

# Planning Commission

## Regular Meeting Minutes Thursday, October 6, 2016 7:00 p.m., Council Chambers



City of South Haven

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

### 2. Roll Call

Present: Bill Fries, John Frost, Clark Gruber, Suzanne Loafman, Steve Miles, Dave Paull, Brian Peterson, Larry Heinig

Absent: Judi Stimson

Motion by Gruber, second by Loafman to excuse Judy Stimson.

All in favor. Motion carried.

### 3. Approval of Agenda

Motion by Gruber, second by Miles to approve the October 6, 2016 Regular Meeting Agenda as presented.

All in favor. Motion carried.

### 4. Approval of Minutes – September 8, 2016

Motion by Peterson, second by Loafman to approve the September 8, 2016 Regular Meeting Minutes as written.

All in favor. Motion carried.

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

**Dorothy Appleyard**, 806 Wilson Street. Spoke about the rental ordinances having some good and some not so great outcomes. Requested that the ordinance be reviewed and numbers reduced.

Elaine Herbert, 140 N Shore Drive. Spoke about her tenure on the Planning Commission, protecting neighborhoods and her unanswered questions about a project in the city.

Pat Gaston, 97 Superior Street. Spoke about our community, as a place for people to live, have churches and non-profits, schools, hospitals and doctors, being over.

## **6. New Business – Site Plan Review**

### a) 132 Northshore Drive

Kate Hosier, Assistant City Manager. Noted she is here in place of Linda Anderson, and we are here for a site plan review in the RM-1 (multiple-family residential) zoning district. Confirmed that a duplex house is permitted in this zone; that the engineering review has been done and that occupancy in the case of short-term rental is capped at 16 as of January 1, 2017. Staff has completed all reviews and one of our city attorneys is here, Catherine Mish.

Michael Burnett, Owner of the property at 132 North Shore Drive. Stated the property has been for sale at least four years and was in such decrepit condition, so dangerous, that the seller would not let him set foot in there until he had closed on the property. Burnette stated the property was sorely in need of help and no one was stepping up to the plate. The setbacks were barely four feet in the side yards and rear; nowhere near what the Zoning Ordinance requires. Stated he is trying to take something that was in need of help and out of compliance and bring something in that fits perfectly, so worked diligently with a local architect and the city's planning/zoning department and city engineer.

Darren Malek, Attorney for Burnett, noted he has a South Haven office. Stated he has reviewed quite a few letters which he is not sure how to address. "The project appears to be completely in compliance with building and zoning ordinances; the project has been curtailed by decreasing bedrooms to four per unit for a total of eight; that parking is three per unit for total of six." Malek made some observations regarding things that could be done, such as landscaping and fencing, but there is an issue as to parking if you invade the parking area too much. Malek determined there would need to be a determination regarding proper turning radiuses for vehicles as the driveway is just sufficient size to meet what the city engineer wants to see and suggested fencing.

Malek noted that based on the letters he has read, that he understands people feel very strongly about their community. Pointed out that there are two categories, both with their own commercial competing interest. One being a Bed & Breakfast, a business under a different ordinances and requirements, so the complaints raised need to be viewed through that lens. Second is a condominium development, and while there were several letters sent, it is easy to see that it is just one letter and observed that those condos themselves are offered for rent. Malek pointed out that while concerns may have validity, the concerns are of a commercial interest, not totally just neighboring concerns. On North Shore Drive, both on north and south, east and west, there are condominium buildings abutting a public beach; the very nature of this corridor, as reflected in the zoning, is entirely consistent with this type of use. My client has been diligent trying to curtail this to something reasonable. There were concerns expressed about party houses. Malek stated he would need to see documentation related to this. "I can't speak to what people believe they have personally observed. But in those letters I didn't see people giving their own personal experiences with the property. What we do have the benefit of is the police reports, which reflect doggedly anonymous callers. The typical protocol is to ask for the caller's info, but those reports remained anonymous, it was a decision someone made not to put their name out there. The

police went personally on site; they take this seriously; they are also members of this community, acting on behalf of all citizens. The officer observes there were no issues and there was no basis for issuing a citation. I take that officer at their word, they have every interest in enforcing the law, there were no warnings issued, either. That didn't happen here. The second call on one evening the officer also made the same determination. My clients have taken a building that was in deplorable condition, had low value from a taxable standpoint, the owner was a transient user." Malek noted that his client did not replace a resident with this duplex, but is replacing something of this nature with something similar, but greatly improved.

Malek also observed, "This is not something that has people trying to slap up the cheapest structure, this is not that. As a casual observer of construction costs, just the driveway configuration with drainage and piping, is very expensive, which they are voluntarily doing. My client reduced bedrooms; that's not being 'just about the money'. This is something they've done; tried to work with everyone as much as possible. These same good folks have been assisted by an architect who is from this community, and have come before you, based on their interests, against others who compete, but trying to positively support the community.

Peterson asked, for clarification, "You are not selling these, but offering them for rent? You know the occupancy limits?" Peterson said the laundry room has an egress window. It was noted that the occupancy limit is not a suggestion.

Burnett stated, "We at this point, anybody who rents, is practically hit over the head with the requirements. And I have no tolerance for people bringing in more than the occupancy. We do have a local person who is our agent."

Malek noted that Julia Burnett has said, as others have, they have their own rules that they developed before this ordinance came along and have contemplated, they have and would express the occupancy limits and empower the agent to remove the tenants. They would immediately take action. Malek noted that his expectation is that in such a situation he would be getting a phone call.

Burnett explained that the laundry room has a window as a matter of convenience; natural light is nice to have and that the laundry equipment was moved in there purposefully so it would be clear that the function had changed. "The occupancy of sixteen is set by the city. I may want to have the occupancy lower than that."

Gruber and Loafman commented on the occupancy limits and their interpretation of those limits. Loafman referenced Sec. 10-244 (d) and stated that the occupancy is limited to 12. while Mish stated the commission is not here to discuss the approved occupancy, noting that is for city staff to do later. "You are here to approve the layout for the duplex." Gruber wants to make sure the applicant understands that this particular property occupancy is lower than 16.

Heinig opened the floor to take citizen input and spoke about the time limit, noting personal attacks are not helpful and will not be allowed.

Tim McKay. 130 North Shore #9. Established that he grew up in South Haven and has returned to South Haven; that he bought property here to retire and that he doesn't rent his

property. Stated that this issue is a symptom of the bigger challenge, the bigger problem. "Thank you for questioning whether it's occupancy of 16, 14 or 12. That matters to us. We live here. These folks don't plan to live there; it is strictly a business proposition." Spoke about enforcement only being possible with an onsite presence. Asked commissioners to remember July 4<sup>th</sup> and asked, "Do we want to be Key West or South Haven? Stand up for South Haven. Would you vote for this if you lived next door? Help determine the maximums. Ask them to provide onsite management just like we do."

Elaine Herbert. Stated she lived at 140 North Shore Drive because the ordinance requires her to. Asked for more than three minutes, saying she would not waste the commission's time, and Heinig told her she could speak again after everyone had a chance to speak. Herbert stated the applicant did not reduce his occupancy. "While he reduced his parking places, his occupancy stayed exactly the same." Listed all the ways the proposed development affects her. Stated It is slander to say she is a competing business. Spoke about all of the expenses she pays as a B & B that the developer should have to pay. The ordinance says every use shall have screening, which she defended saying, "It is residential on the north, south and east and needs a landscape buffer. Please require that this plan have landscape buffers." Also spoke about the glare; the noise; the party house.

Robert Kripaitis, 140 North Shore Drive. "Thank you for visiting the occupancy and size of this. 32 total occupancy with six parking spots. Inadequate. My property, which is not competitive to these larger homes, has 17 parking spots for 17 rooms and joiners are not permitted." Stated that at 95 Woodman he messaged Clark Gruber as City Council member and Planning Commission member, that there were 20 cars parked in the driveway and adjacent parking lots. Spoke about access for fire and emergency vehicles; fire suppression; burn-proof doors must be required for this type of density. Requested that the plan be changed so the property won't negatively impact the property around it.

Donna Payerle, 130 North Shore #8. Stated she bought this property intending to hopefully retire here. "I do appreciate the condition of the previous home on that property but I don't appreciate that he is doing this to improve the property. If he wants it to be reasonable I don't know why it has to be so big, pushing the limits of the size of the property." Commented that there are letters that are similar because the residents of Park Shores have similar concerns. Asked how the occupancy limit is going to be enforced. Noted that the applicant said he can lower the occupancy if he decides to and asked, "Why such a big home? Why a duplex? Why push all the limits?"

Gary Chesla, 130 North Shore #6. Spoke about one of their strongest concerns being the occupancy of 32. Noted the initial development proposal in November 2015, was a 10 bedroom; in 2016 the proposal is for a five-bedroom duplex. Spoke about the laundry and storage and playroom being reinvented from bedrooms commenting that the revised site plan does not reflect this change. Spoke about the formula for determining occupancy; lack of street parking on North Shore Drive for more guest parking or to accommodate those who come to enjoy the beach as day visitors. "What would you do if you were in our shoes, how would you handle the situation, what would you like to see changed?"

Phil Roehm, 95 Willow Court. Shared some photos in regard to the gentleman who spoke about the "party houses"; on page 29 of your packet you received a letter from Paul and Priscilla Loconto confirming these are designed for larger groups. "Michael is aware of that; I did not call the police but in my new home I will call the police and let them know who I am." Roehm commented in reference to the photos, that there is a school bus pulled up in front of

those houses at 95 North Shore Drive and they have occupied all the city parking in that area. "These places are used as business occupations; it's a shame he doesn't have to live up to the same standards as the Bed & Breakfasts. We have similar goals; we both love South Haven. I'm building a home to live in and he believes in making money off his houses. He pays taxes but he doesn't have to pay all of his taxes to the city for Bed & Breakfast type use.

Kim Roehm, 95 Willow Court. Spoke about the comments about enforcing the ordinance and if the renters do not act responsibly and follow the rules, they'll be ejected. "Living at the Harbors, there were clear rules about usage of private beach and even though the renters might have been told, the renters still went ahead and used the beach; sometimes they'd jump in the pool at the Harbors. There was no accountability for not following the rules. We are left to handle it ourselves, or call the police. The one time we called about the drinking at 3 pm in the afternoon. There is no accountability. We as residents are left to try to manage something when we just want to live our own lives, peacefully."

Mary Kay Davis, 130 North Shore Drive. Her concern, if this is approved, is subjecting the Park Shores residents to people infringing on our parking lot and swimming pools. "We'd like to suggest/request that the property be completely fenced and arbor vitae planted."

Catherine Mish. Clarified the occupancy limit would be 16 not 12. Referenced Sec. 10-344 (d) (2) Newly constructed, newly enlarged, and newly rented dwelling units. Noted that having a cap of 12 refers to residential property R-1, R-2 and R-3 so the cap of 12 does not apply. The cap is 16, the lesser of the formula or 16.

Gruber asked how you get to 16 mathematically, since the bedrooms were reduced, he is pretty sure it is only 14. Hosier said there are four finished floors so it would be 16. Gruber admitted his math is off. It was agreed that occupancy is capped at 16.

Herbert. Spoke about it not being comforting to know the Planning Commission does not know what they are doing; that only R-1s are residential; that over and over the spirit of the ordinance says the quality of life in neighborhoods is protected. Pointed out that according to the ordinance, any land use shall have screening around it. It's clearly residential around this property. Listed all the things missing from this proposal. Asked if this development is a condo and stated that if so, it is not even under any of our ordinances. "Please give us adequate parking, make it smaller, give it a landscape buffer, make it respectable for the rest of us. Do the right thing."

Pat Gaston, Superior Street. Spoke about the rental ordinance being beyond belief; her embarrassment about having this ordinance. Asked, "How did we get to this point?" Stated she is not a neighbor and does not have a financial interest. "I have an interest in our town, our community. This is just embarrassing that we've created this rental ordinance. There is nothing you can do. You have to approve this."

Heinig noted we are here to review a site plan, and approve or reject.

Gruber remarked that of course he's embarrassed. He was looking at this as it seems like the same business plan we had before, a 10-bedroom building to get 32 people into. He doesn't see how three parking spots for 16 people will work. "I've seen the other spots and wonder how many cars the petitioner feels like he is looking to park out in the street. If this was a real business plan, I'd go 'I don't see how that number

of people can come to that property and park all over the street.” Gruber concurs on the landscaping; noted it seems the applicant is trying to get the maximum out of this property; stated landscaping will help but won’t solve the parking issues.

Fries commented that people have said they don’t believe and they assume and noted that it is really something you do not know will happen and that he feels a lot of distrust in this room. Fries noted that he does not think, as a commissioner, you should call it a party house; that is not what we should do. “Size does matter. If they have dotted their I’s and crossed their T’s and it is 28% lot coverage, is it the best fit for that piece of property, I’m not sure that is something you or I should judge. If it doesn’t comply in any places that’s what we should look at. We’ve been told it complies in all areas, isn’t that right?”

Gruber responded “Yes.”

Fries commented that it comes back to trust. “We say no. Because why? We should have to substantiate why we would refuse if it meets the criteria. From there, where do you go? If you get a neighbor you don’t like, its discrimination.”

Hosier pointed out the compliance review by Ms. Anderson and noted that there is a standard of review to use to make a determination.

Fries added, “It may not fit to me or to you, but we can’t deny this with no basis.”

Frost asked, “What if several of these rooms that have closets and are labeled storage areas and it was presented as a one or two-bedroom house?” Hosier responded, “We have to take the plan on its face. If it says it’s a storage room, it’s a storage room.”

Frost asked, “If this plan is approved with 3 parking places and the laundry equipment gets moved and that turns into a bedroom?” Mish stated that the city would have to enforce the regulatory ordinance. Frost observed that the city cannot say, “Add another parking space.”

Mish asked if Standard 2 is satisfied, noting, “If you believe that the parking has to be changed to satisfy that standard, that could be part of your decision tonight.”

Frost asked Burnett a question, “If 32 people are in this house, do you think six parking spots are adequate?” Burnett responded that he does not anticipate having that many adults in the house.

Frost noted that the commission should not be talking about occupancy but went on, “A unit that holds 16 people has three parking spots, if the laundry room was a bedroom, it would have to have another parking spot.” Frost asked if the applicant had explored having more parking spaces. Burnett said the garages are double garages that could hold two modern cars and noted that the city software uses 1970’s boats for cars as their standard. Frost asked if the garages can hold a couple of mini vans to which Burnett responded, “Absolutely. Absolutely any four-door car that can hold five people.” Frost asked if the garage doors are 16 feet wide to which Burnett responded, “Yes.”

Gruber asked Burnett, “The neighbors have mentioned landscaping. Have you thought about landscaping to help some of this between your neighbors on all sides?” Burnett explained that at 95 North Shore Drive he put in, at his own expense, about 50 arbor vitae trees because he felt it would benefit the neighbors and gets continual compliments on it.

"I'd like to have it beautifully landscaped, by a local landscaper. I want Park Shores to be happy with me, even though they may not believe me right now. I'm here for the long term."

Burnett added that on the north side there is already a six-foot fence, except where the city's ordinance requires four foot. "I don't see the point of having a fence on top of a fence. I can do that, but I would like to maintain the 24-foot width of that drive, because many have talked about maneuverability; If that is strongly required, I would do that. There will be arbor vitae and a fence on the south side."

Gruber asked if that can be put in the motion adding, "If we did that you would agree to that if we put that in?" Julia Burnett affirmed that they would put up a fence. Heinig stated it can be part of our motion and it will be enforced.

Peterson asked for confirmation that there is a fence on the north side to which Burnett reiterated, "From the sidewalk to the rear lot line on the north side." Herbert interjected that she can attest to that, adding that she was "required to have a 12-foot landscaping buffer on all sides and place parking in the center, between the buildings. This fence was required of me; he is not allowed to use my fence as his buffer. The north side is where the nuisance is, the cars, the loading and unloading, the cleaning trucks." Herbert continued, "A landscape buffer is the least you can do – this is my life."

Heinig stated that the board has heard her comments to which Herbert responded she does not think they have. Peterson commented that he sees her point. Gruber likes the idea of landscaping on the north side, noting Park Shores is going to be seeing a fence and landscaping on their side of it.

Malek stated that on the north side, there is a willingness to work as much as possible with the city's engineering requiring that full width driveway; we could do landscaping subject to the engineer's allowance, given the traffic configuration. "I feel like that could work."

Peterson said civil engineers are not always into landscaping, something may have to shrink. Peterson asked about the setbacks on the south side to which Burnett responded that he is at 12 feet. Malek spoke about working in landscaping where possible if there is 24 feet at a certain pivot point to which Peterson added, "It would be nice mostly where the neighboring structure is, where people spend their evening before they go to bed. Burnett said he would do as much as the city engineer would allow him to.

Heinig pointed out that the commission cannot design the landscaping.

Malek said to the extent of the requirement, if that is a de facto a way to defeating, to not approving this structure. "It's not that we have no interest; we have already had delays; there could be ways but if we could ask for something subject to the engineer's requirements, we don't want an arbor vitae driving the whole project. We are sensitive to the view from the south but it will be an attractive structure."

Heinig brought up Linda's recommendation in the staff report about grass pavers that could be used in the driveway as an alternate to extensive paving. Also, numbering or somehow indicating which parking belongs to which unit, which Hosier pointed out Mr. Burnette included in an email that is in the packet.

Mish said you could condition approval by requiring landscaping, screening and buffering, approved by the zoning director and working with the engineer.

Gruber said we would look at this with that stipulation, landscaping, screening and buffering, approved by the zoning director that also allows the parking indicated on the plan. Mish pointed out that the rub is the setback and width of the driveway.

Frost commented, "He's stuck. Are you right at 12 feet from Elaine's property? Could they ask for a variance, shift it to one side?"

Gruber stated that the commission may see that coming back as a revised plan. "Could they ask for a variance on the south side to allow some landscaping to go in on the north side, not change the plan, moving it over to allow for landscaping on the north side?"

Fries pointed out, "If he meets the criteria now, how can we say you need more criteria? If you go to the zoning board with this, he has to wait another whole year."

Frost responded that he was just throwing an idea out there; that he did not say he was not going to vote to approve the plan. Fries pointed out that the plan may not look good to me or to you but it does to the property owner. Gruber noted that the landscaping, screening or buffering is important.

Malek noted that he is looking at the elevation for the property, the side with the garages and windows. The neighboring first floor is looking at the fence. His thought of arbor vitae won't benefit the second floor until they get really tall. Malek suggested that one thing that could be done is planters or flower boxes under the windows, or on the structure itself, to add some greenery, noting they would require maintenance and watering.

Burnett suggested perhaps we could work with the city engineer, noting however, as Malek mentioned, any landscaping with the six-foot fence will take decades to grow to be seen above that fence. "Does it become a nuisance to the property next door? Are we looking at maples or what? This could become a slippery slope."

Malek repeated that the applicant would do flower boxes if that would assist in the second floor views.

Hosier noted, "The standards are before you; we have heard enough public comment and from the developer."

Heinig reminded, "This is a site plan review; we aren't zoning anything here."

Paull: "My suggestion is that this go back and get more review from planning commissioners and planning commission members. It's not ours to do yet, so I say no."

Heinig asked, "So your motion is not to approve what we have before us?" and Paull responded, "That is correct." Heinig asked if there was a second.

Second by Miles.

Mish queried, "You have a discussion of the factors and standards that would support a motion to deny?" Paull doesn't think we can do that.

Frost: "Does it meet all the building and zoning criteria?" Hosier replied, "Yes, it does. Per Ms. Anderson's review, it meets all the building and zoning requirements. The information is on the second to last page in your packet. She did say no variances were needed. This project is in compliance with all provision in the zoning ordinance."

Frost noted there is a motion on the floor and the city attorney has advised that we articulate the reasons for denying.

Mish read from Standards for Review of Preliminary and Final Site Plans:

#1. "Ingress and egress to the property and proposed structures thereon shall provide motor vehicle and pedestrian safety and convenience, efficient traffic flow and control, and easy access in cases of fire, catastrophe or emergency. Are you saying you have problems with ingress or egress?"

Paull: "Yes."

Mish read #2. "Off-street parking and loading areas where required, shall be satisfactory in size, shape and design and not present significant noise, glare, odor or other nuisance effects on adjoining properties and properties in the proposed development. You have problems with the parking?"

Paull: "Yes"

Mish read #4. The type, dimensions and character of open spaces, landscaping, screening and buffering shall enhance the design, character, use and value of the property and abutting lands and waters. You feel the landscaping, screening and buffering is not sufficient?"

Paull: "Yes."

Mish: "Any other factors you would like to point out besides those three?"

Paull: "No."

Heinig called the vote.

Ayes: Miles, Paull

Nays: Fries, Frost, Gruber, Loafman, Peterson, Heinig.

Fries asked, "Are we grasping at straws? Linda has gone through this; Larry has gone through this; it has gone through every step they are able to go through. It may not work for you and you, but if it meets the criteria, it's pretty hard to say no. Can you just say no without any support to other people that come before you?"

Heinig asked if Fries could make a motion.

Motion by Fries that we accept this plan as written, as presented to us in the packet, that Linda Anderson said meets all the criteria, with the landscaping on all three sides.

Gruber amended, "The developer to install landscaping, screening, fencing and buffering working with and which is acceptable with the planning administrator, the city engineer and parking requirements, along north, east and south perimeters.

Fries said the city engineer would probably suggest working with a landscaping engineer and added, to Burnett, "I have no doubt you're going to do the best thing possible, even if others don't think so."

The amended motion: Motion by Fries that we accept this plan as written, as presented to us in the packet, that Linda Anderson said meets all the criteria, with the developer to install landscaping, screening, fencing and buffering as approved and which is acceptable to the planning administrator and the city engineer including parking requirements, along north, east and south perimeters.

Second by Frost.

A roll call vote was taken.

Ayes: Frost, Gruber, Loafman, Peterson, Fries, Heinig  
Nays: Miles, Paull

Motion carried.

**7. Old Business - None**

**8. Other Business - None**

**9. Commissioner Comments**

Fries: Spoke about text messages have been sent with no names on them; if you are going to send things like that in the middle of the night, if we are going to send it out to other members, it should not be sent without any names. This has been difficult. Linda has been with her husband who had cancer surgery, we wish her the best."

There were no other comments

**10. Adjourn**

Motion by Gruber, second by Peterson to adjourn at 8:44 p.m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom  
Recording Secretary