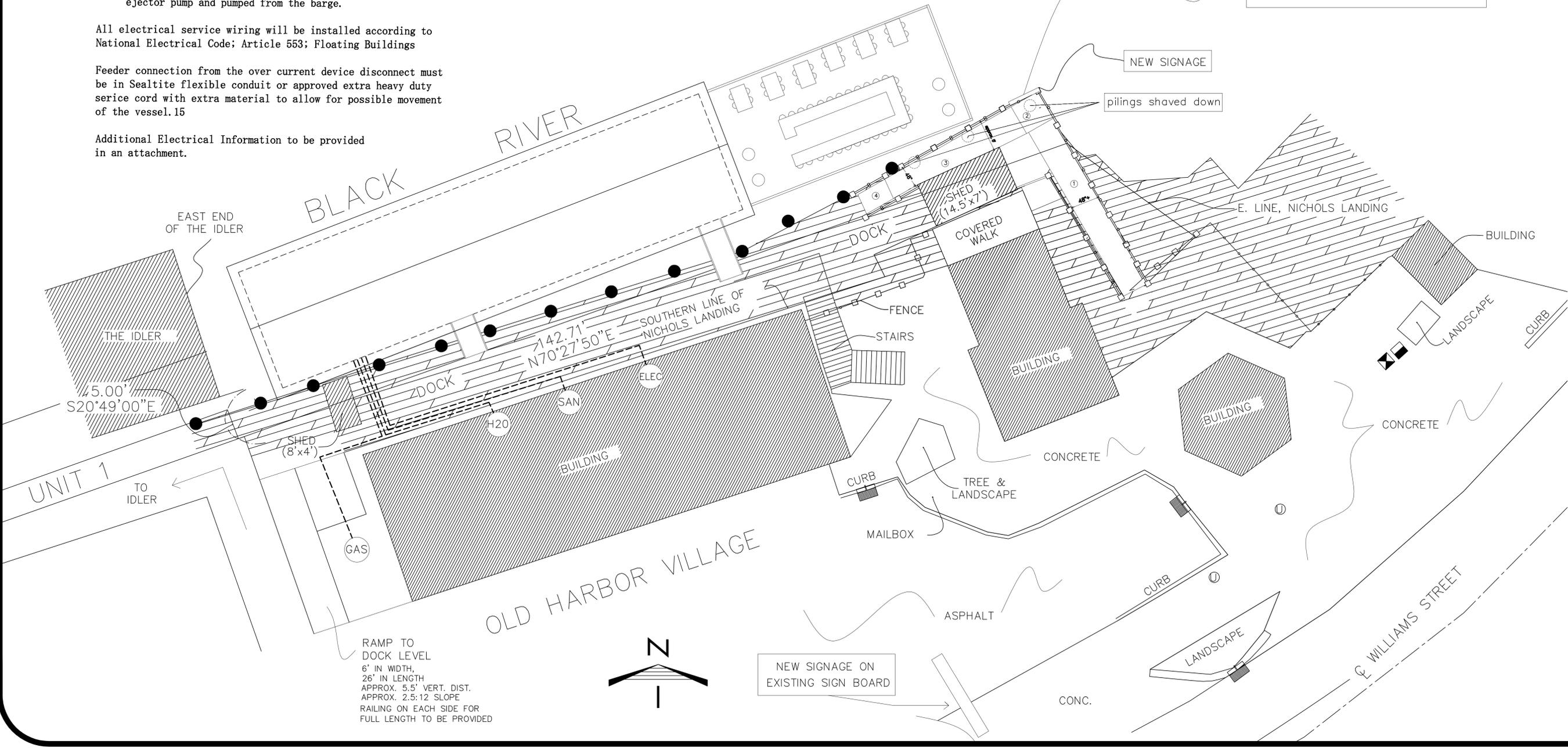
Feeder connection from the over current device disconnect must be in Sealtite flexible conduit or approved extra heavy duty service cord with extra material to allow for possible movement of the vessel.15

Additional Electrical Information to be provided in an attachment.



NEW RAMP TO BE BUILT ON DOCK**
 61 INCH VERTICAL CHANGE.
 ① FIRST 30 FEET - 1" SLOPE PER FOOT
 ② 5'+x5'+ PLATFORM BEFORE DIRECTION CHANGE
 ③ NEXT 26.5 FEET - 1" SLOPE PER FOOT
 ④ LAST 4.5 FEET - 1" SLOPE PER 10 INCHES (AS PER ADA TABLE 405.2)
 42" HIGH RAILING ALONG ENTIRE LENGTH
 **EXISTING DOCK STRUCTURE WILL BE EVALUATED AND REPAIRED/REPLACED AS NEEDED.

NEW DOCK/RAMP WILL CANTILEVER APPROX. 1'-6" (NW) AT IT'S FURTHEST POINT AT PLATFORM AND ANGLE BACK AS RAMP PROGRESSES DOWN TO EXISTING DOCK LEVEL.



General Notes

RIVERBOAT RESTAURANT PROJECT
 SOUTH HAVEN, MICHIGAN
 PREPARED FOR: JOE WILTGEN

Plan BAP

No.	Revised/Year	Drawn

MIDWEST CIVIL
MCE
 ENGINEERS, INC.
ONE HARRISON LANE, SOUTH HAVEN, MICHIGAN 49087-1000
 (269) 231-1100 FAX (269) 231-1101



Date 4.15.14
 Scale 1/8"=1'-0"

GENERAL INFORMATION

Case Number.....SPR 2014-0002

Date of Plan Commission.....05-01-2014

Applicant.....Joe Wiltgen

RequestOperate a barge restaurant adjacent to a dock at Old Harbor Village

Location515 Williams Street, Unit #2

Parcel Number80-53-125-200-00

Size.....20'x120' barge restaurant

Street Frontage.....NA

Current Zoning.....B-3 Waterfront Business

Proposed Zoning.....No Change

Contiguous Zoning.....North: Black River
South: B-3
East: B-3
West: B-3

Current Land Use.....Dock only

Contiguous Land Uses.....North: Black River
South: Old Harbor
East: Old Harbor
West: Old Harbor

Comp Plan DesignationWaterfront and Related Commercial/Recreation

CHARACTER OF THE AREA

The Subject Property is located at 423 Williams, Unit #2. The area is characteristic of the B-3 zoning with waterfront businesses and condominium type of residences. Many of the residences and businesses in the immediate area are seasonal. The character of the area is consistent with the current zoning and future land use classification in its general commercial use.

DEVELOPMENT PROPOSAL

The applicant is asking for site plan approval for a restaurant barge over the Black River. This use is permitted without a special use permit or rezoning¹. Water based businesses also do not

¹ Section 201.23 defines: *Water based business: any business in which the proprietor, employee(s) or customer(s) physically board a ship, boat, barge or vessel at a marine terminal,*

need to provide off-street parking². In an opinion from the city attorney (attached), the barge is subject to site plan review and building code review. Staff gathered comments from city departments regarding land based issues such as access from the dock, safety concerns and utility connections. Those reviews are included in this agenda packet.

PUBLIC RESPONSE

N/A

EVALUATION

The zoning ordinance does not list specific regulations for the use proposed nor does it provide criteria for this type of site plan review. Since the barge will be over water, the setback requirements and maximum lot coverage provisions do not apply.

The master plan includes policy and goal statements intended to encourage tourism and boating during the summer months. Projects such as this advance those recommendations by providing summer residents and visitors with another option for enjoying the waterfront.

RECOMMENDATION

There are some issues that will need to be resolved if this project progresses. The applicant will need to work with the city departments and code officials to assure the project meets all city and state requirements. Based on the department reviews, other remaining issues include:

1. Completion of the Wastewater Survey for Nonresidential Establishments
2. Final electric plan approval by the electric department
3. Further information will be needed as to fire detection systems, also emergency lighting and exit marking for the fire marshal
4. The Harbor Master has recommended denial to the Harbor Commission based on the barge extending into the harbor lines (This is refuted by the applicant's attorney (letter attached. The city attorney has also offered an opinion in this matter and that letter is also attached.)
5. The building inspector requires that the plan show guardrails and maintain 44 inches of clear pathway along the length of the dock. He is also working with the engineer on plans for dock reconstruction prior to the issuance of any permits.

These issues will need to be addressed in final drawings. The planning commission will also need to consider the determination of the harbor commission in deciding the site plan approval. The harbor commission will meet on April 15, 2014.

including, but not limited to dinner boats, charter boats, passenger service, boat tours, watercraft rentals, and commercial fisheries

² Section 1800 h-1 reads: *No parking area shall be required to be provided on-site for a water based business downstream of the Dyckman Avenue Bridge over the Black River.*

Harbor Commission

Regular Meeting Minutes

Tuesday, April 15, 2014, 5:30 p.m.
North Side Marina, 148 Black River Street



City of South Haven

1. Call to Order

Present: Sullivan, Reineck, Silverman, Strong, Arnold
Absent: Pyle, Stephens

Also present: Joe Wiltgen, Applicant for the Restaurant Barge at 515 Williams Street

2. Approval of Agenda

Motion by Strong, second by Silverman to approve the agenda as presented.

All in favor. Motion carried.

3. Approval of Minutes: March 18, 2014 Regular Meeting

Motion by Reineck, second by Strong to approve the March 18, 2014 Regular Meeting Minutes as written.

All in favor. Motion carried.

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

None at this time.

5. Marina Reports

VandenBosch gave an overview of the Marina Reports.

6. 515 Williams Street Restaurant Barge, Site Plan Review

VandenBosch explained that in his original review, he determined that if the barge were not inspected by the Coast Guard to carry passengers, it would be considered by the Coast Guard to be a land structure, and therefore as a structure would be subject to the prohibition on extending past the harbor line in Ordinance #740. The attorney opinion is that the barge is

April 15, 2014
Harbor Commission Minutes
DRAFT

not subject to limits on extending past the harbor line, in part because the ordinance did not use the Coast Guard definition of land structure. The city attorney stated that building codes apply and according to VandenBosch, the city will work out code issues in the permit process through the building, electrical and plumbing codes. These will be reviewed after Planning Commission approval. VandenBosch recommends approval of the site plan because there does not appear to be a hazard to harbor traffic.

Reineck questioned the Idler, and that they extend further than the proposed barge. VandenBosch stated that he originally thought they were grandfathered in to the harbor line restrictions, but according to the city attorney's opinion they may extend past the harbor line.

Strong asked about tying up boats to the barge; Joe Wiltgen said originally he planned to, but not now. Wiltgen noted that the original drawings showed gates on the outside railings for that purpose, but he has since decided against that.

Sullivan asked if this barge will be Coast Guard inspected. Wiltgen responded that it is a barge and after calls to many different Coast Guard stations, he learned that the Coast Guard does not inspect barges.

Sullivan expressed concern regarding a water event such as sinking or capsizing. VandenBosch said that there are no construction codes which directly address seaworthiness of a vessel. The inspector may be able to address some concerns such as construction material failure. With a barge, VandenBosch noted it will be seaworthy for a long time; it might be many years before the hull might begin to have issues with rust.

Sullivan questioned general safety to which VandenBosch responded that the building inspector will be reviewing ramps, handrails and walkways. Wiltgen stated that he has had the building inspector down there to the site multiple times and everything will be built to code. Wiltgen noted that his barge restaurant will not protrude as far out into the river as the Idler.

Reineck asked if VandenBosch has any concerns. VandenBosch said his concern initially was whether the City Code prohibited the barge from extending past the harbor line, but the city attorney resolved that concern that in his opinion.

Silverman asked about navigation in the area of the barge and VandenBosch noted that it is tucked into a corner where it will be located so there seems to be no problem with navigation.

VandenBosch noted Harbor Commission's focus is harbor traffic. Silverman stated that the two issues we had, based on the opinion of the city attorney and your explanation, the protrusion onto the harbor lines is not a problem and navigation concerns do not exist.

Motion by Silverman, second by Strong to recommend the approval of the application to the Planning Commission for the restaurant barge at 515 Williams Street as proposed.

All in favor. Motion carried.

April 15, 2014
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DRAFT

7. Queen's Cup Event Agreement

VandenBosch said this was a last minute item, and he has since talked to Commodore Craig Needham, who sent him some information. VandenBosch has asked the city attorney to go through this and will call the attorney tomorrow so they can work through this agreement. VandenBosch recommended that the board table action on this item as there are some corrections that need to be made; no real big problems but VandenBosch would like the attorney to make the corrections and then meet with a representative for the Queen's Cup and make sure the agreement is satisfactory to them.

Motion by Silverman to table Item 7, Queen's Cup Agreement; second by Reineck until corrections are made to the agreement by the attorney.

All in favor. Motion carried.

Member and Staff Comments

VandenBosch sent an email out to the Army Corps head of dredging. Believes that the dredge spoils in the channel may be a result of the private dredging that was done; will ask the Army Corps to do soundings. VandenBosch said if you want the Corps to do dredging, you ask them to do soundings. They have the expertise to determine whether the problem is due to something other than a natural event.

Silverman noted that the silt was not there before the dredging and it was there immediately after the dredging. Reineck said the dredger does soundings as they work so he cannot see how it could be from the dredging. VandenBosch said depth was twelve (12) feet and now six (6) months later it is five and a half (5.5) feet. So we are waiting on the Army Corps to do their soundings and get back to us.

Strong noted that we should let the lawyers work it out. Silverman commented that perhaps the Army Corps will allow a certain dollar amount.

Silverman talked to close to half a dozen boaters who had done the loop, four (4) had stopped in South Haven and all four (4) raved about our facilities and our community. That is a potential source of transient traffic, because there are an incredible number of boats doing the loop and there are a couple of places they all look for information. VandenBosch noted he gets the Waterways Guide and is waiting for the dredger to get done so he can send out a press release and get some free advertising. VandenBosch said he has gone to "Active Captain" and has put stuff in everywhere he could on that site. Silverman noted there is a hard copy Looper Newsletter that might be another place for a press release.

Adjourn

Motion by Reineck, second by Strong to adjourn at 5:52 pm

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DRAFT

RESPECTFULLY SUBMITTED,

Marsha Ransom
Recording Secretary



City of South Haven

Dept. of Public Works

DPW Building • 1199 8th Ave. • South Haven, Michigan 49090
Telephone (269) 637-0737 • Fax (269) 637-4778

MEMORANDUM

To: Linda Anderson, Zoning Administrator

Cc: Roger Huff, Ron Dotson

From: Larry Halberstadt, PE, City Engineer

Date: March 26, 2014

RE: Site Plan Review Comments
Riverfront Restaurant
515 Williams St

Engineering Department Review:

General Comments Provided

The proposed project consists of a 20 foot wide by 120 foot long by 18 foot high (maximum) floating structure (barge) that will be located in the South Haven Harbor adjacent to Unit 10 of Nichols Landing Condominiums. The single story structure will float on the water of the Black River with approximately 1 foot of draft. 80 foot of the total length will be enclosed with a roof and will house a commercial kitchen, men's and women's restrooms, and a dining/bar area. The remaining 40 feet is open air dining/bar area.

No parking spaces are being proposed with this development. Pedestrian access to the structure will be via timber docks and walkways located within Unit 10 and the General Common Element of Nichols Landing. Additionally, the structure has several mooring points on the northerly side for access from private watercraft. Sheet 1 of the drawings illustrates a minimum clear path width of 36-inches along the pedestrian access from Williams Street. Two gangways will provide pedestrian access between the timber dock and the floating structure. The applicant has acknowledged on the drawing, the possible need to adjust the elevation of the timber dock in the future as necessary to accommodate extreme river level fluctuations while maintaining a gangway slope of 1:12 to meet the requirements of the Americans with Disabilities Act. The drawings also indicate that the side slopes of the timber decking are too steep in some locations and will be reconstructed to meet ADA requirements.

Sewer Department Review:

Approved as Noted

The drawing illustrates sanitary sewer service being extended from Building H of the Old Harbor Village Condominiums to serve the floating structure. It is assumed that the plumbing inside Unit 15, on the ground floor of Building H, will be modified and extended to provide a point of connection for the floating structure. In accordance with the Old Harbor Village Condominium Master Deed, the waste disposal network throughout the project is a General Common Element. This means that all building sewer pipes, drainage pipes, and vent pipes within the boundary of

Memorandum

March 26, 2014

Site Plan Review Comments

Riverfront Restaurant

Page 2 of 3

Old Harbor Village Condominiums are private plumbing owned, operated, and maintained by the Condominium Owners as a whole, represented by their Association.

The Old Harbor Village Condominium Master Deed reserves for Nichols Landing, its Co-Owners, invitees, licensees, guests and assigns, a perpetual easement to utilize, tap, tie into, extend and enlarge all utility mains located on the condominium premises.

It is assumed that sanitary waste will be collected on the floating structure into an ejector sump and pumped from the barge. The drainage plumbing that is extended from Building H should be constructed in accordance with the current edition of the Michigan Plumbing Code. The connection between the barge and land based plumbing should be made with flexible tubing to accommodate elevation changes of the barge due to fluctuating river levels. The applicant will need to work with Old Harbor Village and the Plumbing Inspector to ensure that the private infrastructure within Old Harbor Village is suitable to accommodate the addition wastewater flow generated by the barge.

The applicant must complete the Wastewater Survey for Nonresidential Establishments and Application for Wastewater Discharge prior to connection to the Old Harbor Village plumbing.

Water Department Review:

Approved as Noted

The drawing illustrates water service being extended from Building H of the Old Harbor Village Condominiums to serve the floating structure. It is assumed that the plumbing inside Unit 15, on the ground floor of Building H, will be modified and extended to provide a point of connection for the floating structure. In accordance with the Old Harbor Village Condominium Master Deed, the water distribution network throughout the project is a General Common Element. This means that all water service and water distribution pipes within the boundary of Old Harbor Village Condominiums are private plumbing owned, operated, and maintained by the Condominium Owners as a whole, represented by their Association.

The Old Harbor Village Condominium Master Deed reserves for Nichols Landing, its Co-Owners, invitees, licensees, guests and assigns, a perpetual easement to utilize, tap, tie into, extend and enlarge all utility mains located on the condominium premises.

The water distribution piping that is extended from Building H should be constructed in accordance with the current edition of the Michigan Plumbing Code. The connection between the barge and land based plumbing should be made with flexible tubing to accommodate elevation changes of the barge due to fluctuating river levels. The applicant will need to work with Old Harbor Village and the Plumbing Inspector to ensure that the private infrastructure within Old Harbor Village is suitable to provide adequate drinking water supply to the barge.

A reduced pressure principle backflow preventer shall be installed between the barge and Building H. This backflow preventer must be located in an indoor area to prevent freezing and damage and must be accessible for inspection and maintenance.

Memorandum

March 26, 2014

Site Plan Review Comments

Riverfront Restaurant

Page 3 of 3

Street Department Review:

Approved

Nichols Landing Condominiums do not have direct access to a public street. Access to Nichols Landing is via private easements across adjoining properties. No changes to Williams Street are being proposed with this project.

Attachments

Old Harbor Condominiums Master Deed Excerpt
Wastewater Survey for Nonresidential Establishments

time to time shall be deemed to have irrevocably and unanimously consented to such amendment or amendments to this Master Deed and the Condominium Subdivision Plan as are necessary, in the Association's sole discretion, to effectuate the purposes of this Article VI D as the same may be approved by the Administrator and all such persons irrevocably appoint the Association, its successors and assigns, as agent and attorney in fact for the purpose of execution of such amendment or amendments and all other documents as may be necessary to effectuate the purposes of this Article VI D.

E. The following are easements retained by the Developer and granted to the Co-Owners in Nichols Landing, a condominium:

(1) Roadway Easements: Developer reserves for the benefit of itself, its successors and assigns, and grants to Nichols Landing, its Co-Owners, their licensees, invitees, guests, successors and assigns a perpetual easement for the unrestricted use of all roadways, walkways in the condominium for the purpose of ingress and egress to and from all or any portion of the parcel described in Article VIII and to and from Nichols Landing.

(2) Utility Easements: Developer also hereby reserves for the benefit of itself, its successors and assigns, and for Nichols Landing, its Co-Owners, invitees, licensees, guests and assigns, and all future owners of the land described in Article VIII or any portion or portions thereof, perpetual easements to utilize, tap, tie into, extend and enlarge all utility mains located on the condominium premises, including, but not limited to, water, gas, storm and sanitary sewer mains. In the event Developer, or Nichols Landing, their successors, and assigns, utilizes, taps, ties into, extends or enlarges any utilities located on the condominium premises, they shall be obligated to pay all of the expenses reasonably necessary to restore the Condominium utilization, tapping, tying-in, extension or enlargement.

(3) Parking Easement: Developer grants to the Co-Owners of Unit 9 of Nichols Landing, their invitees, licensees, guests and assigns a perpetual easement for parking on three spaces out of the five (to be designated) parking spaces located immediately to the South of Building A.

(4) Trash Disposal: Developer grants to the Co-Owners of Nichols Landing, their invitees, licensees, guests and assigns the perpetual easement for right to dispose of trash, garbage and similar refuse into the dumpster or trash disposal area located immediately to the East of Building C.

ARTICLE VII

AMENDMENT OF MASTER DEED

A. The condominium documents may be amended by the Developer or the Association of Co-Owners without the consent of Co-Owners or mortgagees if the amendment does not materially alter or change the rights of a co-owner or mortgagee. An amendment which does not materially change the right of a co-owner or mortgagee includes, without limitation, a modification of the types and sizes of unsold condominium units and their appurtenant limited common elements.

B. Except as provided in this Article VII, the Master Deed, Bylaws and Condominium Subdivision Plan may be amended, even if the amendment will materially alter or change the rights of the co-owners or mortgagees, with the consent

CITY OF SOUTH HAVEN
WASTEWATER SURVEY FOR NONRESIDENTIAL ESTABLISHMENTS
AND APPLICATION FOR WASTEWATER DISCHARGE

GENERAL INFORMATION

Date _____

1. Facility name, address, and telephone number:

Zip Code _____ Telephone No. _____

2. Mailing address (If same as above, check []):

Zip Code _____ Telephone No. _____

3. Name, title, and telephone number of person authorized to represent this firm in official dealings with the City:

Name _____

Title _____ Telephone No. _____

4. Alternate person to contact concerning information provided herein:

Name _____

Title _____ Telephone No. _____

5. Identify the types of business conducted (auto repair, retail store, machine shop, electroplating, warehousing, painting, printing, meat packing, food processing, etc.).

6. Provide a brief description of the business conducted at this location:

Number of employees _____ Hours/day in use _____

Standard Industrial Classification Number(s) _____

7. Does this facility manufacture a product? Yes _____ No _____

If yes, list types of products _____

Raw materials _____

(Attach list if you need more space)

8. Are chemicals used or stored onsite? Yes _____ No _____

If yes, attach list with quantities used or stored per year and quantities currently stored onsite. (Note: Do not include maintenance products used only for buildings onsite, such as floor wax, paint, etc., unless products are discharged to sewer.)

DISCHARGES FROM FACILITIES

9. Discharge to sanitary sewer:

	<u>Yes</u>	<u>No</u>	<u>Average Gallons/Day</u>
Domestic Wastes (Restrooms, Showers, etc.)	_____	_____	_____
Cooling Water - Noncontact	_____	_____	_____
* Cooling Water - Contact	_____	_____	_____
* Boiler/Tower Blowdown	_____	_____	_____
* Process Water	_____	_____	_____
* Equipment/Facility Washdown	_____	_____	_____
* Air Pollution Control Unit	_____	_____	_____
* Floor Drains	_____	_____	_____
Yard Drains	_____	_____	_____
Roof Drains	_____	_____	_____

* Attach list of chemicals that potentially could be present in discharge along with average and maximum concentrations, if available.

10. Other Discharge:

Are any wastes from this facility discharged to:	<u>Yes</u>	<u>No</u>	<u>Average Gallons/Day</u>
Storm Sewer	_____	_____	_____
Surface Water	_____	_____	_____
Groundwater	_____	_____	_____
Waste Hauler	_____	_____	_____
Evaporation	_____	_____	_____
Other (describe)	_____	_____	_____

Provide Name and Address of waste hauler(s) if used:

11. Is there a spill prevention control and countermeasure plan prepared for this facility?
 Yes _____ No _____

Note to Signing Official: In accordance with Title 40 of the Code of Federal Regulations Part 403, Section 403.14, information and data provided in this questionnaire which identifies the nature and frequency of discharge shall be available to the public without restriction. Requests for confidential treatment of other information shall be governed by procedures specified in 40 CFR Part 2. Should a discharge permit be required for your facility, the information in this questionnaire will be used to issue the permit.

This is to be signed by an authorized official of your firm after adequate completion of this form and review of the information by the signing official.

I have personally examined and am familiar with the information submitted in this document and attachments. Based upon my inquiry of those individuals immediately responsible for obtaining the information reported herein, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and/or imprisonment.

_____ Date

_____ Signature of Official
 (Seal if Applicable)

BUILDING INSPECTOR

Preliminary Site Plan _____ Final Site Plan

Name of Applicant Joe Wilgen

Address of Applicant 519 Virginia Ave South Haven, MI

Applicant Telephone No. (269) 208-4687

Project Name (if any) River Boat Restaurant Project

Brief Project Description RESTAURANT FACILITY ON FLOATING BRIDGE (CAN BE MOTORIZED)

Plans have been reviewed and found to be: _____ Acceptable Unacceptable

If unacceptable, explain: Need 44" MIN CLEAR EXIT PATHS (Too narrow

AT OLD STAIR AT EAST END OF WALKWAY) VERIFY WALKWAY WIDTHS
ALONG ENTIRE WALKWAY... LOOK TO SHOW GUARD RAIL
Other comments/recommendations: DETAILS ALONG OPEN SIDE OF WALKWAY

Prior to start of construction
* Construction Details needed on Dock/Walkway
 Repair/Renovation
* Detail needed on wheelchair lift

Review performed by Ron [Signature]

Date 3-24-14

SITE PLAN REVIEW

Preliminary Site Plan

Final Site Plan

Name of Applicant: Joe Wiltgen

Address of Applicant: _____

Applicant Telephone No: _____

Project name, if any: Barge Restaurant

Project location: South Of the Idler on the black river

Brief project description: to build a floating Restaurant

Are fire hydrants available at the site? Yes No
Comments: _____

Is water pressure adequate for the project? Yes No
If no, explain: _____

Does project layout provide easy access for fire protection? Yes No
If no, explain: project is a barge on the river behind a large structure

Are the proposed plans acceptable to the Fire Department? Yes No
If no, explain: _____

Other comments / recommendations:

further information will be needed as to fire detection systems, also emergency lighting and exit marking.

Review performed by Tony Marsala Sr Date 04-02-2014

Electric Dep't Review

Linda Anderson

From: Bill Conklin
Sent: Monday, March 24, 2014 4:53 PM
To: Linda Anderson
Cc: Larry Halberstadt
Subject: Barge Restaurant Site Plan Prelim Review



Site Plan Review
Barge Restaur...

Linda,

My comments are shown above. Basically I'll need some more information to determine a cost estimate and to see whether or not electric service is feasible. There could be some right-of-way issues and difficulties boring under stuff should cable be required in larger conduit. I'll know more once an electrical design plan for the barge is completed by the developer. Also, a transformer upgrade is a real possibility due to the number of services already being served by the same transformer..

Thanks.
Bill

City of South Haven
Site Plan Review
Electric Department

Preliminary Site Plan Final Site Plan

Project name, if any Barge Restaurant
Project location Old Harbor on William Street
Brief project description Electric Service

Is primary electric available at the site? Yes No
If no, distance of extension needed? Can't answer because Requirements aren't specified

Will lines or poles have to be relocated? Yes No
If yes, explain: _____

Responsibility for extension or relocation costs: City Developer
Comments: Secondary Single Phase is available but a Padmount Transformer

Will a cost estimate for work be needed by the City? Yes No upgraded may be required depending on the size of electrical needs
If yes, explain: New Service is Rebate Eligible

Does the City have an easement for the existing primary lines? Yes No
If yes, describe: Easement along Williams Street

Is the easement shown on the plans? Yes No

Will the developer need to provide an easement for an extension or relocation? Yes No
If yes, required length: Unknown See asterisk above Required width: General Primary easement is 10'

Is a service request form required? Yes, attached No Electric Permit

Are street lights requested? Yes No

Are plans, as submitted, acceptable to the electric department? Yes No
If no, explain: Need Electrical Load Requirements for Commercial Service

Additional comments/recommendations: Please specify maximum load, Secondary Voltage Required, Number of Phases
Please provide electric plans to determine if hook up is feasible

Review performed by BIN Cowblow Date 3/24/14

April 2, 2014

TO: Linda Anderson

FR: Paul VandenBosch

RE: 515 Williams Street Site Plan Review (Restaurant Barge)

In reviewing the request to place the restaurant barge, I am referring to Chapter 38 of the South Haven Code of Ordinances, Harbors and Waterways, and Ordinance #740, known as the "Harborline Ordinance".

Ordinance #740 establishes project lines and states that no development shall extend past the project lines. Section 38-4(2) of the Code of Ordinances prohibits any structure from extending past dock lines. Section 38-4(8) prohibits any encroachment upon established harbor lines.

A watercraft or vessel may be moored so as to extend past the project line. In the case of a commercial business which invites customers on board a vessel, the US Coast Guard has the authority to inspect and certify vessels as suitable for carrying passengers. The US Coast Guard has determined that watercraft which are moored and connected to land and not able to easily get under way are "land structures" even though they may be floating.

A vessel that invites passengers aboard for commercial operation must either be licensed to carry those passengers by the US Coast Guard, or it is considered a land structure.

The proposed restaurant barge appears to fall under the land structure definition of the US Coast Guard. As a land structure, it is subject to the project line limits imposed by the South Haven City Code.

Staff Recommendation:

Recommend to Planning Commission denial of the site plan review because the proposed restaurant barge appears to be a land structure that extends past the project lines as established by the City of South Haven.

POLICE DEPARTMENT

Preliminary Site Plan Final Site Plan

Name of Applicant Joe Wiltgen

Address of Applicant _____

Applicant Telephone No. _____

Project Name (if any) _____

Brief Project Description Barbe Restaurant

Plans have been reviewed by the Police Department and found to be: Acceptable Unacceptable

If unacceptable, explain:

Other comments/recommendations:

Review performed by (Please print) Thomas Martin Date 3-24-14

ROBERT P. COOPER

A T T O R N E Y A T L A W

MAILING ADDRESS:
P.O. BOX 3316
GRAND RAPIDS, MI 49501-3316

BRIDGEWATER PLACE
333 BRIDGE, N.W. • SUITE 1120
GRAND RAPIDS, MICHIGAN 49504

TELEPHONE 616/235-8802
FACSIMILE 616/235-8804
EMAIL • COOPLAW@ISERV.NET

March 28, 2014

Via email to JWilco1@hotmail.com

Joe Wiltgen
JWilco Properties LLC

Re: Proposed Barge Restaurant
515 Williams St, #2, South Haven

Dear Joe:

You asked me to review the Memo dated March 27 from Paul VandenBosch to Linda Anderson and the City Code provisions referred to in the Memo. The Memo concludes that if the USCG deems the proposed restaurant barge to be a permanently moored vessel, then it becomes a land structure. Under the City Code sections cited in the Memo, the Memo concludes that a land structure cannot extend past the City project lines.

I disagree with the Memo's conclusion. The Memo states: "If the barge restaurant receives a certificate of inspection from the USCG to operate as a vessel, it would be considered a vessel, and not a structure." This is wrong. USCG does not define what a "vessel" is; the City Code does. Sec 38-1 defines Vessel as a watercraft used or capable of being used as a means of transportation on water. USCG inspection has absolutely no bearing on whether or not it is a vessel.

The vessels you propose to use for your barge restaurant have been constructed and are currently used as "land barges" on inland waters to store and transport materials. They are not motorized and are either tied to or guided by tugs. Land barges are not inspected by USCG. There is absolutely nothing in Chapter 38 of the South Haven Code (Harbors and Waterways) which says that if the USCG finds that a vessel is permanently moored, its legal character changes from a vessel to a structure. That is an *interpretation and opinion*, and I suggest it is not correct, and not based on City Code.

Sec 38-4(2) is also relied on as a basis for stating that a permanently moored vessel cannot extend beyond the City project line. That section states (underlining is my emphasis):

No person shall drive any piles or deposit any timber, stone, or other substance or structure so as to project above or below the surface of the waters of the harbor or any part thereof, or beyond the established dock lines, without written permission of the City.

For this section to apply, permanently mooring a vessel to a dock has to be considered as a "deposit of a structure" beyond the established dock lines. The barges float on the surface water. They are not "deposited" into the river bed like timber, stone, or other substances. The Memo is a really strained interpretation of Sec 38-4(2), and I suggest it doesn't make any sense at all.

The Memo also uses Ordinance #740 as a reason that a barge permanently moored to the dock cannot extend beyond City project lines. Again, I believe that is an incorrect *interpretation and opinion*. The definitions in Section 1 indicate what the Ordinance refers to: a "Headock" is a structure typically constructed parallel to the project line so as to provide watercraft mooring or fingerpier access capability. "Finger Pier" is a type of structure either floating or permanent that typically extends perpendicular to the headlock or shoreline and is used for mooring watercraft. "Project line" is a line within the river approximately parallel to the nearest shoreline beyond which no structure may extend. The only two "structures" defined in the Ordinance are Headock and Finger Piers. The Ordinance does not say that a vessel permanently moored to the Headock becomes part of the Headock structure and may not extend beyond the project line.

Even if the Memo correctly interpreted this Ordinance, Section 38-4(2) also specifically permits you to have a structure beyond the established dock lines if you obtain written permission from the City. Since Section 38-4(2) was adopted in 2001 and Ordinance #740 in 1990, the 2001 ordinance would control. The City has the ability to permit a structure beyond the project line. I suggest that you discuss with the City what procedures exist for you to obtain written permission to moor your barges to the dock so that you can proceed with your proposed use.

Let me know if you have any questions.

Very truly yours,



Robert P. Cooper



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April 4, 2014

***CONFIDENTIAL—SUBJECT TO
ATTORNEY-CLIENT PRIVILEGE***

Via Email & U. S. Mail

Paul VandenBosch, Assistant City Manager
City of South Haven
539 Phoenix Street
South Haven, Michigan 49090

Re: Proposed Restaurant Barge

Dear Mr. VandenBosch:

JWilco Properties, LLC, recently applied for site-plan approval¹ for a restaurant on a floating barge. The barge would be continuously moored to a dock on the Black River. You have asked whether it is legally permissible for the barge to overhang the City's established harbor lines. You would also like to know whether the proposed barge is subject to inspection under the Construction Code.

Your first question requires us to interpret several ordinances relating to City harbors. Ordinance #740 establishes harbor lines on the Black River and provides that:

In no case may any development upon the Black River extend into the river past the [harbor]² lines as developed by the City of South Haven.

Section 38-4 of the City Code lists general regulations for City harbors, including harbors on the Black River. It provides in pertinent part:

(2) *Piles or structures.* No person shall drive any piles or deposit any timber, stone, or other substance or structure so as to project . . . beyond the established [harbor] lines.

(3) *Mooring.* No vessel, craft, or float shall be moored or anchored in the harbor or laid up alongside any dock or wharf in such a manner as to prevent the passage of other vessels, craft, or floats.

¹ Notably, the restaurant is subject to site-plan approval because it qualifies as a new "use" for purposes of the zoning ordinance. *See* Zoning Ordinance § 201.21.

² City ordinances use inconsistent terminology for the lines established by Ordinance #740, referring to them as "harbor lines," "dock lines," and "harbor project lines." For the sake of clarity, this memorandum refers to the lines uniformly as "harbor lines."

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(8) *Harbor lines*. No person owning, leasing or in possession of a premises abutting on the harbor shall encroach upon the harbor lines . . . except as permitted [as a preexisting use].

As in all statutory interpretation, these provisions must be read together and harmonized if possible.³ The primary goal of interpretation is to give effect to the intent of the drafters.⁴ There is a presumption that when an ordinance addresses a certain topic, the discussion of that topic is intended to be all-inclusive.⁵

After reading the ordinance provisions together, we think the best interpretation is that the harbor lines do not apply to continuously moored watercraft. Moored watercraft are expressly addressed in a provision entitled “Mooring.” That provision does not mention harbor lines and does not distinguish between continuously moored and temporarily moored watercraft.⁶ Instead, it simply states that watercraft should not be moored in way that interferes with navigation. Under ordinary principles of interpretation, we can presume that the mooring provision is all-inclusive and that moored watercraft therefore are not subject to the harbor lines.

This interpretation is in harmony with the other ordinance provisions. As noted above, the ordinances prohibit depositing substances and structures beyond the harbor lines. The plain meaning of the term “deposit” does not include the placement of a floating object in water.⁷ Accordingly, it appears that this restriction was intended to prevent unseen hazards to navigation lying at the base of the riverbed.

The ordinances also prohibit “encroaching” on the harbor lines. Standing on its own, the term “encroach” might be reasonably construed to prohibit the placement of *any* object beyond the harbor lines. When viewed in context, however, it appears that term should be construed more narrowly so as to apply only to docks, wharves, and other structures actually constructed on the shore. The ordinance establishing the harbor lines repeatedly refers to “construction” and “development.” It also includes definitions of several structures that are typically constructed in a harbor, such as headocks and fingerpiers. In our opinion, the mooring of watercraft – even if semi-permanent – is conceptually distinct from the construction activities that the harbor lines are intended to address.

³ *Clexton v Detroit*, 179 Mich App 209, 214 (1989).

⁴ *Detroit Fire Fighters Assoc v Detroit*, 127 Mich App 673, 677 (1983).

⁵ This principle is known by the Latin phrase *expressio unius est exclusio alterius*, meaning “the expression of one is the exclusion of the other.”

⁶ For purposes of interpreting a City ordinance, it does not matter whether U.S. Coast Guard regulations now distinguish between these uses. As noted above, the goal of interpretation is to determine the drafters’ intent. Other authorities are relevant only to the extent that they informed the drafters’ use of terminology or phrases.

⁷ A common definition of deposit is “to let fall (as sediment).” *See, eg*, Merriam Webster’s Collegiate Dictionary, p. 311 (10th ed).

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In sum, we interpret the term “encroach” narrowly so as not to create additional restrictions on the mooring of watercraft. Accordingly, it is permissible for a continuously moored watercraft to extend beyond the harbor lines, so long as it does not interfere with navigation.

Your second question asks whether the proposed barge restaurant is subject to inspection under the Michigan Construction Code, which applies to buildings and other structures throughout the state.⁸ The term “structure” is broadly defined to mean:

That which is built or constructed, an edifice or building of any kind, or a piece of work artificially built up or composed of parts joined together in some definite manner. Structure does not include a structure incident to the use for agricultural purposes of the land on which the structure is located and does not include works of heavy civil construction including, but not limited to, a highway, bridge, dam, reservoir, lock, mine, harbor, dockside port facility, an airport landing facility and facilities for the generation, transmission, or distribution of electricity.⁹

This definition is broad enough to encompass barges and other watercraft with interior cabins.

As you have correctly noted, the U.S. Coast Guard traditionally inspected barges and other watercraft pursuant to its jurisdictional statute, which provides for the inspection of 15 specific types of “vessels.”¹⁰ The Coast Guard program completely occupied the field of vessel inspection, meaning that state and local authorities could not lawfully inspect vessels as structures under the Building Code.¹¹

In 2009, the Coast Guard reexamined its jurisdictional statute and determined that “permanently moored” watercraft do not qualify as “vessels,” since they are not practically capable of being used for transportation on water.¹² Accordingly, the Coast Guard adopted a new policy for determining whether a watercraft is a vessel. Whenever there is uncertainty regarding the status of a watercraft, a Coast Guard Officer in Charge, Marine Inspection (“OCMI”) examines the craft and makes a determination based on the totality of the circumstances. The following list of questions assists the OCMI in the evaluation process:

1. Is the craft surrounded by a cofferdam, land or other structure, such that although floating, it is in a “moat” with no practical access to navigable water?

⁸ The Construction Code is adopted by administrative rule pursuant to the Stille-DeRossett-Hale Single State Construction Code Act, 1972 PA 230, as amended, MCL 125.1501 *et seq.*

⁹ MCL 125.1502a(b)(b).

¹⁰ 45 USC § 3301.

¹¹ *See, eg, California Federal Savings & Loan Ass'n v Guerra*, 479 US 272, 281 (1990) (explaining that state law cannot be applied when federal law leaves no additional room for regulation).

¹² 74 FR 21814 (May 11, 2009).

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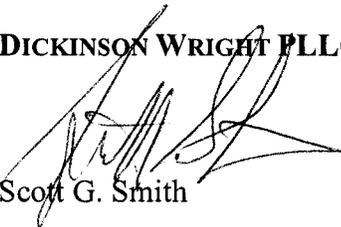
2. Is the craft affixed to the shore by steel cables, I-beams or pilings, or coupled with land based utility connections for power, water, sewage and fuel?
3. If the craft were operated in navigation, would it be thereby endangered because of its construction?
4. What is the purpose, function, or mission of the craft?
5. Can the craft get underway in less than eight (8) hours?¹³

We understand that the proposed restaurant barge would have land-based utility connections for power, water, and sewage. Although it would in theory have access to the Black River, it may be tethered to the dock in a manner that makes it difficult to get underway. It appears that the barge would be used solely as a restaurant and not for any other purpose. Accordingly, we think that an OCMI might determine that the proposed barge is not a vessel subject to Coast Guard inspection. This means that federal law would no longer provide for inspection of the barge, and the City would be free to inspect it as a structure under the Michigan Construction Code.

We trust that this memorandum sufficiently responds to your inquiry. Please let us know if you have any further questions or would like further assistance.

Sincerely,

DICKINSON WRIGHT PLLC



Scott G. Smith

CNC/jlm
c: Brian Dissette

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¹³ *Id.*