

# Zoning Board of Appeals

## Regular Meeting Agenda

Monday, January 23, 2017  
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 – October 31, 2016
5. Interested Citizens in the Audience Will be Heard on Items Not on the Agenda
6. New Business – Zoning Ordinance Interpretation  

The ZBA will be asked to determine an interpretation of Zoning Ordinance **Section 1714. Fences and Landscaping Structures**, Subsection (2).
7. Other Business – Approve meeting calendar for 2017
8. Commissioner Comments
8. Adjourn

RESPECTFULLY SUBMITTED,

Linda Anderson  
Zoning Administrator

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# Zoning Board of Appeals

## Regular Meeting Minutes

Monday, October 31, 2016  
7:00 p.m., Council Chambers



City of South Haven

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

### 2. Roll Call

Present: Dennis Lewis, Bob McAlear, Tom Stegeman, Judi Stimson, Steve Runkle, Lisa Bettis-Cooper, Scott Boyd

Absent: Dave Miller, Jodi Carlson

Also present: Kate Hosier, Assistant City Manager; Catherine Mish, City Attorney

### 3. Approval of Agenda

Motion by Lewis, second by Stegeman to approve the October 31, 2016 Regular Meeting Agenda as presented.

All in favor. Motion carried

### 4. Approval of Minutes – July 25, 2016 Regular Meeting Minutes

Motion by Stegeman, second by Stimson to approve the July 25, 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

None at this time.

### NEW BUSINESS

6. A variance request has been submitted for the property at 346 Park Avenue for relief from zoning ordinance section 1800-1. The variance would allow parking on a driveway which is legally located in the required side setback area. The parcel number for the property is 80-53-833-007-01.

Kate Hosier, Assistant City Manager. Explained that the city is acting as an agent for the property owner. The city approved the building and driveway permits for this property; no garage was proposed but the driveway will accommodate parking and is situated as allowed.

Hosier said a citizen questioned why parking is being allowed on the property, due to a provision in the ordinance which prohibits parking in the side setback. It is permissible to pave up to your lot line; you would drive through to your garage but here there is no garage. The city's past practice has been to allow parking on driveways that are located in the side setback. Hosier added, "All we are here for is a variance for parking."

Lewis asked why a variance and not a special use to which Hosier responded that this is not a use variance but a dimensional variance. Lewis asked clarification that there is no garage. Hosier reiterated that there is no garage.

Lewis asked, "Is there something that says you can't do this?" Hosier responded, "Yes, there is an ordinance that says you can't park in side setback."

Stimson noted that the city has been doing this for a long time, and granting this variance is just giving the applicant the same right that others have. Hosier said that is correct, adding that in just the small sampling the city did of 196 surrounding properties, it was found that 42 percent have properties with owners parking in the side setback. Hosier stressed that if a larger sampling had been done, she believes it would be found to be even more prevalent. Stimson said of her neighbors on both sides, both of them are.

Hosier said it's the city's position that this is common practice. Lewis said, "You can build your driveway in the side setback, but not park on it."

Discussion ensued regarding the number of parking spaces required by the ordinance and the prevalence of stacked parking on a driveway in the minimum setback.

McAlear asked if there have been neighbor complaints to which Hosier responded that there are concerns and the one who requested this lives within 300 feet.

Stimson said the Planning Commission is looking at amending that section of the ordinance to which Hosier added that this is a widespread thing and the city needs to bring our ordinance into compliance with common practice.

Runkle asked if there is a minimum size or width for a driveway and Hosier responded that the minimum driveway width is nine feet in the ordinance. Runkle pointed out that the electric drop on the driveway side of the house protrudes over the driveway, allowing only eight feet nine inches. Runkle indicated that the porch also protrudes over the driveway. Hosier noted that the driveway is nine feet six inches wide. Runkle stated that he measured it and the driveway is less than nine feet wide. Hosier explained that the city is going by the measurements city staff took of the driveway.

Motion Stimson, second by McAlear to open the public hearing.

All in favor. Carried.

Barb Carlini, 340 Park. Said she lives next door to the property in question. Read an email she sent in and stated she understands that the ordinance is ignored. Proposed that if the city is looking for side drive parking that the variance request be tabled and the city continue working toward an amendment for the zoning ordinance. Asks that the committee to amend the ordinance look at a standard width of eleven feet or greater, making it more reasonable for people to park in the drive and get in and out of the car. Asked why the house at 346 Park was allowed to be built if it doesn't comply with zoning laws. "What happened?" Her point is it would seem if we are urgently looking for a variance right now for a driveway that is less than nine feet and at the point where the junction box comes in it is 8'9". Noted if she had that situation she would have to let the passengers out before she is in the driveway and she might not park in the driveway but on the street.

At this point, after two reminders, Hosier indicated that Carlini's time was up. Carlini asked if she had to stop or could complete her thought. Chair Boyd stated that he would prefer that she stop; everyone gets the same amount of time to address the board.

Boyd explained the procedure for keeping track of the time for speakers during a public hearing.

Pat Gaston, 97 Superior Street. "What a mess we have here. We had a building permit printed for a home that wasn't in compliance with our zoning and now the city is presenting an application for a building permit they granted." Asked how we came to a place where we don't care about zoning, adding that our zoning is a joke. Suggested that when doing the Master Plan make it so you can do whatever you want, wherever you want, however you want, whenever you want.

Chuck Kiplinger, 315 Park. Lives at the end of the block. "I have a question". Boyd explained that the board is not here to answer questions but to listen. Kiplinger stated that then he has a comment. The driveway has already been poured; they are asking for a variance for something they have already done. It was disturbing. "I thought they would at least wait until they got the variance before they poured the driveway."

Hosier explained that the contractor has a valid driveway permit. All we are here for is to determine whether he can park on the driveway.

Stimson asked, "Aren't we talking about whether he can park in the driveway, not the width of the driveway?" Hosier agreed, noting, "It's in the minimum offset. You can pave up to the lot line and the only thing this board is to consider is whether they can park there, in the side setback."

McAlear asked if the reason the city is requesting this variance is to comply with present law, and the future Planning Commission may change that law, but we have to comply with the present ordinance. Hosier said that is correct. McAlear noted that there has been a huge precedent.

Motion by Lewis, second by Runkle to close public hearing.

All in favor. Motion carried.

Lewis said he has no problem with this noting, "We aren't here about the width of the driveway, but whether the applicants can park on it."

Motion by Stimson to motion to approve the variance at 346 Park Avenue for relief from zoning ordinance section 1800-1, as presented, permitting parking on a driveway which is legally located in the required side setback area.

Lewis said he would also add that this is a common practice in the city and this has never been brought up before.

Stegeman asked if there were any extenuating circumstances to which both McAlear and Lewis responded that the precedent is already set.

Boyd made a statement about the number already parking in side setbacks.

Second by Lewis.

A roll call vote was taken:

Ayes: Lewis, McAlear, Stegeman, Stimson, Runkle, Bettis-Cooper, Boyd

Nays: None

Motion carried.

## **7. Board Member Comments**

Lewis said his favorite auto detailer doesn't have the minimum number of pots out there yet. Boyd said this is correct and requested city staff to please check and make sure the landscaping is complied with.

Hosier said it will be done.

## **8. Adjourn**

Motion by Lewis, second by McAlear to adjourn.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom  
Recording Secretary



## Agenda Item #6 Ordinance Interpretation

City of South Haven

**Background:** Section 603 (5) of the Michigan Zoning Enabling Act of 2006, as amended, gives local Zoning Boards of Appeal (ZBA) the authority to hear and decide questions of interpretation related to the zoning ordinance. The Zoning Board of Appeals Handbook, published in 2006 by the Michigan Municipal League, provides insight into this authority:

*The ZBA is authorized to issue an official interpretation of the zoning ordinance. Interpretations may be related to either the text of the zoning ordinance or to the boundaries of the zoning map. Unlike legal opinions or recommendations of consultants, an interpretation by the ZBA establishes the meaning of the matter being interpreted and is deemed to be the actual meaning of the ordinance from that point forward, unless the ZBA's interpretation is appealed to the courts. Several rules of thumb may help in making interpretations. Interpret the text of the zoning ordinance based on a thorough reading of the ordinance in order not to have the effect of amending the ordinance. Give weight to reasonable practical interpretations by administrative officials if applied consistently over long period of time. Once an interpretation is rendered, it is the official position of the community as to that provision. Consistency in decision making is important for the long-term.*

Essentially, once the ZBA makes an interpretation of a section of the ordinance, that interpretation will apply to all future readings of the ordinance unless a court decides otherwise. In most cases the planning commission should respond by drafting an ordinance amendment clarifying the language to support the ZBA interpretation.

The section of the ordinance in question for this request is **SECTION 1714. FENCES AND LANDSCAPING STRUCTURES**. Subsection (2) of that section reads:

*Fences, walls, or obscuring walls shall not contain barbed wire, electric current or charge of electricity, glass, spikes, or other sharp protruding objects.*

*Notwithstanding the foregoing provision, security fences six (6) feet high or more may include up to eighteen (18) inches of barbed wire in an industrial area, surrounding a public utility, or around a police facility. Such barbed wire shall slant inward towards property, or be straight up. Security fences with barbed wire in any other location or surrounding any other use require a special use permit by the Planning Commission.*

**Recommendation:** Staff asks that the ZBA review the ordinance and make an interpretation as to whether the language allows barbed wire fencing in an industrial area per se or if the language allows barbed wire fencing only in industrial areas that are surrounding a public utility or a police facility.

**Attachments:**

Zoning Ordinance Section 1714 (with highlights)

## SECTION 1714. FENCES AND LANDSCAPING STRUCTURES

Fences and landscaping structures are permitted or required, subject to the following:

1. Fences on all lots of record in all residential districts which enclose property and/or are within a required side or rear yard shall not exceed six (6) feet in height, measured from the surface of the ground. Fences located in the front yard or beyond the front of the house shall not exceed four (4) feet in height, measured from the surface of the ground. Landscaping structures in any district shall not exceed ten (10) feet in height. No fence, landscaping structure, wall, planting or structure shall, within ten (10) feet of any public or private right-of-way or driveway, be of such a nature as will impede clear vision of an intersecting sidewalk, street, alley or driveway (see Section 1712). The applicant must demonstrate that the proposed fence or landscaping structure will not restrict the visibility of pedestrians and traffic to operators of vehicles. Notwithstanding the provisions of Section 1713, all fences shall be constructed so as to allow the passage of air through the fence to an adjacent dwelling.
2. Fences, walls, or obscuring walls shall not contain barbed wire, electric current or charge of electricity, glass, spikes, or other sharp protruding objects.  
  
Notwithstanding the foregoing provision, security fences six (6) feet high or more may include up to eighteen (18) inches of barbed wire in an industrial area, surrounding a public utility, or around a police facility. Such barbed wire shall slant inward towards property, or be straight up. Security fences with barbed wire in any other location or surrounding any other use require a special use permit by the Planning Commission.
3. Fences which enclose public or institutional parks, playgrounds or public landscaped areas, situated within an area developed with recorded lots, shall not exceed eight (8) feet in height, measured from the surface of the ground, and shall not obstruct vision to an extent greater than twenty-five (25) percent of their total area.
4. All fences shall have the finish side facing out, away from the property on which the fence is located.
5. Fences and landscaping structures are structures, but may be erected along property lines or within yards, irrespective of the setback requirements of this Ordinance, except that landscaping structures shall not be erected closer than three (3) feet to an adjacent parcel. No site plan review is required for a fence or landscaping structure which conforms with Ordinance standards in a residential district. The Zoning Administrator may waive site plan review for a fence or landscaping structure in any other district if no other structural changes or changes in the design or layout of the site are proposed.
6. The Zoning Administrator may require the removal, reconstruction or repair of any fence or landscaping structure not in good condition.

**Zoning Board of Appeals (ZBA)**



**#7. Meeting Calendar for 2017**

(Generally, the ZBA meets on the fourth Monday of the month.)

January	23
February	27
March	27
April	24
May	22
June	26
July	24
August	28
September	25
October	23
November	27
December	18*

\* Due to the Christmas holidays, the December meeting will not take place on the fourth Monday of the month.