

Planning Commission

Regular Meeting Minutes Thursday, May 1, 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: Frost, Heinig, Peterson, Wall, Webb, Paull
Absent: Miles, Smith

Motion by Wall, second by Frost to excuse Miles and Smith for personal reasons.

All in favor. Motion carried.

3. Approval of Agenda

Motion by Wall, second by Heinig to approve the May 1, 2014 Planning Commission regular agenda as presented.

All in favor. Motion carried.

4. Approval of Minutes – Regular meeting February 6 and workshop meeting March 6, 2014

Motion by Wall, second by Peterson to approve the February 6, 2014 regular meeting minutes and the March 6, 2014 workshop meeting minutes as written.

All in favor. Motion carried.

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

None at this time.

6. New Business – Public Hearings

At the request of Chairperson Paull, Anderson read the adopted rules for holding a public hearing.

Motion by Wall, second by Frost to open the public hearing.

All in favor. Motion carried.

a. Request from Gary Barner, of Barner Farms, South Haven, to operate a seasonal farm market at 708 La Grange Street.

Gary Barner, 65245 County Road 388, South Haven: Stated he wants to set up a seasonal produce market on the old Max 10 property.

In response to questions, Barner described a carport structure divided in thirds with two-thirds sale space and one-third enclosed space for storage of leftover produce and sales tables, etc. so he will not have to transport all of it back and forth daily. Stated he would be selling his own locally grown produce, such as corn, green beans and tomatoes. Will be open seven (7) days a week from 11:00 a.m. to 7 p. m.

Paull called for public comments on this issue. There were none.

Motion by Wall, second by Heinig to close the public hearing.

All in favor. Motion carried.

Anderson read the standards and recommended approval, with stipulations as outlined in the staff report, stating that the request complies with Sec. 1510.13.

Anderson noted there are no particular special conditions for farm markets listed in the ordinance. Since the applicant wants to run the farm stand for more than four (4) weeks a special use permit is required. Neighbors who called were agreeable and happy to see the stand proposed.

Paull called for discussion by the commissioners.

Peterson asked about parking. Wall likes the proposal and complimented the applicant on his delicious corn. Paull had questions regarding the fireworks stand that is usually there.

Anderson noted that the ordinance allows two uses and since the Max 10 building is currently empty, a fireworks stand could go in also. Anderson also pointed out that she has approved a few firework stand requests in other locations already this season.

Motion by Wall, second by Peterson to approve the special use request for Gary Barner of Barner Farms with the following conditions:

- 1.) The setback for any tents or covers shall be at least 15 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 afterhours.
- 5.) Only one sandwich board sign is permitted on a property.

All in favor. Motion carried.

b. Request from John and Vickie Hannigan to construct an inground pool at their property at 711 North Shore Drive.

Frost stated that he may have a conflict of interest in this proposal and asked to be excused. Motion by Wall, second by Heinig to recuse Frost from this particular item. All ayes.

Motion by Heinig, second by Wall to open the public hearing.

All in favor. Motion carried.

Paull requested that the applicant present his request.

John (Jack) and Vickie Hannigan, 7981 Whiteburn Drive, Ada Michigan, and also own a condo in South Haven, purchased this property in January 2014 and would like to build a home on that property with a walkout story and request to build a pool on that property. Applicant feels this is the best place to put the pool; they have gone through the standards and made sure what we have designed is esthetically pleasing and according to the standards.

Paull asked the basic elevation of the pool deck.

Paul Fikse, Architect, Visbeen Architects, Grand Rapids, Michigan. Referring to a three-dimensional rendering of the proposed house and pool, determined that six hundred ten feet (610') is the street level and the pool is at about six hundred five feet (605') approximately. Fikse noted that adjacent homes are at about six hundred ten feet (610').

Peterson asked how far the pool extends over the bluff.

Hannigan noted the bluff is sloped so the lower level of the house is about ten feet (10') into the ground with the pool at the lower level, but there is still another drop-off and the ground will be graded and tiered.

Paull noted that there is a natural bluff line along there; "How far beyond that does the pool extend?"

Fikse pointed out that the pool is below the level of the first drop-off. The height from grade to the pool deck is about ten feet (10') from current grade, which is basically the depth of the story of the lower level. The pool is an edgeless pool and the fencing is down from the level of the pool, taking it out of the view of his client and the neighbors. When someone is sitting in the neighbor's yard the pool will not be visible. Similarly with the neighbors to the north, you also cannot see the pool when sitting in the neighbor's yard.

Hannigan feels this is a beautiful community and a beautiful piece of property and they are trying to develop something that fits properly into the property and feels it is something that can make the community proud. The architect looked at the project from the ordinance perspective, which states pools may be located in the side yard, which in this case would be the south side (since you wouldn't want a pool on the north side), and the pool would also be in the neighbors' side yard. The requested rear yard location, Fikse feels, is a benefit to all.

Paull asked for public comment.

David Wagner, 1337 Walters, Northbrook, Illinois, summer resident at 701 North Shore Drive for fifty-five (55) years. Stated that his family would love to tell the new neighbors all about how the pool should be and what color their house should be and that is not relevant. The factors Wagner feels are relevant are the environment, ecology and erosion factors. Stated that he remembers when the water was up against the bluff and his family put a steel protecting wall up because of concerns that the house (located to the south of the applicant's property) would slip into the lake. He suggesting that the applicant move the pool away from the lake for looks and because when things are so close to the bluff, when you look out, the neighbors would be seeing the neighbors. Thinks the planning commission should consider keeping things further away from the bluff. Feels the property will be devalued due to the view being obscured.

Cynthia Koch, 545 Sixth Street, Ann Arbor, Michigan and 717 North Shore Drive. Stated she is opposed to the pool for the following reasons: The natural beauty of the lake and the bluff will be spoiled for her and the twenty-four (24) families she rents to each year and for the people who walk by on the beach. The pool will be visible to anyone on the deck as they have an elevated porch. The artificial blue of pools will contrast to Lake Michigan's color, which changes constantly. Koch noted the pool will be seen from our deck, porch, front yard, steps and "aqua blue will be ever present when we are not inside. I don't know if you can imagine the bluff now but it is pristine with sea grasses, beautiful trees, lined with Victorian and Arts & Crafts houses. We live where we do have lots of pools and none are located in the front yard." Koch stated that she was told the lake side was the front yard; asked if there are other pools in front yards that are not on the beach. Stated that currently there is no noise except the lake noise and she is concerned that this will be a noisy place. If the pool were on the street side Koch could retreat to the lake side.

Paull stated that the lake side is not a front yard. Koch said Miss Anderson told her that. Anderson disagreed, noted that she would never have said that because the front yard issue is clearly stated in the ordinance. Anderson noted that due to confusion over the front and back yards on waterfront properties, the ordinance was amended recently, but before she worked for the city.

Dan Able. 8717 North National, Niles, Illinois. "When they drain the pool where is the water going to go? Into storm sewers or down the bluff, which will erode?" He is also concerned about safety, the fence around there and what they are going to do. They do not live here year round and wildlife and children may get in there. Pools are an attractive nuisance according Mr. Able.

Paull asked if the applicant had answers to any of the questions.

Hannigan stated that he had the property inspected by Prism Engineers; "it is not high risk or critical dune." Noted that the house is located according to regulations so as not in front of property lines; intentionally made sure the pool is not in the view of the neighbors. Stated that regulations were followed and that they are quite sensitive to the issue of noise. Hannigan noted they don't have a large family; they live in a condo and are very familiar with pools and noise. Stated they plan to live in this home up to nine (9) months a

year, maybe even twelve (12) months. Hannigan pointed out that they will be here in South Haven more often than many of the folks that may be around them.

The pool will have an automatic cover as well as the fence which will be in compliance with local and state ordinances regarding the enclosure of a pool according to the architect.

Cynthia Koch requested another opportunity to speak. The planning commissioners allowed her three (3) more minutes. She noted that the applicant said that putting the pool in the side yards would impact neighbors more than on the lake side, but she has an issue with why the street side, which is the back yard, was not considered. Per Paull, street side is the front yard and pools are not allowed in the front yard anywhere in the city.

Koch would like to see where the stair steps are which would give a clearer picture of the level of the pool. Has a question about the fence but will save that.

Dan Able requested permission to speak a second time. Stated the erosion zone comment by the applicant is incorrect. Says he has lived here for years and the pool is going to cause major erosion problems when it is drained.

Anderson clarified that high risk erosion districts and areas are designation by the DEQ (Department of Environmental Quality). The city does have some high risk area, but most are on the southern end of the city where Monroe Boulevard meets the city limits. This is not a high risk area, according to the DEQ.

Paull reiterated that this is true.

Jeff Segard, Contractor/Builder. Stated that this pool never gets completely drained; it is only drained down a little but the majority of the water is left in for the winter.

With no further comments offered, there was a motion by Heinig, second by Wall to close public hearing.

All in favor. Motion carried.

Paull called for discussion by the commissioners.

Motion by Wall, second by Heinig to recuse Frost from this particular item.

Wall stated that other pools have been built on the bluff before; "Is this equivalent to what we have seen before?" Anderson stated that she did not see a lot of difference; the issues are what they often hear, with the exception of the bluff issue. The property owner addressed the standards that applied. Addressing the standards of zoning ordinance section 1502, Anderson stated she did not find that there was anything that would be inconsistent with the surrounding area. She stated that this body has approved other pools along the lakeshore. There is noise even when there are families there without a pool. There should be no additional strain on public services. Application as submitted meets the site plan requirements of Article 4. The plans show the required fencing

according to zoning ordinance and the building code. The applicant will need a building permit, obviously.

Peterson stated that he can relate somewhat to the neighbors because he grew up on North Shore Drive and his parents still live there. Neighbors have a pool on the bluff, which is a little higher, they knew there was not going to be an obstruction, it doesn't look good and there is noise, but there are guidelines. Peterson stated he is not a fan of this himself, as suburbanization of the lakeshore, but that is neither here nor there. "Is this within the guidelines? It is." Peterson was out there and looked at it from all angles, was concerned with it being at the level of the house, but the house is going to be lowered. There is concern being voiced about not seeing the lake and lighthouse but seeing or hearing other people instead. The way it has been situated Peterson does not think it is going to be an issue.

Motion by Wall, second by Heinig to approve John and Vicky Hannigan's request to construct and in-ground pool at their property at 711 North Shore Drive.

Paull informed that the applicants will have to conform to all building codes and all other requirements, which will be scrutinized as the project goes along.

Wall: Wants the neighbors to know "we hear you, but it is no different than anywhere else in the city, there will be noise and laughter, but you have the biggest pool and noises right there on the beach. I understand you are concerned about the noise and the beautiful bluffs. Our bluffs are changing, times are changing and when people buy property their vision may be different than yours, or than the Planning Commission's views. That doesn't make yours wrong or theirs wrong." Wall expressed hope that the neighbors would form relationships, be neighbors; "Don't let this ruin a potential friendship."

Paull called for a vote.

All in favor. Motion carried.

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.

Motion and second to recuse Peterson due to conflict of interest.

All in favor. Motion carried.

Anderson introduced the request. This is a permitted use which does not need to provide parking because it is a water front business and they are exempted from parking. This request has been considered by the Harbor Commission and the Harbor Master and both recommended approved.

The access to the barge and other concerns have been reviewed by the city engineers, fire department and police department. The owner is currently working with the building official on final plans. There are utility connections to be determined but are allowed. The barge will be barrier free and it will connect to the dock. The applicant owns the dock the barge abuts. All reviews are completed; staff sought an attorney opinion and has been in

much contact with the Coast Guard. The building official has also been in contact with the state construction bureau for guidance in reviewing a water based structure. Anderson recommends that the site plan be approved with the conditions.

Heinig asked if stipulation #4 has been taken care of. Anderson explained that the initial recommendation of the Harbor Master was to deny the application. Since that, with further review, the Harbor Master changed his recommendation and that has all been taken care of.

Paull invited the applicant to speak.

Joe Wiltgen, 519 Virginia Avenue. Wiltgen says the plan is to bring a barge in next week and the restaurant will be built onsite.

Paull asked for a clarification regarding the parking issue. Anderson said that when Wiltgen moved from the dock to the barge that removed the pressure from the issue of parking.

Motion by Wall, second by Frost to approve the site plan for the barge restaurant on the Black River, upriver of the Idler with the following four conditions:

- 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 building inspector requires that the plan show guardrails and maintain 44 inches of clear pathway along the length of the dock. Also work with the engineer and building official on plans for dock reconstruction prior to the issuance of any permits.

All in favor. Motion carried.¹

8. Commissioner Comments

Wall – none
Peterson – not one
Heinig - none

¹ The site plan approval by the planning commission is the last approval step required by a board, commission or council for this project. The restaurant is a permitted use in the B-3 Waterfront Business Zone and permitted uses only need site plan approval by the planning commission and that decision is final. Off-street parking is not required because the restaurant on a barge is considered a water-based use under zoning ordinance section 1800, 12-h, 1.

The applicant will need to obtain building code permits from city code officials as well as utility connection approval from the city engineer. Other miscellaneous reviews will be needed as the project progresses and both the applicant and city staff will be overseeing to make certain the codes and regulations of the city are met with this project.

Webb - none
Frost – none

Paull noted the commission has been working on a number of amendments to the city code in committee; “If anyone is anxious for anything to be done by the end of summer, it probably won’t happen this season.”

Anderson noted that Paull is referring to the noise ordinance; there will be sweeping changes coming, the subcommittee has met with the mayor, police chief, major owners of Old Harbor Village and the executive director from the Housing Commission, since they have two big units near the water. Police Chief advised that if we cannot have something in place by Memorial Day to wait until next year.

Paull said the police department provides significant noise education to local businesses prior to the season and if we try to change things now it will be confusing for both the business owners and the police officers. The city will wait until fall to enact anything. He added that the new ordinance will be much easier to enforce.

It appears the vendor ordinance only has one or two changes.

Council has also asked the planning commission to look at the animal control ordinance.

All proposed amendments will come back to the Planning Commission for review, public hearings and for the commission to make recommendations to City Council, which will probably occur in the fall.

Anderson noted that there is no business for next month at this point.

Paull is putting his two (2) cents worth in regarding the animal ordinance; the request for review is based on one complaint; the complaint has been addressed through the police but his objection comes from people wanting to require that pet owners build a fence around their back yard and requesting breed-specific ordinances. Paull stated he has issues with breed-specific ordinances because one of those breeds being targeted is the pit bull; Paull’s pit bull is diabetic sensitive and he needs the dog. The sub-committee will review it to see if the ordinance needs to be effectively changed and it will be brought to the Planning Commission later. Paul thinks it is an overreaction to one incident.

9. Adjourn

Motion by Wall, second by Peterson to adjourn at 8:05 p.m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom
Recording Secretary