

Zoning Board of Appeals

Regular Meeting Agenda

Monday, February 27, 2012
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 – December 19, 2011
5. Interested Citizens in the Audience Will be Heard on Items Not on the Agenda

NEW BUSINESS

5. **#5 Oak Court – Helen Keen-Thoesen is requesting dimensional variances for front and rear setback requirements for an existing residence at the above address. The proposed encroachments on the front and rear of the building involve additional roof overhang (soffit) of twelve (12) inches in the second floor rear (south) and extending the first floor 30 inch soffit completely across the front of the house (north). The parcel number for the subject property is 80-53-701-006-00.**

6. Adjourn

RESPECTFULLY SUBMITTED,

Linda Anderson
Planner / Zoning Administrator

South Haven City Hall is barrier free and the City of South Haven will provide the necessary reasonable auxiliary aids and services for persons with disabilities, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting to individuals with disabilities at the meeting upon seven (7) days notice to the South Haven City Hall.

Zoning Board of Appeals

Regular Meeting Minutes

Monday, December 19, 2011
7:00 p.m., Basement, City Hall



City of South Haven

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

2. Roll Call

Present: Apotheker, Henry, Manley, Paull, Wheeler, Wittkop, Ingersoll
Absent: None

3. Approval of Agenda

Motion by Manley, second by Wheeler, to approve the agenda as presented. All in favor.
Motion carried.

4. Approval of Minutes – November 28, 2011

Motion by Wittkop, second by Manley, to approve the November 28, 2011 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.

UNFINISHED BUSINESS

6. Meijer Variance Request

Meijer, Inc of Grand Rapids, Michigan has requested a variance from zoning ordinance section 1800-12 in order to provide fewer parking spaces than are required for a proposed retail facility. The variance would reduce the parking requirement from one space per 150 square feet of usable floor area (UFA) to one space per 210 feet of UFA.

This request was before the ZBA at the last meeting. At that time, the ZBA requested additional information regarding parking standards and studies. Lynn Richardson, of Meijer, Inc., agreed to provide such studies for the December meeting.

Motion by Apotheker, second by Henry to open the public hearing. All in favor. Motion carried.

Greg Sullivan, 817 South Haven Place. Sullivan had concerns and questions regarding the parking. Sullivan owns a parcel at 271 Blue Star Highway; on the notice map it is C911. Sullivan spoke with Anderson last week and he was given information about the parcel. On the map it is 34B2, in the township of South Haven and runs from Blue Star Highway back to the other parcel. Will Meijer be maintaining that parcel?

Ingersoll noted that this discussion is regarding the requested parking variance and for Sullivan to contact the Planning Commission through Linda Anderson, Planning and Zoning Administrator, concerning site related issues.

Sullivan stated that he objects to the variance; when town is crowded, such as at the 4th of July, he has specific concerns about the parking variance as it pertains to this parcel. Sullivan is concerned that there will not be enough parking and people will be parking their cars on the referenced parcel.

Motion by Henry, second by Wittkop to close the public hearing.

Ingersoll stated to Meijer, Inc. Representative Lynn Richardson that the board had asked for a private parking consultant to state whether the amount of parking requested in this variance request is enough. Ingersoll noted that what was received looks like a white paper from a University of Connecticut referring to shopping center parking as opposed to big box store parking. Ingersoll noted that the summary the board received with Richardson's letter did not seem adequate.

Richardson said she was unable to provide something from a parking consultant because Meijer does not typically work with parking consultants. Ingersoll pointed out that he worked for thirty years for a parking consulting firm. Richardson responded that the information Meijer is sharing is industry standard with the International Council of Shopping Centers (ICSC) and other entities; four spaces per thousand is a pretty consistent ratio used across the board nationally. Richardson stated that Meijer is like a shopping center due to the various departments within the box, so she respectfully disagreed with Ingersoll's assessment of the source of the information submitted.

Wittkop said that to address Sullivan's concern, the parking lot summaries the board received concerning this makes it clear that most parking lots are very underutilized when it comes to parking spaces in shopping centers or big box stores. Wittkop noted that the study showed that on the best shopping days 25% to 40% of the lots were utilized. Wittkop said that given that data; overflow parking on Sullivan's property is not very likely.

Wittkop also said he feels the City requirements for parking are way above where they should be. Wittkop recommends that the Planning Commission address that issue because the City of South Haven is not in line with a lot of other cities and townships.

Anderson concurred based on data from the west Michigan cities she researched.

Manley also agreed saying years ago these requirements were debated and that the Zoning Board of Appeals recommended to City Council a change that did not happen. Manley has to believe that Meijers has a pretty good idea of how much parking they would need. Manley stated that he cannot believe Meijers would build a parking lot that would not be sufficient for

their store; that would be counterproductive. Manley asked, "Who would suffer if the parking lot was too small? Not me, but Meijers." Manley noted that his observation has been that most stores have very large and unattractive, underutilized parking lots.

Henry recalled that Meijers, Inc. was proposing a parking space of 9.5' square feet and that seemed to him, having used the facility up in Grandville, that, when hauling kids in and out of vehicles, the extra inches are welcome and also help prevent banging into the next car with your car door.

Ingersoll summarized that the parking standards are often set as general standards for any retail or commercial use and most parking standards are pretty antiquated. Ingersoll noted that what Mr. Manley has said is absolutely true; the group that gets hurt by inadequate parking will be the retailer or store itself. Ingersoll noted that It is in the City's best interest for the Zoning Board to somewhat limit the parking if we can rationally do so. More parking means more pavement; more run-off and more potential contamination. It has been Ingersoll's experience that the seven per thousand that the City of South Haven Zoning Ordinance recommends is in excess, probably about double what is needed. Ingersoll pointed out that Meijers is not trying to design for the day after Christmas or the day after Thanksgiving. That would be the 85th percentile; on the vast majority of the days the parking requested will put Meijers in pretty good shape. Ingersoll reiterated that inadequate parking hurts the merchant on those busy days more than it hurts the City. Ingersoll thinks it is in the City's best interest to approve the request due to less paving and environmental concerns with the City's required vast sea of asphalt.

Motion by Manley, second by Wittkop, that the Zoning Board of Appeals accept and grant the variance for the Meijer parking lot to the level of one parking space for every 210 square feet of usable floor area because the Board believes this will 1) adequately serve the store and the citizens; 2) that it is very unlikely that the parking area will ever reach full capacity; 3) because the parking area will be environmentally friendly, particularly with the natural and manmade constraints of the property, and 4) the application meets the requirements of Zoning Ordinance Section 2205. All in favor. Motion carried.

6. Malek Variance Request; 259 Pearl Street

Robert and Sandra Malek, 259 Pearl Street, have requested a variance from Article IV, Section 403.2 in order to construct an attached garage which will not conform to the side setback requirements. They also request a variance for maximum lot coverage.

The issue of access to the rear of the property and the recreational vehicles stored thereon is one which must be settled prior to any variance approval. The public hearing for this request has been continued from the November 28, 2011 meeting.

Motion by Henry, second by Manley, to open the public hearing for Malek's side set-back. All in favor. Motion carried.

Robert Malek, 259 Pearl Street. Malek said he would like to add another garage door on the back side of the proposed garage and also have an entry door on that side. Malek noted that other than that change the request is the same as it was in November. Malek said he talked with the church representatives about where the property line was and what the setback was and the church representative did not say any more about it to Malek.

Tom Ruesink, Evergreen Bluff. Representative for the Congregational Church, Phoenix Street. Ruesink said Malek has been very cooperative but noted that Malek has been using the church property for a number of years to get access to the rear of his property. Ruesink noted that it is not a good idea to have property and depend on your neighbor for accessibility. Ruesink added that he presented the zoning request to the church trustees and their motion was to oppose the variance request for the property. Ruesink noted that church leadership has also discussed the fact that there are trees adjacent to the property that belong to the church and plan to have a survey done to be sure they all know what belongs to who. Ruesink said the church trustees think the Maleks are already considerably over the amount of coverage that is allowed by City zoning. Ruesink understands Malek's problem of parking on the driveway and the grass to allow renters to be accommodated.

Motion by Henry, second by Wittkop, to close the public hearing. All in favor. Motion carried.

Ingersoll opened the meeting for discussion by the board.

Wittkop said adding a rear garage door does not alleviate the problem. Wittkop asked Malek why he proposed adding the garage door. Malek stated he wanted to install the door to alleviate the problem of the access to the back yard. Malek stated he was trying to get along with the church. Apotheker questioned whether eliminating the door in the back of the proposed garage would mean that the applicant could not access the property behind the proposed garage.

Henry said as he understands it, Malek's problem was initiated by the City notifying Malek that he did not have sufficient or proper off-street parking. So if the Zoning Board does not grant the variance then Malek can not solve the problem he has with the City. Malek concurred that is so.

Anderson noted that there are some other options, such as a parking pad and stated that both Dan Gomez, South Haven Code Enforcement Officer, and Anderson talked to the applicant about other options. Anderson pointed out that the City requires that parking be on a hard surface and not in the front yard.

Ingersoll said granting a three car garage is a problem, actually two problems: coverage is a problem and access to the rear yard is a problem. At the same time, this request would allow Malek to build up to one foot from the property line. The compromise issue could be a two car garage with a driveway coming up to a paved area for a third vehicle.

Malek stated that he is trying to give his renters all a parking spot that is covered. He had no idea it would be so much ado to comply with the City to put those parking spots there and to cover them. Malek said the estimate for the building is \$10,000.00; the biggest expenses are the footings and concrete. Aesthetically, putting the cars in the garage, continuing the stone work on the front of the garage he thought he was in the ball park. Malek said he knew there were other options but he wanted to do a three car garage. Ingersoll said the problems are that you want to put a building almost up to the property line and the coverage of your lot is going to make your property further out of compliance.

Wittkop said the applicant should consider a two car garage with an apron. Malek said it does not make sense to him to put in a two car garage and concrete going around the

garage with it not being covered. Malek noted that he had not anticipated building a garage or incurring this expense. The board questioned what would be done with the motor home and Malek noted he just got the motor home and plans to move that to a covered place for storage when he put the garage in.

Ingersoll said the problem we face here is that, if there is a reasonable way to do this while conforming to the code; the board has to do that.

Wittkop said the applicant needs two variances to do just about anything on that lot. Wittkop said you might have to tell one of the renters they have to park where there is not cover. Malek said he would be thrilled to do that, park like he has for almost thirty years. After a question from the board, Anderson explained that the current ordinance regarding lot coverage right now does not include paved areas, only structures. Anderson also pointed out that issue will be discussed during the upcoming review of the Zoning Ordinance.

Ingersoll asked if Malek understood what they were getting at. He asked how many cars he is trying to park on the property. Malek said up to six. Some of his renters have one car but some have had two.

Paull said there are two variances; side yard setback and lot coverage; it really is not the board's job to help Malek determine how to solve the problem. What is going on then is like the proverbial cutting of the baby in half.

Motion by Paull, second by Manley, that we deny the requested variances for the one foot side yard setback and for lot coverage since both make the property more non-conforming and do not comply with Zoning Ordinance Section 2205 (2-8).

Ingersoll asked if there was any other recommendation that should be added to the motion. Anderson said the motion is fine as you stated it. If you are not allowing any additional lot coverage, the applicant cannot add anything on that property. Ingersoll said could you amend the motion to request a two bay garage. Paull said no, that is cutting the baby in half. It is not our place to tell the applicant what to do to solve his problem.

Ingersoll called the motion.

Yeas: All
Nays: None.

Motion passed. Request denied.

NEW BUSINESS

8. Klooster, 4 Oak Court, Side, Rear and Front Line Variance Requests

Steve and Nancy Klooster request variances to add a second floor balcony on part of the front of the house, exterior stairs on the west side and roof drip lines encroaching 18 inches into the yards. The proposed upper level rear porch is recessed and does not extend beyond the main wall of the house. The side stairs extend from the second floor to that roof porch.

Staff has no problem with granting the variances for the added front balcony or second floor staircase. As was discussed at the last meeting, the adjacent neighbor has a similar front balcony. It should also be noted that the house to the west of the Kloosters' is six (6) inches from the lot line and the house in the rear of the Costar's is three (3) inches from the lot line. The proposed drip line of the eaves is on the Kloosters' property and should have little effect on the neighboring lots.

While staff does not encourage building ground level to the lot line, it should be noted that other houses in this neighborhood have essentially done just that. The ZBA should review all material and make a determination as to whether the applicant has presented a compelling enough case to warrant any or all of the requested variances.

Ingersoll said the adjustments made from the previous request were swinging the stairs around to the west side and one other adjustment. Ingersoll asked how this request should be considered in light of the last variance the Zoning Board granted. Anderson said we are looking at this like an entirely new application and any decision made tonight would override the previous action.

Motion by Manley to open the public hearing, second by Henry. All in favor. Motion carried.

Bob McNulty, 265 Broadway. Builder and Applicant's Representative. McNulty stated that the applicant requests to demolish the existing house and build a house on the same footprint as the existing house on three sides and on the fourth side be four feet further away from the property line. Ingersoll asked how far away from the rear property line the existing main wall of the house proper is located. McNulty said eight feet.

Ingersoll said one of the drawings, the one with the north and south elevation, shows what looks like stairs leading down below grade; McNulty said that is an egress . . . at this point a gentleman in the rear asked what is being clarified. Ingersoll suggested he come forward and give his name and address for the record.

Al Laaksonen, 226 ½ East Michigan Avenue, Paw Paw, MI 49079. Attorney representing Jim Wettlaufer.

Ingersoll stated that what was being discussed was on the north elevation where the right side shows something that looks like a stairway leading to a basement or lower level; after discussion with the builder it was determined that the item in question is an egress window.

Laaksonen distributed what he described as 2011 aerials with pink highlighting around the properties in question, which he noted makes it easier to see the applicant's roof, the tan-ish beige one. Laaksonen also distributed to the board members a copy of the statute with regard to the Zoning Board of Appeals, and noted that this statute is in the definitions section of the City Zoning Ordinance. Laaksonen also pointed out that this statute was in an excellent letter that was part of the agenda packet for this meeting.

* Materials provided by Laaksonen attached at the end of the minutes

Laaksonen stated that the definition in the statute is different than the nine things the board is asked to consider. By state statute, according to Laaksonen, you may grant a variation if

the use is practical. Laaksonen stated that the board is supposed to look at the Zoning Ordinance, not to grant what people want, but to uphold the zoning ordinance.

Ingersoll said it was kind of interesting that it was his client that has the porch that has the protrusion overhead all the way out to the lot line. Ingersoll failed to see how stones can be thrown at something here and not realize that your client has what the applicants are asking for. Laaksonen stated that his client's deck is from the midpoint to the west and only 10 feet wide, not sixteen feet as the Kloosters are requesting. Ingersoll said the Kloosters do not have theirs going all the way across, but from the center point as well. Ingersoll thanked Laaksonen for his comments and noted that the Board makes the interpretation, not the attorney.

Steve Klooster, 4 Oak Court. Klooster noted that he bought the property at 4 Oak Court last December. Klooster didn't expect problems because the builder went to what was described as one of the most respected architects in town. Klooster expressed that he did not want to ask for more than we deserve and never imagined that someone would hire an attorney over it. Ingersoll asked how far that deck extends out from the house and Klooster said 5' because we were trying to compromise. Klooster stated that If making the deck extend out less will help, we are willing to do that.

Mary Jane Heidler, 2 Oak Court. Heidler stated that if you looked at the plans you can see how close in we are. Heidler noted that she and her husband have looked at the plan and see nothing wrong with it and that the applicants took care of the issues from the last meeting.

Jim Wettlaufer, 3 Oak Court. Wettlaufer stated that the reason he hired an attorney was because he felt the Board did not listen to or respond to the letters that were submitted. Wettlaufer said he has nothing against the Kloosters and would not want them not to have a nice home there. Wettlaufer said that the longer the deck is the more his view gets reduced and increases privacy issues of his master bedroom. It is the length and depth of the deck that concerns him. Wettlaufer said that maybe the applicants could move the deck to the west side of the house.

John Bussema, Willow Court. Bussema stated that his only opposition would be to zero setbacks, if there are zero setbacks in the proposal.

Motion by Wittkop, second by Apothekar, to close the public hearing.

Ingersoll suggested the Board review the letters that were received from Helen Thoesen; William Connolly; and Larry and Martha Hoffman. Anderson stated that all had concerns and opposition concerning the request. Anderson noted that the letters will be placed in the record.

**Letters are attached at the end of the minutes.

Ingersoll summarized that the request is to

- 1) Move the building main wall a little closer to the rear lot line and remove the attached utility room and, by doing so, create a four foot, eight inch clear path on that side of the house.
- 2) Extend the front, ground level deck one foot closer to the lot line.

- 3) West side exterior stairs with a 36 inch overhang from 2nd floor to roof on the west.
- 4) East side roof overhang of 18 inches

Henry said he missed last meeting and is catching up on discussion. Henry questioned if a variance is to build a bigger building than is allowed? Ingersoll gave an overview of the last meeting and this new request.

Wheeler noted that the stair will obstruct no person's view. Manley said one thing he learned on the Planning Commission was, while we may have a view, no one owns one. Manley stated, "If another person builds on a property in front of mine and I lose a view, I have no legal recourse if the building is built legally." Anderson said the request narrative from the applicant is on agenda page 22. She further stated that the main point here is everything on this street requires a variance because it is in a multiple family zone with large minimum lot sizes and large setbacks. Even building on the existing foundation required a variance.

Henry asked if the applicant extensively remodels there is no variance needed? Anderson said no, only if the building envelope changes or if more than 60% is demolished.

Manley stated that on page 23 the front looks like it needs a variance. Anderson said anything they do on the existing foundation requires a variance. The question for the Board is whether the applicant should be permitted to have these decks and other upper level encroachments.

Ingersoll stated he has no feeling of a problem in the back, the house wall is four feet closer to the lot line but the utility/mechanical room is no longer up to the property line. Regarding the front Ingersoll noted that he is kind of wavering on that a little bit. Certainly the porch is good and regarding the deck over that porch, there is some precedent already of other roofs and decks in that area extending over the property line. Ingersoll said the outside stairs were giving him the most angst. Apotheker noted the stairs are entirely on the applicants' property. Ingersoll concurred that yes, everything that the applicants' are requesting is within their property lines.

Klooster explained that on the east side there is an 8' raised patio that will be taken out of there; the encroachment on the east side will be gone. We will only extend a foot more than the steps on the front. The steps do not encroach as much as they could.

Manley is trying to understand the main complaint of the neighbor who hired an attorney. Wettlaufer said that it is the length of the deck. Klooster said the neighbor to the west encroaches three feet to the lot line.

Henry restated the density of the cottages in this neighborhood: everyone wants to be near the water for the view and be part of nature. Henry said it would be nice to see some give and take so this project can adapt to satisfy not only the owners needs and requirements but also that of the neighbors. If, when you are this close and do not get along, it is not a very nice experience. Most people come to South Haven to relax and enjoy themselves, so if neighbors do not get along that is sad.

Ingersoll stated this is an area where people need to make sensible use of the property while not encroaching on the neighbors. Ingersoll said one of his thoughts was to ask the

parties involved to work it out, but as a Board we are required to approve or disapprove the request as presented.

Wheeler said as a board what we have to determine is whether granting a variance is detrimental to the other properties: detrimental being a higher standard than inconvenient. Wheeler said it needs to be asked: "Is blocking a view detrimental or inconvenient?" Ingersoll said having a balcony on the west is very similar to the neighbor next door, which follows the same principal but is just a little narrower.

Ingersoll suggested approving the variances separately.

Motion by Paull, second by Apothekar to approve the rear variance as presented.

Manley said it seems there is some question as to what really is the rear foundation. Anderson said in her interpretation of the ordinance what the applicants are requesting is to have a four foot, eight inch rear setback as opposed to the required 25 feet. Presently a person cannot walk around the building and there is no access to the back of the house. Anderson stated that taking that mechanical room off and rebuilding the back wall makes the structure less non-conforming.

Ingersoll called the vote.

All in favor. Motion carried.

Ingersoll called for a motion on the front balcony and deck, which gives a setback of 2'2".

Motion by Paul, second by Wheeler to approve a front setback of 2'2". All in favor. Motion carried.

Ingersoll called for a motion regarding the west side exterior stairs from the second floor to the roof and east side eave overhang.

Motion by Apothekar, second by Manley to support the side variances to allow the stairs and roof overhang. All in favor. Motion carried.

Manley offered that, although there is no legal protection for a view, if one wanted to have a neighborly discussion and come to an agreement that is acceptable as long as no nonconformity is extended.

9. Meeting Schedule for 2012

Anderson noted that the meeting schedule is generally the fourth Monday each month, except for December, when the Zoning Board of Appeals will meet a week early.

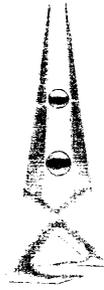
Motion by Henry, second by Manley to accept the meeting schedule as presented. All in favor. Motion carried.

10. Adjourn

Motion by Paull, second by Wheeler to adjourn at 8:24 p.m. All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom
Recording Secretary

**C**Michigan Compiled Laws Annotated CurrentnessChapter 125. Planning, Housing, and Zoning (Refs & Amos)☐ Stille-Derossett-Hale Single State Construction Code Act (Refs & Amos)→ → **125.1515. Variances; grounds; conditions, granting, breach**

Sec. 15. (1) After a public hearing a board of appeals may grant a specific variance to a substantive requirement of the code if the literal application of the substantive requirement would result in an exceptional, practical difficulty to the applicant, and if both of the following requirements are satisfied:

(a) The performance of the particular item or part of the building or structure with respect to which the variance is granted shall be adequate for its intended use and shall not substantially deviate from performance required by the code of that particular item or part for the health, safety and welfare of the people of this state.

(b) The specific condition justifying the variance shall be neither so general nor recurrent in nature as to make an amendment of the code with respect to the condition reasonably practical or desirable.

(2) A board of appeals may attach in writing any condition in connection with the granting of a variance that in its judgment is necessary to protect the health, safety and welfare of the people of this state. The breach of a condition shall automatically invalidate the variance and any permit, license and certificate granted on the basis of it. In no case shall more than minimum variance from the code be granted than is necessary to alleviate the exceptional, practical difficulty.

HISTORICAL AND STATUTORY NOTES

2006 Main Volume

Source:

P.A.1972, No. 230, § 15, Eff. Jan. 1, 1973.

C.L.1970, § 125.1515.

LIBRARY REFERENCES

2006 Main Volume

Health 🔑 392.Zoning and Planning 🔑 489.

Westlaw Topic Nos. 198H, 414.

C.J.S. Health and Environment §§ 35, 51 to 54, 56 to 64.C.J.S. Zoning and Land Planning § 239.

2011 ORTHO AERIAL MAPS



February 27, 2012
ZBA Regular Meeting

2011 ORTHO AERIAL MAPS



December 19,2011

TO: South Haven Zoning Board of Appeals

FROM: Helen Keen-Thoesen, #5 Oak Court

RE: Variance Request for Klooster Property, #4 Oak Court, South Haven

I was only able to review the plans for #4 Oak Court a few days ago. I had previously sent a letter outlining my concerns. After the latest review, these are my comments.

Regarding, the setback for the north side at ground level, the request to take the porch a foot closer to the property line is a problem. The current setback is 3.2 feet and changing it to 2.2. feet makes it that much closer to the driveway which is already tight enough and difficult to navigate safely.

The variance for the west side of the house for a 36 inch outside overhang stairway poses a safety issue, both for physical safety and security. I do not object to a rooftop porch but the stairway should be put on the inside of the house.

On the variance for the south side of the building, the drawing shows a rear door but I cannot determine if it is at ground level. If this door requires steps or an additional porch for access that would protrude into the 4 foot 8 inch area to the lot line, I would object based on access to utilities and the closeness to the property line.

I welcome improvement to the property, and I feel certain that the issues can be settled to comply with the zoning requirements that are currently in place and have been enforced in the past.

Larry and Marthann Hoffman
4 Willow Court
South Haven, Michigan 49090

City of South Haven
Zoning Board of Appeals
539 Phoenix Street
South Haven, MI 49090

December 17, 2011

RE: Agenda Item #8 (Klooster Dimensional Variance)

We respectfully request that this letter be read aloud at the meeting of December 19, 2011 and made part of the record.

Zoning Board of Appeals Members,

We are writing today to express our continued opposition to the request by Steve and Nancy Klooster for a dimensional variance for their property located at 4 Oak Court. More specifically, the portion of the request that applies to the south side of the structure. We oppose the issuance of this variance for a number of reasons.

The City of South Haven's Zoning Variance Request questionnaire asks the petitioner to answer a number of important questions regarding their request. We believe that the answers to some of these questions do not meet the test for approval and in some instances are untrue.

1. *#1 Such a variance will not be detrimental to adjacent property and the surrounding neighborhood.* We believe that the reconfiguration of the south side of the property will have an adverse effect on our property, which is adjacent to the Kloosters. They are asking not to build in their original footprint, but, to reconfigure the square footage on the south side of the build. This will bring their finished structure to within several feet of our existing home. Also, they are counting non-livable space, a shed, into that re-design. In our opinion, the non-livable space or shed, is not a part of the current dwellings foundation footprint. Bringing that home even closer to ours presents an increased safety risk in the event of a fire or other emergency.
2. *#4 Such a variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.* We agree with the Kloosters that, "It makes good sense to put a new foundation in." We are simply asking that the new foundation be built in the same footprint and configuration as the current one.
3. *#6 The condition or situation of the specific piece of property or of the intended use of said property, for which the variance is sought, shall not be the result of actions of the property owner. In other words, the problem shall not be self-created.* In our opinion, it is this test in which the petitioner fails miserably. The problem in this instance is **entirely self-created**. The owner purchased the property knowing that the lot was not suitable to build a re-configured structure on, but, went ahead with the purchase anyway. If the owner did not realize that this

City of South Haven
Zoning Administrator
Zoning Board of Appeals
December 6, 2011

Re: Dimensional Variance Request
4 Oak Court

I received a notice from the Zoning Board of Appeals regarding public comment related to a dimensional variance requested for 4 Oak Court. I am opposed to granting a variance beyond the previously approved variance to reconstruct the house on the existing footprint.

Page 20 of the Zoning Ordinance defines a Variance. It states: *These standards seek to ensure that no variance is granted unless: (a) strict enforcement of the Zoning Ordinance would cause practical difficulty or unnecessary hardship, (b) would not be contrary to the public interest, (c) there are circumstances unique to the individual property on which the variance is granted, and (d) the variance request is not due to actions of the applicant.*

This variance request fails on all four counts.

- A. Enforcement of the ordinance would not cause hardship. The property was purchased less than one year ago. The owners knew the size of the property they were buying and paid appropriately.
- B. Granting a variance would be contrary to the public interest; the structure would fill the lot and create hardship for the adjacent property owners by encroaching on the already limited space in that area.
- C. The lot dimensions are small, but so are the adjoining lots. It is not unique to that property.
- D. The request is due to the actions of the applicants. They purchased the property knowing what they were buying.

Section 2205 of the Zoning Ordinance lists seven standards that must be met prior to authorizing a dimensional variance. The applicant's request fails the following standards:

Standard 1: Granting the variance would be detrimental to adjacent property and the surrounding neighborhood.

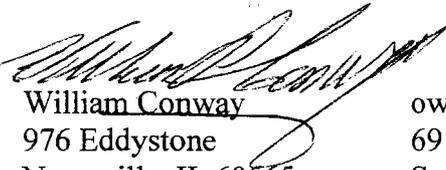
Standard 3: The circumstances are not unique to the subject property and do apply to other properties in the same district.

Standard 4: The variance is not necessary for the enjoyment of property rights similar to others in the vicinity. In fact, granting the variance opens the door for other property owners with similar properties to demand variances to allow them to expand structures into already reduced setbacks.

Standard 6: The problem is self-created. The owners knew the size of the property they purchased. To allow further encroachments on already reduced setback requirements diminishes the neighbors' enjoyment of their properties and the value of those properties.

Standard 7: Compliance with the already approved variance will not prevent the owners from using the property for a permitted purpose nor render conformity burdensome.

The purpose of the Zoning Ordinance is stated at the beginning of it. The regulations were enacted to support that purpose. There exists neither a unique issue, nor a non-owner created hardship to support overriding those regulations. The variance request should not be granted.


William Conway
976 Eddystone
Naperville, IL 60565

owner:
69 North Shore Unit 22
South Haven, MI 49090

lot would not be suitable for his intended purpose, then it is grossly unfair to grant a request that would adversely affect the neighboring properties due to the buyers lack of due diligence.

4. #7 *That strict compliance with the area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome.* The answer to this question is untrue. One year ago this month the Kloosters purchased the property at 4 Oak Court for \$240,000.00. They have stated in their request that if the variance is not granted that their property would be essentially worthless. We would suggest that the property is at least worth what they paid for it one year ago. Hardly worthless. The buyers should have been aware of the possible problems that might arise from buying a property with the sole intent of demolishing it and attempting to rebuild. Again, their current neighbors should not be adversely affected by the property owner's shortsightedness or ignorance of the city's building codes.

5. #8 *That the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the hardship.* The petitioner states that they will have "the same square foot print". This is hardly compares with building within your *existing* footprint. The fact that the owner would request special treatment to re-configure his ground floor square footage to suit his particular needs shows a complete disregard for the adjacent property owners. They go on to state that this is "nothing different than adjacent properties have done". We strongly disagree with this statement. None of the homes that abut Oak Court or Willow Court built outside of their original footprint when they were either rebuilt or remodeled. This statement shows a complete lack of research and understanding of their new neighborhood.

As we stated in our last letter to the board, we have no issue with the Kloosters building a new house on their lot. In fact we welcome the change it will bring to the area. I'm sure it will be a nice addition to our neighborhood. And, we are looking forward to their family being able to enjoy South Haven the way ours has for the past 18 years.

However, for all of the reasons stated above, we are **strongly opposed** to the board granting a variance to move their new structure closer to our existing one (southern exposure). In our opinion they have not shown cause and would derive an equal amount of enjoyment from a new dwelling that was built in the same footprint as the current one. Additionally, not one property owner in our area has stepped forward in support of this request. This lack of neighborhood support should suggest to the board that the approval of this request might not be in the best interest of anyone except the petitioner.

We trust that the board will weigh all of the factors and render a decision that will be fair and respect the rights of all that will be impacted.

Respectfully,



Larry and Marthann Hoffman



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Phone (708)758-2060
FAX (708) 758-8369

December 12, 2011

TO: Zoning Board of Appeals, South Haven

FROM: Helen Keen-Thoesen, 5 Oak Court 

RE: Request for Variance at 4 Oak Court, South Haven
Parcel Number 80-53-701-005-00
Hearing Date December 19, 2011

I received the notice of the second hearing on the above matter. I am unable to attend the hearing but I would like to voice my concerns again.

The notice was not specific as to the number of feet requested for variances on the front, side, and rear setbacks. Thus it is a little difficult to address each issue specifically. However, I still have the same concerns. The zoning requirements set forth require that new construction must be on the same footprint as the original structure, as was required of the adjoining properties on Willow Court when they tore down the old structures on put up new houses. Because the drive on Oak Court is so narrow, moving the foundation closer to the driveway could present a driving hazard. Changing the setbacks at the rear would interfere with access to the sewer line, gas line, and electric utility lines. Construction close to the sewer line could potentially damage the sewer line which all of us on Oak Court and Willow Court go to great lengths to keep in good operating condition. Changing the side setbacks would increase the building density in an area that is already very dense. I do not object to the building of a basement.

For the above reasons, I think it would be best to keep to the past practice of building on the current footprint of the existing cottage at 4 Oak Court.

I am happy to see new construction; if done properly and according to code and current zoning regulations, it can only improve the surrounding neighborhood.

If you have any further questions, please feel free to contact me at 708-267-8600. Since, I cannot be there, I am requesting that this be put in the record and read, if that is standard procedure.

Thank you for your consideration.

City of South Haven
Zoning Administrator
Zoning Board of Appeals
December 6, 2011

Re: Dimensional Variance Request
4 Oak Court

I received a notice from the Zoning Board of Appeals regarding public comment related to a dimensional variance requested for 4 Oak Court. I am opposed to granting a variance beyond the previously approved variance to reconstruct the house on the existing footprint.

Page 20 of the Zoning Ordinance defines a Variance. It states: *These standards seek to ensure that no variance is granted unless: (a) strict enforcement of the Zoning Ordinance would cause practical difficulty or unnecessary hardship, (b) would not be contrary to the public interest, (c) there are circumstances unique to the individual property on which the variance is granted, and (d) the variance request is not due to actions of the applicant.*

This variance request fails on all four counts.

- A. Enforcement of the ordinance would not cause hardship. The property was purchased less than one year ago. The owners knew the size of the property they were buying and paid appropriately.
- B. Granting a variance would be contrary to the public interest; the structure would fill the lot and create hardship for the adjacent property owners by encroaching on the already limited space in that area.
- C. The lot dimensions are small, but so are the adjoining lots. It is not unique to that property.
- D. The request is due to the actions of the applicants. They purchased the property knowing what they were buying.

Section 2205 of the Zoning Ordinance lists seven standards that must be met prior to authorizing a dimensional variance. The applicant's request fails the following standards:

Standard 1: Granting the variance would be detrimental to adjacent property and the surrounding neighborhood.

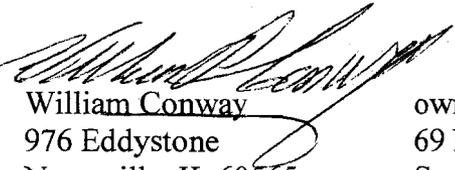
Standard 3: The circumstances are not unique to the subject property and do apply to other properties in the same district.

Standard 4: The variance is not necessary for the enjoyment of property rights similar to others in the vicinity. In fact, granting the variance opens the door for other property owners with similar properties to demand variances to allow them to expand structures into already reduced setbacks.

Standard 6: The problem is self-created. The owners knew the size of the property they purchased. To allow further encroachments on already reduced setback requirements diminishes the neighbors' enjoyment of their properties and the value of those properties.

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The purpose of the Zoning Ordinance is stated at the beginning of it. The regulations were enacted to support that purpose. There exists neither a unique issue, nor a non-owner created hardship to support overriding those regulations. The variance request should not be granted.


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ZONING VARIANCE REQUEST
CITY OF SOUTH HAVEN
BUILDING DEPARTMENT
539 PHOENIX STREET, SOUTH HAVEN, MICHIGAN 49090
FOR INFORMATION CALL 269-637-0760

PAID
JAN 17 2012
CITY OF SOUTH HAVEN
\$300.00
OK

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

Name: Helen Keen-Thoesen Date: 1/6/12
Address: 8007 Lake Shore Phone: 708-267-8600
Address of Gary IN 46403
Property in Question: # 5 Oak Court Present Zoning of Property: RM-1 Residential
South Haven MI
Name of Property Owner(s): Helen Keen-Thoesen

Present Zoning of Neighboring Properties to the :

North RM-1 South RM-1 East RM-1 West RM-1

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

Section(s): _____

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

See attached sheet for responses

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

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

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



January 6, 2012

TO: Linda Anderson, Zoning Administrator
Zoning Board of Appeals, South Haven, MI

FROM: Helen Keen-Thoesen, #5 Oak Court, South Haven

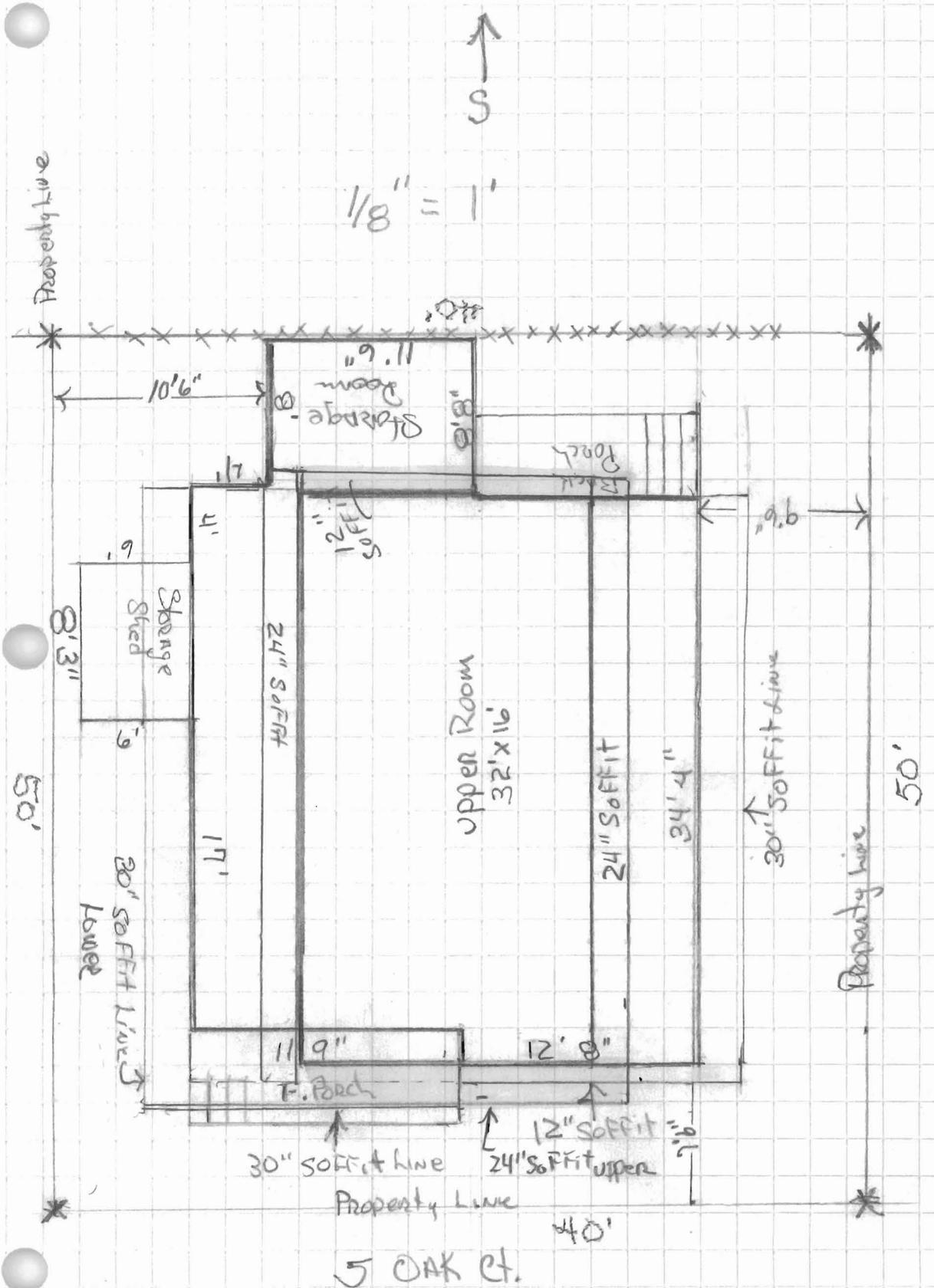
RE: Request for Variance for #5 Oak Court

I am replacing the roof on the property at #5 Oak Court. In this process, the soffits on both floors are being extended. For the second story, I am requesting a variance for the soffits on the south side to be extended another 12 inches to match the rest of the soffits on the second story which are 24 inches. On the first floor, I am requesting a variance on the north side of the cottage. Specifically, I would like the soffit on the north side to be 30 inches all the way across. Currently, the overhang over the front porch is 30 inches for a length of 11 feet 9 inches. I would like the 30 inch soffit to continue across the balance of 12 feet 8 inches, so that the soffits would match on the north and west side. The extension of the soffits will help to decrease the amount of sun that comes into the cottage and keep it cooler.

If you have any questions, please contact me at 708-267-8600. I have attached my response to the nine items on the application form on the attached sheet to make the response easier to read. Thank you for your consideration in this matter.

RESPONSE TO THE ITEMS ON THE VARIANCE REQUEST FORM

1. THE REQUEST FOR A 12 INCH EXTENSION ON 2 PARTS OF THE SOFFIT WILL NOT AFFECT THE ADJACENT PROPERTY AND NEIGHBORHOOD. THE AREAS THAT WE ARE REQUESTING THE VARIANCE FACE OAK COURT AND THE GRASSY AREA ON THE SOUTH. THE EXTENSION WILL NOT AFFECT ANYONE'S SIGHTLINE.
2. THIS REQUEST IS TO IMPROVE PROTECTION FROM THE SUN AND TO MATCH THE REST OF THE SOFFITS.
3. THIS REQUEST WILL NOT AFFECT THE USE OF MY PROPERTY OR THE SURROUNDING PROPERTIES.
4. THERE IS NO IMPROVED PROPERTY VALUE BY EXTENDING THE NOTED SOFFITS 12 INCHES. IT WILL HELP TO KEEP THE COTTAGE A LITTLE COOLER AND HELP PREVENT SUN DAMAGE ON THE INSIDE.
5. I DO NOT KNOW OF ANY OTHER REQUESTS LIKE THIS IN THE PAST 40 YEARS I HAVE BEEN THERE. I DO NOT SEE A NEW GENERAL REGULATION NEEDING TO BE FORMULATED.
6. THE FOOTPRINT OF THE COTTAGE WILL BE EXACTLY THE SAME. THE USE OF THE COTTAGE DOES NOT CHANGE. IT WILL STILL BE USED AS A RESIDENTIAL SEASONAL HOME.
7. THIS REQUEST DOES NOT APPLY TO THIS STATEMENT.
8. THE 12 INCH EXTENSION IS THE MINIMUM AMOUNT NECESSARY TO MATCH THE REST OF THE SOFFITS.
9. THIS REQUEST APPLIES ONLY TO THE COTTAGE I OWN AT #5 OAK COURT.



NOTE: LAKE MICHIGAN SHORELINE & BLACK RIVER AS SHOWN ARE FROM SPRING OF 1976 AERIAL PHOTOGRAPHS.



2011 ORTHO AERIAL MAPS

Showing Parcel Lines and Labels

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 60 US Feet

-  2011 Digital Orthophotograph
-  Municipal Name
Municipal Border
-  Railroads
-  Public Roads
-  Property Lines
-  Subdivision Lines
-  Condominiums Lines

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City of South Haven

Agenda Item #5 Keen-Thoesen Dimensional Variances

Background Information:

#5 Oak Court – Helen Keen-Thoesen is requesting dimensional variances for front and rear setback requirements for an existing residence at the above address. The proposed encroachments on the front and rear of the building involve additional roof overhang (soffit) of twelve (12) inches in the second floor rear (south) and extending the first floor 30 inch soffit completely across the front of the house (north). The parcel number for the subject property is 80-53-701-006-00.

The ZBA is granted the authority to decide this matter in Sections 1901, 2-b and 1911 of the zoning ordinance.

Recommendation:

All the lots and residences on Oak Court are nonconforming and would require variances to expand or enlarge in any way. Staff has no problem with granting the variances requested. The variance will increase the nonconformity that already exists, but not at the footprint of the building. The ZBA should review all material and make a determination as to whether the applicant has presented a compelling enough case to warrant a variance.

Support Material:

Completed application and support materials
Staff Findings of Fact

RESPECTFULLY SUBMITTED,

Linda Anderson
Planner / Zoning Administrator

ZONING VARIANCE REQUEST
CITY OF SOUTH HAVEN
BUILDING DEPARTMENT
539 PHOENIX STREET, SOUTH HAVEN, MICHIGAN 49090
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PAID
JAN 17 2012
CITY OF SOUTH HAVEN
\$300.00
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January 6, 2012

TO: Linda Anderson, Zoning Administrator
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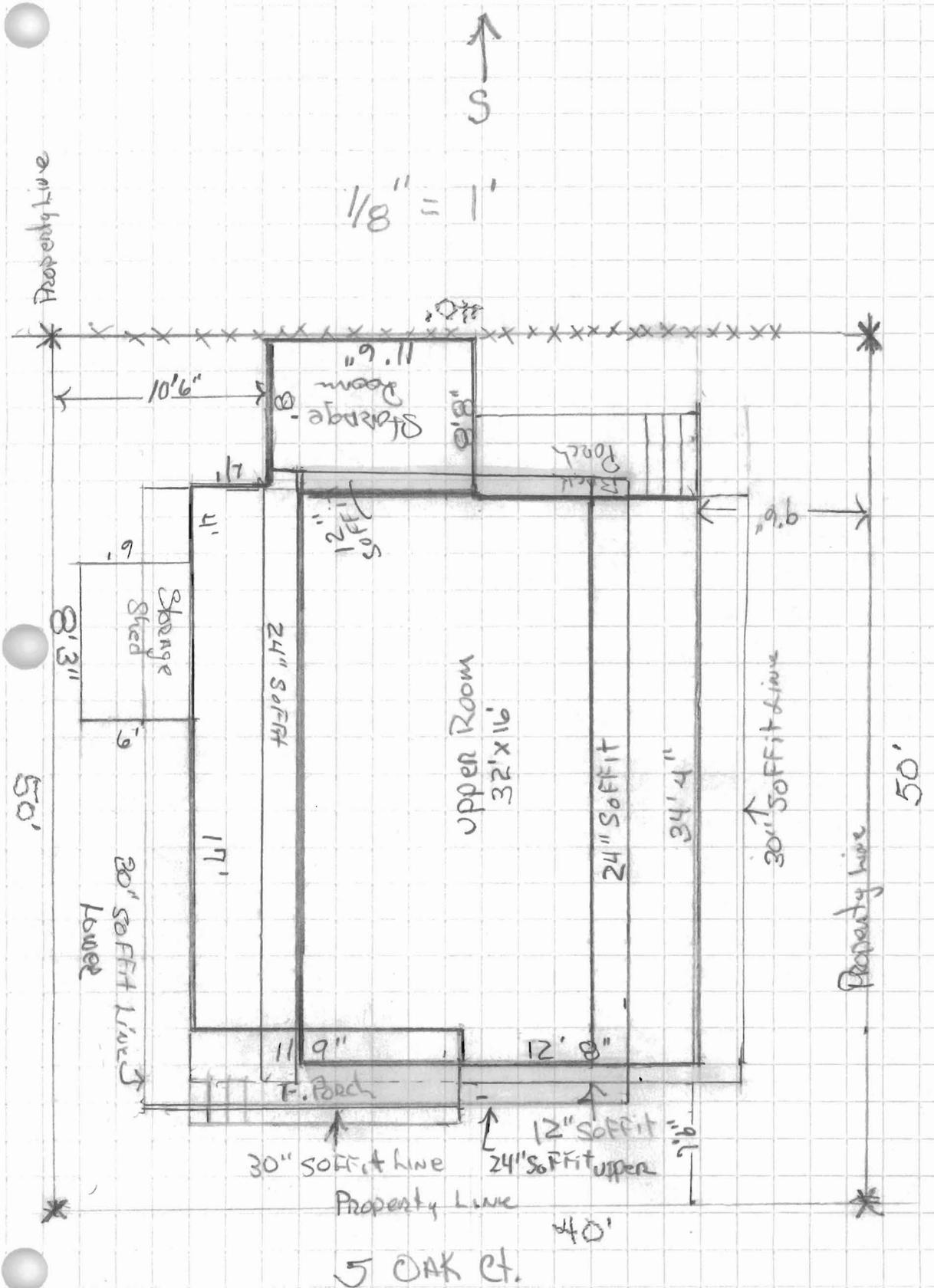
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STAFF FINDINGS OF FACT

CITY OF SOUTH HAVEN ZONING BOARD OF APPEALS

DATE: January 20, 2012
ADDRESS: #5 Oak Court
ZONING DISTRICT: RM-1 Multi family Residential
LOT DIMENSIONS: 50 feet deep, 40 feet wide
LOT AREA: 2000 sq ft
LOT COVERAGE: Allowed – 35%, Existing – 75%
REQUIRED SETBACKS: Front - 25 feet; Rear – 25 feet; Side – 12 feet
EXISTING SETBACKS: Front – 7’6” (exc. porch area); Rear – 0 feet; Side – 9’6”/4’6”
PROPOSED SETBACKS: Front – 6’5”; Rear – zero; Sides - NC
VARIANCE REQUEST: Ms. Keen-Thoesen has applied to extend the soffit on two (2) sides of her house. This extension causes further encroachment into the required yards but does not alter the existing wall lines of the house.

DIMENSIONAL VARIANCE STANDARDS

City of South Haven Zoning Ordinance Section 2205:

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

Oak Court is a small street with five (5) residential lots, all approximately 2000 square feet in size. All of the lots and residences on the street are nonconforming due to the lot size and setback requirements of the RM-1 Multi-Family Residential zoning. The situation with this property is the same as the adjacent lots and is not detrimental to the neighborhood.

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

The ordinance provides for the variance process when relief is needed due to lot size or configuration. This is a case where lot size is the cause for the variance application. This meets the intent of the ordinance.

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

In the RM-1 zoning district, the minimum lot size permitted is 8712 square feet. The lots on Oak Court average about 2000 square feet, less than 25 percent of the minimum requirement. The setback requirements for the RM-1 zone reflect the larger lot size and are inappropriate for the lots on Oak Court.

Ms. Keen-Thoesen’s proposed soffit to the front and rear of the house will result in encroachment of more than three (3) additional feet into the required yard area. If the residence was on a lot of a typical size for the zoning district, this variance would likely not be needed. We find a definite argument for practical difficulty.

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

Other properties in the zoning district (except those on Oak Court) have large enough lots to accommodate a soffit which extends extra inches into the required yards. Although this variance may not be necessary for the applicant to use or enjoy the property, the extended soffit is a common building element in other residences in the RM-1 zone.

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

As stated, most lots in the RM-1 zone are large enough to comply with the zoning requirements. The five (5) lots on Oak Court are the exception. This is not a problem general to the zoning district or this area in the city overall.

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

This is an old lot of record and the applicant had little to do with the limited size. This is not a self-created problem. Anyone wanting to extend or enlarge a structure in any direction on this lot would need variances.

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

To strictly comply with the ordinance requirements would not result in the lot being unusable for any use allowed in the RM-1 zone. It currently is a residential lot and would continue to be such.

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

Staff believes the roof extension would be considered minor in other circumstances. The total extension of the soffit requested will not be unusual in the city, according to the building inspector. Since the residence already has soffit on other floors of the same dimension as requested, it seems the request is not excessive.

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

This variance only applies to #5 Oak Court.