

Zoning Board of Appeals

Regular Meeting Agenda

Monday, June 24, 2013
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 – May 20, 2013
5. Election of Chair and Vice-Chair for 2013-2014
6. Interested Citizens in the Audience Will be Heard on Items Not on the Agenda

NEW BUSINESS –Variance Request

7. Michael and Julia Burnett are seeking three (3) dimensional variances necessary to construct a duplex on their property located at 95 North Shore Drive: 8/16 feet (instead of 25 feet) on both Oak Court and Woodman Streets; North Shore side patio is seven (7+/-) feet from the property line where 19 is required.
8. Member Comments
9. Adjourn

RESPECTFULLY SUBMITTED,

Linda Anderson
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, May 20, 2013
7:00 p.m., Council Chambers



City of South Haven

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

2. Roll Call

Present: Miller, Lewis, Paull, Wheeler, Ingersoll
Absent: Boyd (excused), Wittkop (unexcused)

3. Approval of Agenda

Motion by Lewis, second by Wheeler to approve the May 20, 2013 Planning Commission agenda as presented.

All in favor. Motion carried.

4. Approval of Minutes – February 25, 2013

Motion by Lewis, second by Wheeler to approve the February 25, 2013 Planning Commission 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 –Variance Requests - Public Hearings

6. Four Leaf Homes, LLC is asking for a variance to install a sign which identifies the relocated entrance to Pleasant View Estates manufactured home park on property located 1223 and 1233 Phoenix Street (Meijer property). The proposed off-premise sign is not permitted in the B-4 zoning district. The parcel number for the variance request is 80-53-869-009-10.

Motion by Miller, second by Wheeler to open the public hearing. All in favor. Motion carried.

Anderson introduced the item, noting that the Michigan Department of Transportation (MDOT) closed the access road that went to the mobile home park. The owner of Pleasant View mobile home park wants to move the sign from where the old entrance to the park was onto the Meijers' property where the new park entrance will be. Anderson pointed out that the Zoning Ordinance does not allow off-premise signs. The sign as it stands right now is off-premise, because it is on city property while the park is in the township. From a planning standpoint, Anderson noted, having the sign close to the main access road will avoid confusion and possibly rear end accidents as people try to find the entrance to their destination.

Ingersoll asked if Meijer's was on board to which Anderson responded that Meijers is in agreement with the proposal.

Cindy Compton, representing Four Leaf Homes, Inc., demonstrated on a large drawing of the area being discussed, where the existing drive is; where the current sign is; and noted that the existing sign will not be moved; rather a new monument sign has been designed.

Ingersoll asked whether the entrance sign would be combined with the Meijer sign. Compton explained that Meijer did not want their retail center sign confused with a manufactured home park so the proposed sign is separate from the Meijer entrance sign.

Paull asked whether any future development would be able to use that sign, rather than putting up new signs. Compton responded yes, based on the cross access agreement, the proposed sign has several spaces which can be used to identify any future businesses that may locate in the area which a part of the property Pleasant View Estates previously occupied.

Lewis asked if the sign that is being proposed is 48 sq. ft. Compton said the 200 sq. ft. includes the posts, not just the face of the sign. After further discussion, Compton said she was off-track with her remark regarding 200 sq. ft., clarifying that 200 sq. ft. was noted in the ordinance but the proposed sign will not be that large. Anderson explained this proposed sign would be in keeping with the proposed overlay zone for that area, which will have provisions for signage and other elements.

Motion by Lewis, second by Wheeler to close the public hearing.

All in favor. Motion carried.

Ingersoll called for discussion.

Lewis stated that he has no problem with the request stating, "this is not self-created in any way whatsoever. It would alleviate a safety concern."

Ingersoll stated the request is in the best interest of both the park and Meijers.

Lewis believes the proposed sign meets all the variance standard criteria in the ordinance.

Motion by Lewis, second by Paull to grant Four Leaf Homes, Inc. the variance for an off-premise sign in a B-4 district because the request meets all zoning criteria and includes exceptional conditions as put forth in our zoning regulations, is definitely not self-created but

created by the Michigan Department of Transportation (MDOT), and is a very unique situation.

All in favor. Motion carried.

7. Janet and Wesley Todd, 327 Eagle Street, request a front yard variance from zoning ordinance section 402-1 to extend a porch to 12 inches from the property line. The property number for the request is 80-53-020-002-00.

Anderson introduced the request and noted this is a request for a front set back variance. If someone has an open porch, open stairs or patio, it may extend 6 feet from the front of the house giving them 9 feet to the right of way. The uncovered porch currently extends to 4 feet of the right-of-way. The applicant is asking to extend the porch another 3 feet toward the front property line, leaving a set-back of 1 foot from the city right-of-way.

Motion by Lewis, second by Paull to open the public hearing. All in favor. Motion carried.

Wesley Todd, 327 Eagle Street, the applicant with his wife Janet Todd, stated the existing porch is hardly functional because of the opening of the door which forces one to step back to get the door open and step around it. The porch is also not in good repair which would double the improvement.

Paull asked about the house adjacent; how close is that house to the front sidewalk. Todd stated that the house on one side has extensions out to the sidewalk, while the commercial building on the other side is right up to the sidewalk. Ingersoll asked whether he was correct that ingress was from the side, not the front, on the existing porch. Todd stated that is correct.

Bertha Keithly, 317 Huron Street. Read the letter she had previously sent to the Building Department and which Anderson had forwarded to members of the board.

Todd noted that he appreciates the interest and is glad Keithly likes the brickwork, which he stated is in ill repair.

Motion by Lewis, second by Wheeler to close the public hearing. All in favor. Motion carried.

Lewis has concerns about such Zoning Ordinance requests; "it seems we get a lot of them." Stated that as far as he is concerned, 'making the place look better' does not cut it as a reason to approve a variance. Agreed with Keithly that structures that close to the city sidewalk can be a hazard. Lewis noted that "If you go back into the Zoning Board's criteria, #3 asks for exceptional circumstances. In the applicant's own words the reason for the request 'is not exceptional or extraordinary'."

Paull noted that such a request concerns the board because it seems to be pushing the limits of what the ordinance expects to see in the city and when there is a request like this that limits the front yard to one foot, where the house is already non-conforming, the fact of the matter is that even a 4 foot front yard is pretty skimpy. Since the house is already non-conforming and there is no specific reason for the variance, Paull stated that he would be opposed to approving it.

Wheeler asked if Paull is opposed to building a front porch or just this particular porch. Ingersoll pointed out that there is at least one other house that goes all the way up to the sidewalk and he is not sure how or when that got there. Wheeler is not so sure that this is such an untenable situation.

Motion by Lewis to deny the variance for the simple fact that the exceptional or extraordinary circumstances as required in the zoning ordinance do not exist as responded by the applicant and because it is possible for a structure that close to the sidewalk to be a safety hazard. Second by Paull.

Ingersoll objects to the safety issue, indicating that there are other houses with structures right out to the sidewalk line. Wheeler said for the sake of saying it, he would be probably be willing to give permission for a lesser variance, but as it stands right now with only one foot of green left it would be difficult for him to say he is in favor of that variance. Lewis noted that the board is able to grant a lesser variance than what is requested. Paull pointed out that the board does not have any plans in front of them requesting a lesser variance. Lewis said he mentioned that for future reference of the applicants.

After discussion, Ingersoll said he would be willing to consider tabling the request at this point, should Lewis' motion go through to deny it.

Anderson explained that once something has been denied you cannot table or hold off. Tabling has to come before denying or approving.

Ingersoll called the vote. A Roll Call vote was taken, with a yes vote to deny the variance request.

Ayes: Todd, Lewis, Paul, Wheeler, Ingersoll
Nays: None

Motion carried, variance denied.

8. Leonard and Lynette Stack, 320 Eagle Street, request a front yard variance from zoning ordinance section 402-1 to extend an open porch to 6 feet from the property line where 9 feet is required. The property number for the request is 80-53-019-004-00.

Anderson noted it is a coincidence that we have two very similar variance requests right across the street from each other. This house, however, is in current compliance with the ordinance. The applicants have asked to move their deck three feet toward the property line.

Motion by Lewis, second by Paull to open the public hearing. All in favor. Motion carried.

Lynette Stack, 320 Eagle Street. Asked if her request also included going 2 (two) feet toward the side of the house, noting that this has been a learning process.

Anderson explained that no variance is needed to make the deck wider; only the request to build out closer to the front property line requires a variance.

Stack: Noted that the exception to the zoning rule is that they share a driveway with their neighbor and one of the attractions was there is no green space in front of the house except

the parkway. Stack pointed out that the house and driveway take up the entire lot with the exception of the area for which they are requesting the porch variance. The porch is in disrepair and the bricks are sunken, which is a hazard for people coming in and out the front door. "What we are really looking for, with the request for the variance, was to at least be able to put a table and chairs out there", Stack added, "when there are three or four cars in the driveway there is nowhere else to sit." Stack noted that she did a little more homework, pointing out that on 216 Huron there is a massive addition going up and Anderson said any change to the property cannot interfere with the view and Stack is sure that addition will block someone's view. Seeing some of the changes made in town and new structures going up, Stack stated, "it doesn't seem like it is always an even playing field. The new Marina building is blocking one house on the bluff and 216 Huron has a huge addition." (Anderson clarified explaining the difference between a clear vision area for traffic and view protection.)

Ingersoll explained that nobody ever sees all the reasons why something is granted or denied unless they are here at the meeting; there are usually very good reasons. As far as the view goes, you cannot buy a view. There is nothing in there that says you can prevent someone from blocking a view, particularly down on the lakeshore.

Wheeler noted the only way you have a guaranteed view is to buy whatever property is between your place and the view.

Ingersoll noted that the projects Stack is referring to did not go through the Zoning Board of Appeals (ZBA).

Stack stated that she is trying to do whatever she can to be cooperative. But there is no green space. Paull asked what she has in front of her house between the house and the parkway, to which Stack responded it is red rock. Paull replied that that is "green space".

Bertha Keithly, 317 Huron Street. Stated she owns three properties on Eagle Street. Read the letter she sent to the Building Department and which Anderson had sent to the members of the board.

Motion by Wheeler, second by Lewis to close the public hearing. All in favor. Motion carried.

Lewis stated he is against this variance request, too.

Wheeler noted that the dilemma is that this board is a judicial body charged to uphold the ordinance; unless there are extenuating circumstances which justify going against the ordinance, the board cannot grant a variance.

Paull did not hear any extenuating reason, so would be inclined to disapprove, as well.

Ingersoll noted that the difference with this request is that this one has a house in compliance, unlike the previous request. Noted that a variance would make the porch more functional, but that is not the reason the board exists. This board exists to provide relief in cases where there are extenuating circumstances that would lead to exceptional difficulty if the property owner was forced to comply with zoning regulations.

Motion by Wheeler to deny the variance because there are no extenuating circumstances in this request that would warrant going against the Zoning Ordinance. Second by Lewis.

Lewis stated that granting these variances would set a precedent which could lead to more requests for similar improvements.

Ingersoll called the vote. A Roll Call vote was taken, with a yes vote to deny the variance request.

Ayes: Lewis, Paull, Wheeler, Miller, Ingersoll.

Nays: None

Motion carried.

9. Member Comments

Lewis recognized the two board members who are being term-limited for their service.

Ingersoll thanked Lewis.

Paull noted that the two applicants that were denied today ran up against why there is a Zoning Board of Appeals and why there is a Zoning Ordinance. A while back, this community decided that there are certain standards for the way this community will change and grow and to go against that there has to be an exceptional circumstance.

Wheeler commented that while he might personally feel differently he has to abide by the ordinance.

Miller noted it is his first meeting.

10. Adjourn

Motion by Lewis, second by Wheeler to adjourn at 7:58 p.m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom
Recording Secretary



City of South Haven

Agenda Item #7 Burnett Dimensional Variances

Background Information:

The applicant is asking for variances in order to build adjoining duplex units on property located at 95 North Shore Drive. This use is permitted in the RM-1 zone. The subject parcel is narrow and undersized for the RM-1 zoning district. The front setback is 25 feet and the lot is 50 feet wide. Given the three (3) frontages of this lot, there is no room for development without the variances.

Three (3) variances are sought: 8/16 feet (instead of 25 feet) on both Oak Court and Woodman Streets; North Shore fronting patio is seven (7+/-) feet from the property line where 19 is required.

Recommendation:

There is little option available to the applicant as the lot is nonconforming and will require variances to build anything. Staff has no problem with granting the variances along Oak Court and Woodman Streets. There is some question as to whether the variance along North Shore Drive is necessary for preservation of a substantial right of the owner when a smaller deck and patio could comply with zoning requirements. The ZBA should review all material and make a determination as to whether the applicant has presented a compelling enough case to warrant variances.

Support Material:

Completed application
Site plan
Aerial photo of the site
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
FOR INFORMATION CALL 269-637-0760

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

Name: Michael & Julia Burnett Date: 6.4.2013
Address: 1633 N. Clybourn #2 South Phone: 847-274-8609
Chicago, IL 60614
Address of Property in Question: 95 N. Shore Dr. Present Zoning of Property: RM-1
Name of Property Owner(s): Michael & Julia Burnett

Present Zoning of Neighboring Properties to the :

North RM1 South RM1 East RM1 West RM1

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): 501, -1, 2, and 1722

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:

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

WILL NOT BE DETRIMENTAL TO ADJACENT PROPERTY OR NEIGHBORHOOD,

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

WILL BE DESIGNED TO RESEMBLE HOMES IN THE AREA,

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).

UNDERSIZED LOT FOR THE ZONING DISTRICT.

16

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.

VARIANCE IS NECESSARY FOR
THE ENJOYMENT & USE OF THE LOT
AS POSSESSED BY OTHER PROPERTIES,

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.

THE SITUATION IS RELATED ONLY TO
THIS PARTICULAR PROPERTY,

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.

THE CONDITION IS NOT THE RESULT
OF THE PROPERTY OWNERS

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.

STRICT COMPLIANCE WITH THE
SETBACKS WOULD RENDER THE
PROPERTY UNBUILDABLE,

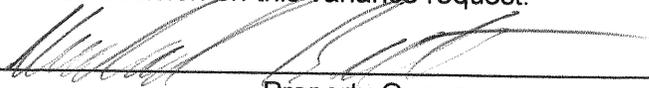
8. That the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the hardship.

THE VARIANCE REQUEST IS THE
MINIMUM AMOUNT NECESSARY,

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

THE VARIANCE WILL RELATE ONLY
TO THIS PROPERTY,

I hereby give permission for the members of the Zoning Board of Appeals and City Staff to access and inspect the property in question for the purpose of gathering information to make an informed decision on this variance request.



Property Owner _____
Date

THE INFORMATION CONTAINED WITHIN THIS APPLICATION IS TRUE TO THE BEST OF MY KNOWLEDGE AND SUBMITTED TO THE ZONING BOARD OF APPEALS FOR THEIR REVIEW. I REALIZE THAT ANY INFORMATION THAT I SUPPLY THAT IS NOT CORRECT COULD VOID ANY DECISION BY THE BOARD. I ALSO ACKNOWLEDGE THAT IF THE VARIANCE IS GRANTED BY THE BOARD, THE WORK WITHIN THE REQUEST MUST BE CARRIED OUT WITHIN ONE YEAR OF THE PUBLIC HEARING OR THE VARIANCE BECOMES NULL AND VOID.



Applicant Signature _____
Date

Van Buren County Community Information Center

Parcel 80-53-732-001-01



Close This Window

Van Buren County Property Information

If you have Questions or find Incorrect Information Send an Email.

Jurisdiction: South Haven City
Plate Number: C80

Owner Name: CARSTENS CYNTHIA S
Parcel Address: 95 NORTH SHORE DR
SOUTH HAVEN, MI 49090
Mailing Address: 12137 3 1/2 MILE RD
BATTLE CREEK, MI 49015

Property Information

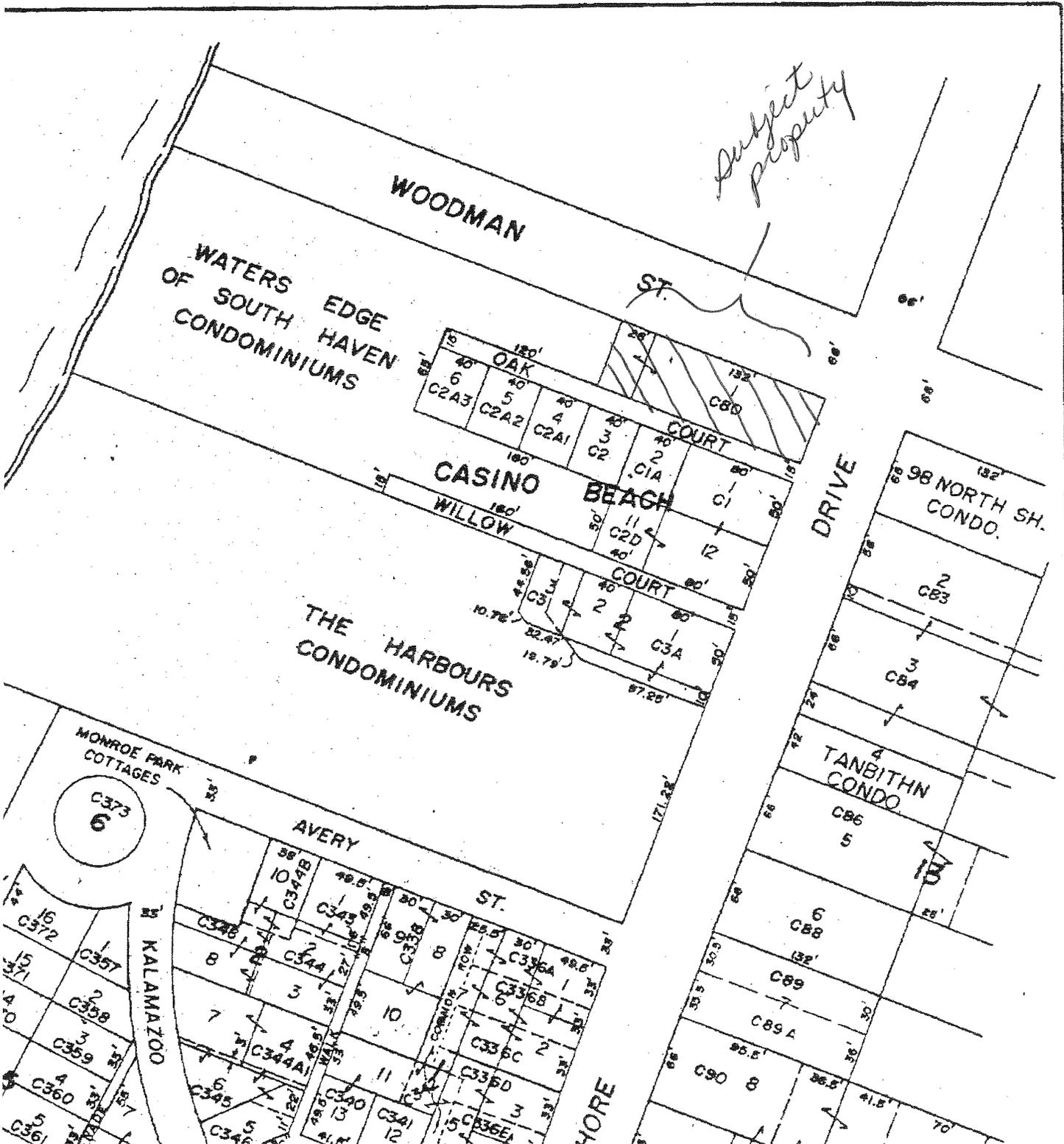
School District: 80010
Current Property Class: 402
Current Assessment: \$280,000
Previous Assessment: \$280,000
Taxable Value: \$24,492
Homestead %: 0%
Calculated Acreage: 0.2



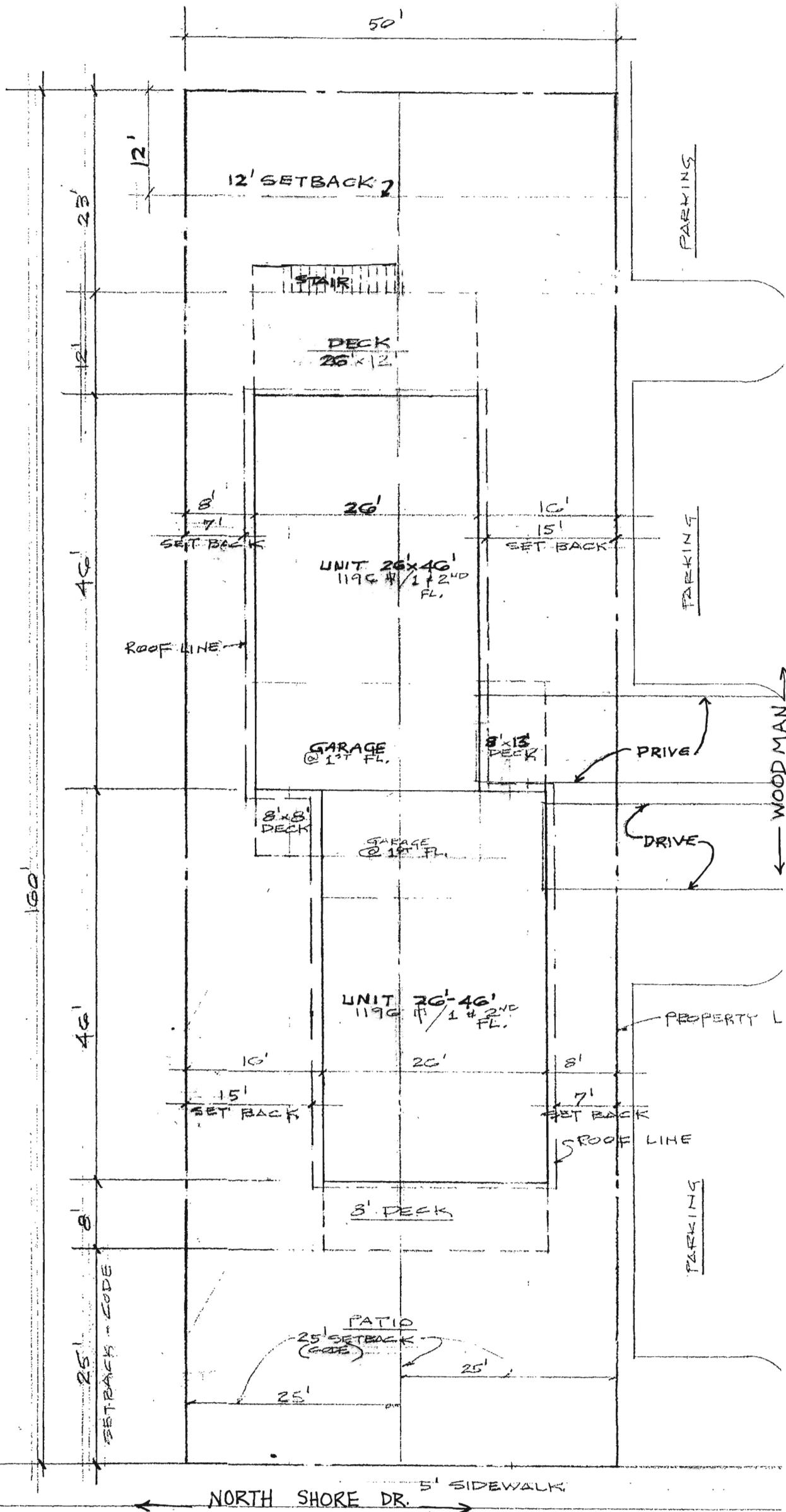
Legal Description

C80 3-1-17 745-308 873-139 1570-832 THAT PART OF ELY 160' OF LOTS 1 & 30, BLOCK 12 LY NLY OF CASINO BEACH SUB. DYCKMAN & WOODMAN'S ADD.

95 North Shore Dr



oak Court





STAFF FINDINGS OF FACT

CITY OF SOUTH HAVEN ZONING BOARD OF APPEALS

DATE: June 4, 2013

ADDRESS:

ZONING DISTRICT: RM-1 Multi family Residential

LOT DIMENSIONS: 160 feet deep, 50 feet wide

LOT AREA: 8000 sq. ft. (RM-1 zone requires 8712 sq. ft. minimum)

LOT COVERAGE: Allowed – 35%, proposed – 30%

REQUIRED SETBACKS: Front - 25 feet; Rear – 25 feet; Side – 12 feet

PROPOSED SETBACKS: **(Note: This property has 3 front yards and one side yard)**

Front – 8 feet on Woodman and Oak Court, 25 feet on North Shore Drive with an open patio extending to within 7 feet of the property line.

Side (west property line) - 35 feet (w/12 foot deck extending into yard)

VARIANCE REQUEST:

The applicant is asking for variances in order to build adjoining duplex units on the property. This use is permitted in the RM-1 zone. The subject parcel is narrow and undersized for the RM-1 zoning district. The front setback is 25 feet and the lot is 50 feet wide. Given the three (3) frontages of this lot, there is no room for development without the variances.

Three (3) variances are sought: 8/16 feet (instead of 25 feet) on both Oak Court and Woodman Streets; North Shore fronting patio is seven (7+/-) feet from the property line where 19 is required.

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.

This property abuts up to Oak Court, a neighborhood also in the RM-1 zone with very small lots. All of the lots and residences on Oak Court are nonconforming due to the lot size and setback requirements of the RM-1 Multi-Family Residential zoning. As some ZBA members will remember, we have seen properties on Oak Court require variances to complete any new construction. The situation with this property is similar in that the lot is 50 feet wide where 66 feet is required and the lot area is 712 square feet under the minimum lot size. Since this is largely a residential neighborhood, residential construction on this lot will not be detrimental to the surrounding 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 is 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).

The Burnett's lot is 50 feet wide and 160 feet deep with frontage on three (3) sides. The front setback requirements are 25 feet, thereby eliminating any possibility of using the lot for any purpose. 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 comply with the setback requirements. To deny this variance request is to deny all use of the property.

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 and the subject lot 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 build on this lot would need front setback variances at least.

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 result in the lot being unusable for any use allowed in the RM-1 zone.

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

The applicant is proposing to construct one duplex residence on the property. Any residence proposed for this property will require variances on the Oak Court and Woodman Street sides. The side yard (west side) is in compliance with zoning and the North Shore side could be in compliance if the deck and patio were reconfigured to extend no more than 17 feet from the house wall¹.

¹ Section 1722-1 allows open (to the sky) porches and decks to encroach up to 6 feet into the required front yard. This would allow the deck and patio to be 17 feet from the property line.

9. That the variance will relate only to property under the control of the applicant.
This variance only applies to property at 95 North Shore which is owned by the Burnett's.