

# Zoning Board of Appeals

## Regular Meeting Agenda

Monday, August 26, 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 – June 24, 2013
5. Interested Citizens in the Audience Will be Heard on Items Not on the Agenda

### **OLD BUSINESS – PUBLIC HEARING**

6. Kal-Haven Variance Request from Zoning Ordinance Section 1716-2, Nonresidential Access.

### **NEW BUSINESS – PUBLIC HEARING**

7. One Apache Court rear setback variance
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, June 24, 2013  
7:00 p.m., Council Chambers



City of South Haven

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

### 2. Roll Call

Present: Bugge, Miller, Paull, Wittkop, Lewis

Absent: Boyd

### 3. Election of Chair and Vice-Chair for 2013-2014

Motion by Wittkop to nominate Dennis Lewis for Chair. Second by Paull.

All in favor. Motion carried.

Lewis assumed the position of Chair and called for nominations for Vice-Chair.

Motion by Miller to nominate Wittkop for Vice-Chair.

Wittkop declined.

Motion failed.

Motion by Miller to nominate Dave Paull for Vice-Chair. Second by Wittkop.

All in favor. Motion carried.

### 4. Approval of Agenda

Motion by Bugge, second by Wittkop to approve the agenda as amended.

All in favor. Motion carried.

### 5. Approval of Minutes – May 20, 2013

Bugge abstained since she did not attend that meeting.

Motion by Miller, second by Wittkop to approve the May 20, 2013 meeting minutes.

All in favor. Motion carried.

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

None at this time.

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.**

Anderson noted that according to the Definitions in the Zoning Ordinance this property has three (3) front yards and whether the street is public, private or an easement, front yard setbacks will apply. Anderson added that all three streets are shown as public right-of-way according to city plat maps.

Anderson noted that a letter of support was received from Pat and Al Houdek, 276 Park, South Haven and letters of opposition from Larry and Marthann Hoffman, 4 Willow Court, South Haven; William Conway, Naperville, IL; Gerald Molitor, 80 Woodman, #1; Helen Thoesen, 5 Oak Court, South Haven and Edward and Marian Werhand, 98 North Shore Drive. The ZBA members had copies of these letters and had read them.

Lewis asked whether the ordinance was recently amended to allow three (3) front yards. (Ref. Section 201.12. Front Lot Line) Anderson said she was unsure of the date of the adoption but it was at least a few years.

Motion by Wittkop, second by Paull to open the public hearing.

All in favor. Motion carried.

Michael Burnett, 95 North Shore Drive, South Haven and 1633 N. Clyborne, Chicago, IL. Expressed “pride and happiness” in having discovered South Haven about seven (7) years ago. He stated desire to construct a home with the intent of improving the neighborhood and having a dream home for his family and friends. He further stated that by engaging local builders and architects he can provide economic stimulus through building.

Lewis called for questions from the board. Paull noted he would hold questions until after the public hearing.

Jim Wetloffler, a neighbor, expressed opposition to the request for dimensional variances. He stated his understanding of what criteria the zoning board bases decisions; stated he previously considered the property in question and determined it did not meet his needs; detailed his dislike of the layout of the proposed building on the property as being too close to existing buildings and having a 15’ to 16’ setback on the side where there are no buildings adjacent. Noted that this property has been vacant for twenty-five (25) years; several people have passed on the property because it does not meet the criteria. Stated that Burnett’s plan seems to be a profit venture and will increase the density substantially; that the City previously denied a variance for the property on 95 North Shore Drive.

Edward Warhan, North Shore Drive, stated he lives year around across the street from this property in a duplex. Noted that their duplex was built on a lot a third wider than the lot in this request. Pointed out inadequate parking in the plan; limited street parking during the busy season; concern that the owner is building this as an income property. Requested that the board deny the variances to preserve the good quality of living residents have in this neighborhood.

John Bussema, 3 Willow Court, expressed opposition to the proposed plan because the Zoning Board already has rules in place and should stick to them. Stated that someone put a lot of time and effort into developing the rules and the board should keep those and use them.

Philip Rome, 69 North Shore Drive, Apt.19. Stated that neighbors of the Burnett's property are opposed to further development of that property; his wife and he are grateful for those who want to enhance our community and would be glad to have a beautiful single family home there. He further expressed his opposition to building a home on that lot, to build out the density of our neighborhood and adding to the problems existing by having too many rentals in that neighborhood. The applicants already bought a single family home in this neighborhood and turned it into a multi-unit property. These people have not been good neighbors, they have bullied current residents on our own beaches and he is opposed to allowing the applicants to have more property to turn into rental units.

Steve Klooster, 4 Oak Court, asked the board whether there been a reason as to why they would grant any of these variances. Lewis said the board has not yet had that discussion.

Susanne Schlossman, Woodman Street, expressed that when rules are made the board should stick by them; that Burnetts should have done their due diligence; that there are rental houses all over and she is extremely opposed to this request.

Elaine Herbert, Yelton Manor, North Shore Drive, stated that she has no argument with these ambitious young people, but "wants to oppose the variances for all the reasons my neighbors have expressed." She enumerated the many stringent rules she had to meet when constructing the Manor and now these people want to squeeze into this small property. "We have to meet all the standards but these people want relief from those same standards."

Lewis called for other comments.

Bugge asked about the variance that was denied in 1995. Anderson said without looking at that and seeing what the specifics were she does not know. Anderson also stated that a previously denied variance would not necessarily set a precedent for this Board of Appeals.

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

All in favor. Motion carried.

Paull asked Burnett about the purpose of having two units to which Burnett said, "We enjoy sharing South Haven with others. My wife has 5 sisters and 3 brothers; it is a large group and we thought this would be an excellent use of this space." He noted that multiple family houses are permitted in this zone. Their goal is to spend as much time as possible in this

facility, to ask friends, family to use it. He disagrees with many of the expressed opinions. Burnette does not believe his request to be an intensive use; "We are only asking to use 1/3 of the land, the rest would be landscaping and so forth. We want to be an asset."

Paul asked, "Will this be your permanent residence?" Burnette said not right now, but later he would like to reside there year round. He stated that his intent is not to necessarily rent this but "it is not out of the realm of reason."

Wittkop stated that renting would be for profit and variances are not lightly given for that reason.

Julia Burnett, 95 North Shore Drive. Stated that the owner of the little shop on North Shore Drive was very excited about the variance being granted so a little beach house could be built there. Noted that the vacant lot has become a hangout for teenagers.

Paul said he lives on Park & Brockway and that for 80 percent of the year he is the only one there. "It is a pretty lonely existence. It is also peaceful." He noted that when the neighborhood is occupied during that short intense portion of the year, there are multi-family residences with upwards of eight (8) cars and sixteen (16) people in one residence, parking in the front yard, even though it is prohibited. Partly it is a result of lack of leadership in this community in to pass at least a bare minimum of a rental ordinance so the city could address some of these issues. He went on to state that owning rentals is a very comfortable way of investing in South Haven but for those who live here it is not so comfortable. Paul continued, "This one looks suspicious. Nothing that I can see that would prevent the owner from building the sort of home that nicely fits the neighborhood; one nice house would fit on that property. This bothers me from a lot of different perspectives."

Lewis said he does not know how a house could fit on the property in question. Paul said there might be a need for some variances no matter what is built, but they could be far less with less density.

Miller asked whether renting is allowed in the R-1 district. Anderson said renting is allowable anywhere in the city as there is no rental ordinance. Miller noted there seems to be a huge opposition to rentals but it is an allowed use.

Miller asked whether the board needs to take into consideration the concept in the state of Michigan that if local codes and regulations prevent the owners' ability to do anything with the property, is that not a "taking".

Anderson said variances to the Zoning Ordinance are intended to provide relief from the regulations for a specific property. There is a takings claim which occurs when local regulations change so an owner is no longer able to use the property for any use in that zoning district. A claim could be made in a situation like this one but whether it would have any "legs", so to speak, may hinge on the fact that the applicant bought the nonconforming property with the current regulations in place and regulations did not change after he bought it.

Lewis asked about the proposed building. Does it meet our parking requirements? Anderson said all of that is not the concern of the board of appeals, but will be done through a number of administrative reviews. The city engineer will have to determine where curb cuts and driveways will be. There is a requirement for two (2) parking spaces off street. The Building

and Zoning Department has to have a driveway permit and a site plan showing two (2) legal parking spaces for each unit before a building permit can be issued.

Bugge noted that we can grant variances, which does not mean that the builder may build anything. Wittkop noted the property is too small. Bugge noted that the property does not meet the area requirement; even if it was a wider lot it would not meet the three (3) front yard setbacks. Instead of the required 8,712 sq. ft this lot is 8,000 sq. ft. The width of the lot would still require a very narrow building envelope. This lot is being looked at as a through lot or a corner lot, requiring more front setbacks than a normal lot would have. Bugge reviewed this request looking at relief from the three (3) front set back requirements. In actuality, if one was to look at Sec. 17.15 of the Zoning Ordinance, the subject property is a corner lot, but it is not because it has three (3) streets which throw the property into a unique category. If it was a corner lot, by choice, the narrow dimension bordering a public street could be deemed to be the front. Stated that she does not know whether people would feel comfortable with North Shore as the front, in which case the property could be built on and it would meet all the setbacks. Bugge noted that the building could then be twelve (12) feet from Oak Court and Woodman Street and twenty-five (25) feet from North Shore Drive and twenty-five (25) feet for rear yard setback. What the applicants put on there would be determined by that building envelope. Bugge noted that the applicants are also asking for a variance for a deck to extend further into the front yard than the ordinance allows but sees no reason to grant that. Bugge noted they can extend decks an allowable distance into the required side or front yard and still be in conformance.

Lewis agreed and stated that he foresees this as one of the only properties in the city that has this situation. Considering the North Shore Drive frontage as the front yard, which is what their address is and the two other front yards, to the north and south, as typical side yards, it would give the homeowner a setback of a normal buildable lot. Bugge said having 12 feet on each side is actually greater than some other residential zoning districts.

Bugge suggests considering this a corner lot, calling the front yard that which is adjacent to North Shore Drive. That would put a 25 foot front yard setback to the east, a 25 foot rear yard setback on the west, and considering Oak and Woodman as side yards, the building envelope would be 12 feet on each side. The applicants then would be meeting all the required setbacks. Bugge does not think the deck extending beyond the standard envelope needs to be granted. The unique situation here is that this property has three (3) streets adjacent to it. She stressed that the neighbors understand that adhering to the ordinance, the owners can extend some of their decks into the side, rear and front yards, in compliance with the ordinance.

Anderson pointed out something for the Board of Appeals to consider. Sec. 1715 doesn't mention anything about the setback, it just states this could be considered the front but does not say the other property lines adjacent to streets could be considered as side yards. "Be very careful that you do not set a precedent in ordinance interpretation and that the section of the ordinance you are referencing is stated in your variance approvals".

Lewis asked Anderson, "You would prefer that variances be granted on the side yard, rather than stating that front yards as defined in the ordinance are now side yards?" Anderson responded affirmatively.

Paull stated that there would be no variance on North Shore setback and 13' variances on both Woodman and Oak Court.

Bugge said this variance is necessary regardless of whether the building is single family or multiple family; they are both approved uses and the applicant still will need compliance with parking requirements and other site plan issues. Lewis agreed that whether the applicant builds a duplex or not does not matter at all to this board. Anderson stated that a variance stays with that property regardless of ownership and reiterated that the RM-1 zone allows multi family.

Lewis asked for further discussion or any clarification from the board.

Miller commented favorably on Bugge's review of the situation.

Lewis called for a motion.

Motion by Bugge to grant a variance of 13 feet from the front set back of 25 feet (*editor's note: this motion establishes a front set back of 12 feet*) on the north and south sides of the property due to the property having frontage on three (3) streets and being undersized for the zoning district. These circumstances create exceptional and extraordinary conditions allowing all standards of Section 2205 to be met with this part of the application. Second by Miller.

A roll call vote was taken:

Yays: Bugge, Miller, Paull, Wittkop, Lewis

Nays: None

Motion by Bugge to deny the request to permit the patio to extend beyond the front yard setback on the east side due to there being no exceptional circumstances. Second by Paull.

A roll call vote was taken, with a yes vote indicating denial:

Yays: Bugge, Miller, Paull, Wittkop, Lewis

Nays: None

All in favor. Motion carried.

## 8. Member Comments

Lewis welcomed Bugge to the board.

## 9. Adjourn

Motion by Paull, second by Bugge to adjourn at 7:54 p.m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom  
Recording Secretary



## Agenda Item #6 Kal-Haven Variance Request

City of South Haven

### Background Information:

Mr. David Nixon, representing Kal-Haven Bikes, Inc., owns property in the City of South Haven which is bordered along the west side by the Black River and along the south by Kal-Haven Trail. Access to the property is provided through a 24 foot wide easement off Blue Star Highway which is commonly known as Black River Road. Access is not available from the south as the MDEQ has determined that portion of the property to be a protected wetland. The access easement is intended as a means of ingress and egress as well as for the installation of public utilities. *(Survey attached)*

Mr. Nixon's property is zoned B-3 Waterfront Business. The property underlying the easement is zoned R-1B Single Family Residential. Mr. Nixon has long been interested in developing his parcel of land into a use permitted under the current zoning. Unfortunately, the property is largely wetland and available buildable area is minimal.

### Chronology of David Nixon Appeals to the City:

Mr. Nixon appeared before the planning commission on **November 3, 2011** to request that his property be split into two (2) parcels. The proposed split would divide the property into north-south parcels. The request was referred to the planning commission because staff did not feel the unimproved easement constituted the required frontage on a private or public street. There were also concerns regarding the presence of wetlands and floodplains in the area of the division and the status of the utilities as installed by the applicant. Conversations with the city engineer revealed that the engineering department never saw the "as-builts" for the pipes, so assuming they were put in by Nixon the city would not allow any taps on that line.

Following discussion, the planning commission denied the request due to lack of access or frontage on a public or private street, questionable development potential of the proposed parcel, presence of both wetlands and floodplain and utilities which may or may not be city approved.

On **August 27, 2012**, Mr. Nixon requested two (2) zoning ordinance interpretations from the zoning board of appeals (ZBA). The first request asked the ZBA to determine if a 24 foot easement could constitute a private street. The second request asked for clarification of Section 1716-2 which prohibits access to a commercial use through residentially zoned properties. Following a review of the city's attorney opinion and their deliberation, the ZBA determined that *in this case* the easement could be construed as a private street. The ZBA made clear this was not a blanket interpretation for all easements, but the wording of this particular easement did appear to equate to a private street.

The ZBA chose not to interpret or clarify the second inquiry as they believed the zoning text was unambiguous and clear in its intent. The prohibiting text would stand as adopted.

On **October 22, 2012**, Mr. Nixon again went before the ZBA. In this case he asked for a variance from Section 1716-2 to allow access to a proposed commercial use through a residential zone. Several residents owning property along the easement spoke in opposition to the request stating that they did not want commercial traffic using the easement due to safety and noise concerns. The ZBA also reviewed an opinion from the city attorney and deliberated the standards for variance decisions in the zoning ordinance (Sec. 2205). The ZBA ultimately voted unanimously that the request for a variance from Zoning Ordinance 1716-2 be denied since such a variance has the potential for detriment to the surrounding neighborhood (Sec. 2205-1).

**Current Status:**

Mr. Nixon subsequently brought a legal challenge against the decision. On July 16, 2013, the court remanded the matter back to the ZBA for clarification of the decision. The ZBA will revisit the matter at their August 26 meeting. The city attorney will prepare a brief for the ZBA and will attend this meeting as he did the October 2012 meeting.

Given the number of ZBA members who were not on the board when this case was heard previously, we are presenting the matter as new. Neighbors have been renotified and the legal notice republished in the manner required by state statute.

If you would like additional information or documentation related to this matter, please let me know.

**Recommendation:** Staff recommends that the ZBA members review the attached material, visit the site and consider any public comments prior to making a decision. Please remember that this is not a plan review. We have received no information on Mr. Nixon's plans for the area should he receive a variance. The ZBA is only reviewing the variance request in relation to the standards set forth in Zoning Ordinance Section 2205.

**Support Material:**

- Court Order
- Minutes of the October 22, 2012 meeting
- Aerial map of site
- Survey
- Neighbor letters

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF VAN BUREN

KAL-HAVEN BIKES, INC.,  
Appellant,

V

Case No. 13-62-888-AV  
HON. PAUL E. HAMRE

CITY OF SOUTH HAVEN, SOUTH  
HAVEN ZONING BOARD OF APPEALS,  
Appellee.

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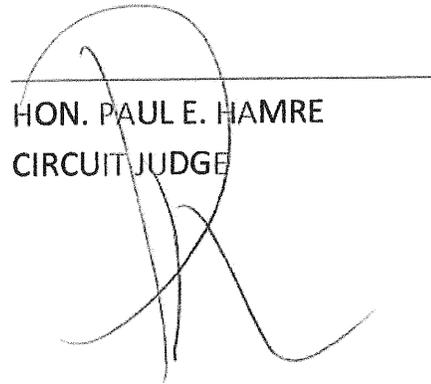
Kenneth P. Lane (P68617)  
Attorney for Appellee  
200 Ottawa Ave NW, Suite 500  
Grand Rapids, MI 49503  
(616) 608-1100

ORDER REMANDING CASE

After reviewing the file, briefs and arguments of the parties;  
IT IS HEREBY ORDERED that the case is remanded back to the South Haven Zoning Board of Appeals for the purpose of the Zoning Board of Appeals to make specific findings of fact regarding Appellant's variance request, including addressing each of the nine factors that are required as part of the South Haven variance request application. The Zoning Board of Appeals may reconvene at its discretion for the purpose of modifying its findings of fact and its decision if it determines a modification is necessary. The supplemental record shall be filed with the court on or before September 16, 2013.

THIS IS NOT A FINAL ORDER AND DOES NOT CLOSE THE FILE

DATED: 07/16/2013

  
\_\_\_\_\_  
HON. PAUL E. HAMRE  
CIRCUIT JUDGE

CERTIFICATE OF SERVICE/MAILING

I Certify that on this date, copies of this document were served upon the parties or their attorneys by ordinary mail addressed to the address last shown on a pleading in this cause.

DATED: 07/16/2013

  
\_\_\_\_\_  
Judicial Secretary

## Zoning Board of Appeals

### Regular Meeting Minutes

Monday, October 22, 2012  
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: Apotheker, Henry, Lewis, Paull, Wittkop, Ingersoll,  
Absent: Wheeler

#### 3. Approval of Agenda

Motion by Wittkop, second by Henry to approve the October 22, 2012 regular meeting agenda as presented.

All in favor. Motion carried.

#### 4. Approval of Minutes – September 24, 2012

Motion by Henry, second by Apotheker to approve the September 24, 2012 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 Request**

#### **6. Kal-Haven Bikes, Inc., (represented by David Nixon), 1073 E. Wells Street, requests a variance from zoning ordinance section 1716-2, Nonresidential Access. The applicant is seeking to gain access to commercial property through a residential area via an existing private road/easement. The parcel number for the applicant's property is 80-53-870-010-00.**

Anderson noted the applicant is looking for a variance from one line in the ordinance. Ingersoll asked if this goes hand in hand with the last issue the applicant brought before the board. Anderson responded that the last time the applicant appeared he requested an

interpretation of whether the easement he holds to the extension of Black River Road could be interpreted as a private road. The ZBA found that the wording in the easement did allow the same access as would a private street or road.

**Attorney Steve McKown, Allegan, Michigan, representing David Nixon.** McKown handed the chair exhibits to be distributed to the board and explained each exhibit. The first exhibit is the legal description; second is a small aerial map; third is the land contract from 1987 regarding this property; fourth is a land contract memorandum; fifth is the deed from the land contract sellers in the 1990's; sixth is a deed; seventh, for this record tonight, the application for the interpretation and the two judgments that were entered in Circuit Court in Paw Paw; eighth is the Freedom of Information Act (FOIA) request and the City's response (this is pertinent since the language in question appeared in the 1990 zoning amendment section, long after the applicant acquired the property); and ninth is a copy showing past use of the property and the Department of Natural Resources approval for boat slips.

McKown stated that the property involved is about 3.82 acres, bordered on the west by the Black River, on the south and east by the Kal-Haven trail, with the only access the easement from Blue Star Highway. The easement is shared with several residential properties and then continues on to the applicant's property. The question at the last meeting was whether or not the existing easement is a private road. McKown noted that every private road is an easement of sorts allowing access for ingress, egress or utilities. Denying this variance would deprive the owner of use of his property. Access is not defined in the ordinance so they chose to use the commonly understood meaning. Admitting that no research was done, McKown stated, "There are likely other uses like marinas that go through residential property in the city for access." McKown stated, "Resorting to the definition of access from the dictionary includes any alley or road, including public and private roads".

McKown asked, "What was the City Council intending to do when they adopted this amendment? Were they only including private roads?" McKown continued, "This amendment does not do that so it leaves uncertainty. We (the applicant) are asking for a variance; this twenty-four foot (24') easement, this private road, is the only way to get to this property so it is usable."

McKown noted that in section 901 there is a list of what can be done in the B-3 zoning district. The list includes beaches, recreation areas, dwellings above permitted use (mixed use), marinas, golf courses and hotels, among others. Planned Unit Developments (PUDs) are permitted with a commercial use included. There is no use that can be implemented on this property without this zoning variance. McKown said he and his client do not know if there is anything else like this situation anywhere else in the City; this property is taxed as commercial property but the owners can not get to it. Since 1987, when Mr. Nixon acquired the property in conjunction with his wife and a corporation, there have been commercial uses made.

Ingersoll asked how the previous owner gained access; McKown stated the previous owner (Mr. Olen) made use of the easement to get to the property.

Ingersoll asked why the access was not pursued at the time of the previous lawsuits. McKown explained that in August 2010 and December 2011 there were other lawsuits regarding issues with the easement filed by residential owners along Black River Road as well. The easement was changed to 24' from 16' at the time of those lawsuits. McKown

stated that in 1984, as demonstrated by Exhibit 5, the survivors of Mr. Olen conveyed the ownership to Mr. Nixon and the present corporation.

The predicament, according to McKown, is that there is no apparent use that can be made of this property without access. According to McKown, there have been two requests for variances. The problem is not self-created; this was created by the adoption of the Zoning Ordinance. There can not be any reasonable use of the property without the variance.

McKown noted that there are nine (9) factors required as part of the application. McKown went through the application's nine (9) factors, reiterating the responses included in the application.

Paull stated Nixon does not own the easement. McKown responded that an easement is a slice of ownership; the applicant does own that easement along with others who use it. His corporation is considered an owner by definition in your ordinance. This easement can only be used for ingress and egress and for public utilities.

Wittkop asked, "There are no other easements that cross the Kal-Haven Trail?" McKown noted that this corporation, Kal-Haven Bikes, does not own the property to the south. The group discussed the entities that do cross the Kal-Haven Trail, such as farmers and farm related businesses.

Lewis spoke to a change in use of the private road/easement being detrimental to others around the neighborhood. Heavy traffic use could be detrimental. McKown said his client has no specific plans since he is unable to access the property at this time. Here he is just trying to get a variance to use the property. McKown noted the topography is a little unusual, with one area quite steep with a hill.

Wittkop asked how much of the property is dry. McKown noted that there are different numbers out there, but said some numbers he has heard identify 60% as wetland. Whatever environmental issues are involved will control uses; there would need to be Department of Environmental Quality (DEQ) or Drain Commissioner approvals.

Ingersoll asked if the owner of the land across which the easement is located has been involved. McKown responded that the owner of that land was not responsive to their inquiries. That is what ultimately led to the past legal actions.

Paull asked how the easement grew from a 16' utility easement to a 24' road. McKown said the original 16' was for ingress and egress; the change to 24' was a result of lawsuits.

**Ken Lane, Clarke Hill, City Attorney for South Haven.** Lane stated that the easement was established by two court orders and two quiet title actions. The stated purpose of the easement was pedestrian and vehicular ingress and egress and that meets the definition of a private road. This request is not to change the use of the easement, or how the applicant's property can be used. This request is for relief from section 1716.2, which does not allow the private road to provide access over residential property to a commercial property. The applicant wants to use the property for typical uses under B-3 zoning. Lane explained why he did not give the board a firm recommendation, but rather gave the pros and cons as starting points for discussion.

Paull asked, "Is not the use of this road as a residential access quite different than the use as a commercial driveway, in terms of intensity?" Lane said without knowing what the private road, stated to be for pedestrian and vehicular access, will be used for, it is hard to say whether or not the easement traffic will be an issue. Paull asked if cars with trailers, trucks with trailers and boats on trailers will be more intense. Lane pointed out that it is still vehicular access which does not state how much traffic. Ingersoll said one section of the ordinance says the access is for vehicular access, the other section says it cannot be accessed for commercial uses. "We are parsing words", Paull stated. Henry said we need to go back and try to understand the intent of the wording of this particular ordinance. Ingersoll said the board does not look at the intent but at the wording. This easement is identified as a private road under the Zoning Ordinance. Lane returned that without knowing what this private road is going to be used for, there may need to be improvement made to this road but that is a different meeting and a different issue.

Ingersoll opened the public hearing.

**Dixie Capps**, resident of Black River Road since 1987; another resident has been there over thirty years and still another, both in attendance, for fifteen years. Capps stated her question to the board is, "Have any of you looked at the road?" Her deed for the easement shows 16'; the road is not that wide. Capps said she has heard a marina is going to be put in there. "This is wetlands and cattails; how is Nixon going to widen the road to 24'?" Anderson noted that the easement is 24' feet in front of her house. Capps said years ago someone wanted to put a campground in there; this is a nesting area for birds. Capps asked the board to vote no and asked the board to wait and look at that road before making a decision.

**Robert Trowbridge**, 01250 Blue Star Highway. Trowbridge stated that he owns the property along Black River Road which is in South Haven Township. Trowbridge had questions about how the 16' easement changed to a 24' easement; now he knows how that happened. Stated he does the maintenance on the road and it is hard to keep up with because it is soft and sinks; he can not continue to do the maintenance if this request is granted and the property begins to be used for commercial purposes and the road starts being used for commercial traffic. Each of us (the residents) owns a piece of the easement. If it is going to be 24' through South Haven Township, there is a deep ditch that will have to be reconstructed and drained. Trowbridge has asked South Haven Township and they would not let him drain it. How are you going to make three hundred (300') of the road in the township wider. Trowbridge concluded, "What financial burden will be put on the residents if that road is improved?"

Wittkop asked if the board is ruling on a city or a township issue. Anderson said if this request is granted, the approval would have to be contingent on the applicant working with the township. As far as the city, any use that goes in there has to go to planning commission and be reviewed by emergency services, the police department, city engineering, etc. This is only the first in a number of approvals which would be required.

Lewis said Mr. Trowbridge brings up a very good point to which Ingersoll responded, "No, construction is not part of our pervue here. We are here to rule only on what is written in the ordinance as pertains to this request."

**Matt Petter**, 508 River Island Drive. Petter lives across the river from the property under discussion; Kal-Haven Bike Company comes before the board all the time, just asking for

little bits from the ZBA or planning commission. Petter said, "Go to the ordinance that says you cannot put commercial access over private land." Petter stated that the applicant probably bought that property for a song because it is landlocked. Now he comes and asks for this and he recommends no.

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

All in favor. Motion carried.

Anderson shared three letters in opposition from Ward Hamlin Jr.; Constance and Matt Petter and Richard Docksteder.

Paull stated that when a variance is granted a precedent is being established; "I realize that somewhere in the ordinance it states that ZBA decision do not set a precedent". Paul continued, "But in this case if you grant the variance, you are setting a precedent." Ingersoll said "every time this board grants something we set a precedent. There is only one set of circumstances that we are considering". Paull said he didn't study the entire city, but there might be some places in the City where similar circumstances exist. Ingersoll stated that the board cannot go on "ifs" but on the facts that we know.

Lewis said Ingersoll is correct and his biggest issue is that he does not see how he can vote against it, unfortunately. As far as can be told from the information provided, this is the only access to the applicant's property. Lewis said, "Shame on the city for creating this situation." The zoning ordinance, according to Ingersoll, sets this up as a commercial property and the drafters probably did not even consider access.

Apotheker has a problem with the question in the standards (Section 2205-1) which states that that this request, if granted, will not be detrimental to adjacent property owners. Apotheker thinks granting this request could cause problems and be detrimental to those along Black River Street.

Wittkop has a problem with the entrance to this area through the township. If the Zoning Board grants this and the township says "Sorry, Charlie," we are putting the cart before the horse. Ingersoll said the applicant does not have any reason to go before the township unless they can get this variance".

Anderson said any decision made by the board, can have contingencies, such as they must get township approval within a certain amount of time.

Attorney Ken Lane: The variance grants the relief from that particular section of the Zoning Ordinance; it does not say anything about the condition of the road, whether it is appropriate for specific uses of the property, the rest remains an issue for the township and the Planning Commission. Ingersoll said if the Zoning Board approves it, the approval is not saying anything about the use of the property.

Henry is comfortable with the ordinance and the way it is written so would have to vote no.

Motion by Henry that the request for a variance from Zoning Ordinance 1716.2 be denied. Second by Wittkop.

Lewis would like to see the reasons for the denial included in the motion.

Wittkop said such a variance will be detrimental to adjacent lands and the surrounding neighborhood, per zoning Section 2205-1.

Motion by Henry that the request for a variance from Zoning Ordinance 1716-2 be denied since such a variance has the potential for detriment to the neighborhood.

Anderson asked that the chair clarify that a yes vote meant to deny the request and a no vote meant to approve the request.

A roll call vote was taken:

Ayes: Henry, Paull, Wittkop, Apotheker

Nays: Lewis, Ingersoll

Motion carried.

Ingersoll stated we denied a request to allow commercial access over residential property in a 4 to 2 vote.

- 7. Michael Roth, 214 Huron Street, requests a variance from zoning ordinance section 402-5 to permit 44 percent lot coverage where 40 percent is the maximum allowed. The parcel number for the applicant's property is 80-53-022-005-00.**

Anderson noted this is regarding a covered roof. Mr. Roth is seeking to construct a wrap-around porch with a roof. This brings the lot coverage to 44 percent, which is 4 percent more than the ordinance maximum of 40 percent. Anderson talked about keeping part of it open, with a pergola to bring that percentage down, but applicant preferred to keep it consistent.

**Roth, Michael and Julie**, 214 Huron. "Anderson correctly stated our case. The house is the second from the last on Huron and is a single story two-bedroom house with a screened in porch on the west end of the house". Roth explained he and his wife bought the house and due to having four kids, wanted to put another bedroom on the house. After they got into the process they found out that the foundation will not support another story, "so we could not go up over the existing portion of the house. We got an architect to give us a plan to replace the screen porch with a four-season room and go up over that. We want to keep the screen porch atmosphere and the character of the house. We use our screened porch all the time. Our improvements would be right where it is now; not encroaching into the open space. By putting our year-round improvements where the screen porch is, we will try to keep the screen porch atmosphere by screening in part of the new porch. Roth explained that the second floor will be a cantilever over the new family room. Our neighbors wished us well when we talked to them about it. It will maintain the neighborhood character of the area; many of the other houses have similar improvements."

Ingersoll asked for more details. Roth explained that the existing screen porch would turn into a family room and the upstairs above the family room would be bedrooms. We hoped to bring the porch around the house.

Ingersoll asked if Roth really wanted the Huron Street porch and the portion of the porch that faces the garage and the concrete. Ingersoll stated that the 25.5' in the back could be taken off to which Roth responded, "We will be happy for what you will give us." Roth also

noted that this drawing was architecturally designed and it is possible that without the back portion we would not need a variance. Ingersoll stated he hates to shoot down a good idea. The ordinance says 40% but the flip side is this is an improvement to the South Haven area.

Roth responded, "Shame on us that we did not find out in the inspection period that the foundation is not structurally good enough for us to build up over the main structure."

Lewis noted it is good to find as many exceptional circumstances as possible in considering these cases. Apotheker pointed out that the porch itself is not so much the issue as the cantilevered portion of the second floor. The group discussed the cantilever and noted that the cantilever alone does not bring the number above 40 percent. It is the porch roof that is the problem. The board also discussed conditions that could be attached to an approval.

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

Anderson noted that the board needs to look at the ordinance standards in considering this request.

Ingersoll asked for discussion. Henry has no problem with the variance. Paull said the thing that bothers him is that if we approve this, we will be granting a substantial property right to one person that no one else in the neighborhood has. Ingersoll stated that the porch is not livable area. Wittkop said that does not matter, the porch is still covering property and has a roof. Paull said it still is granting something others do not have. Apotheker pointed out that the overage is a small amount at only 4 percent.

Motion by Henry to approve the variance request at 214 Huron Street to allow for 44 percent lot coverage, a 4 percent increase over the allowed ordinance maximum of 40 percent. A condition shall be attached that the area to be defined shall not be used as habitable space. Reasons for the approval include the unique foundation structural problems which existed and not self-created by the applicant, the fact that requested variance improves the property and the neighborhood and is clearly not detrimental and the variance relates only to property under the control of the applicant. Second by Apotheker.

A roll call vote was taken:

Roll call vote:

Ayes: Lewis, Apotheker, Henry, Ingersoll

Nays: Paull, Wittkop

Motion carried. Variance granted.

## 8. Member Comments

None at this time.

## 9. Adjourn

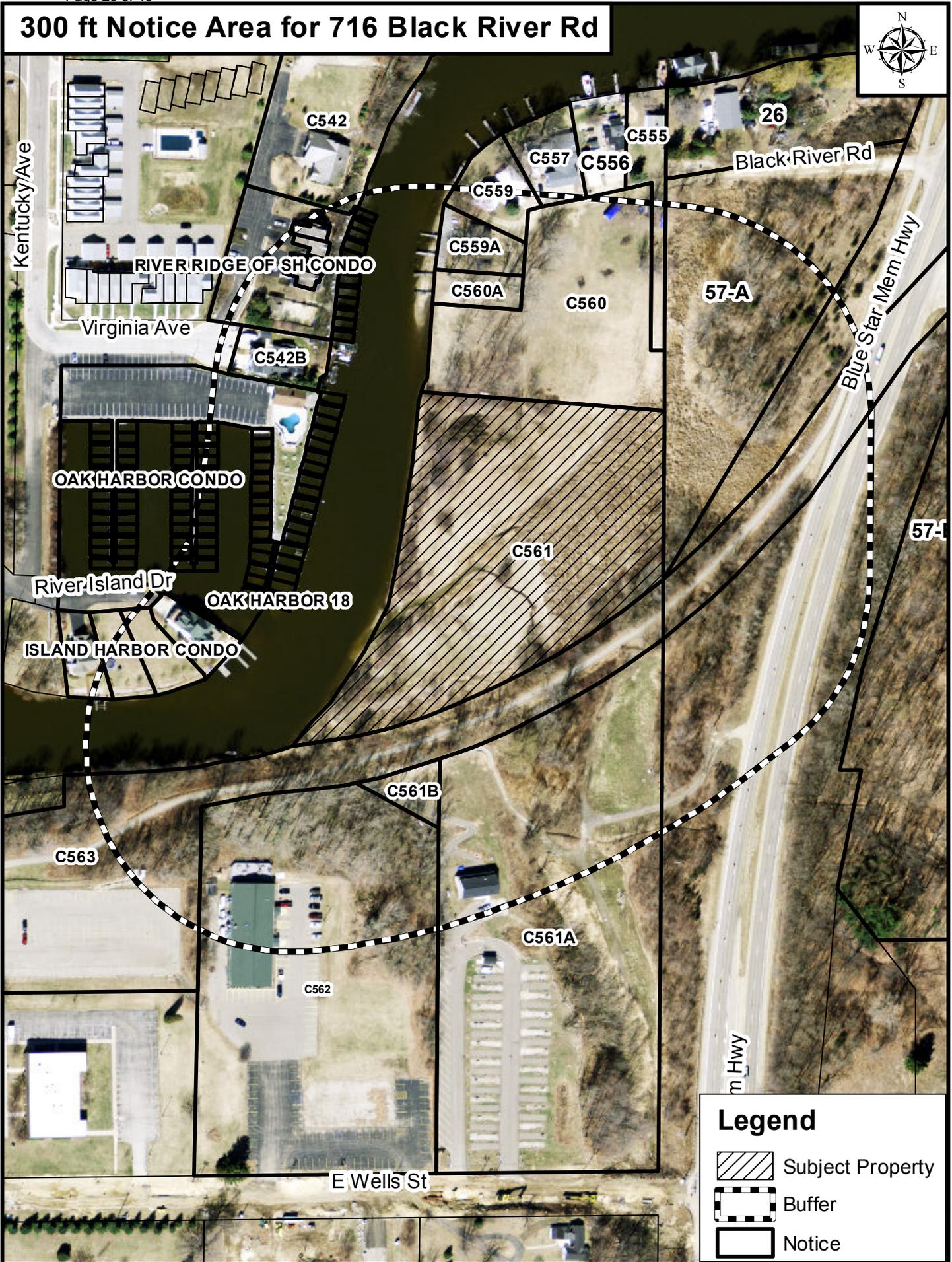
Motion by Lewis, second by Henry to adjourn at 8:17 p.m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom  
Recording Secretary

# 300 ft Notice Area for 716 Black River Rd



**Legend**

-  Subject Property
-  Buffer
-  Notice

# SURVEYOR'S CERTIFICATE

**PROPOSED SPLIT DESCRIPTION:**

PART OF THE NORTHWEST QUARTER OF SECTION 2, TOWN 1 SOUTH, RANGE 17 WEST, CITY OF SOUTH HAVEN, VAN BUREN COUNTY, MICHIGAN DESCRIBED AS COMMENCING AT THE WEST QUARTER POST OF SAID SECTION; THENCE NORTH 87°38'30" EAST ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER, 1319.37 FEET TO THE POINT OF INTERSECTION WITH THE HISTORICALLY HELD AND MONUMENTED EAST LINE OF THE WEST HALF OF SAID NORTHWEST QUARTER; THENCE NORTH 00°48'46" WEST ALONG SAID MONUMENTED LINE, 889.52 FEET TO A FOUND IRON ON THE NORTH LINE OF THE KAL-HAVEN TRAIL PROPERTY; THENCE CONTINUING NORTH 00°48'46" WEST ALONG SAID MONUMENTED LINE, 116.89 FEET TO THE PLACE OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE CONTINUING NORTH 00°48'46" WEST ALONG SAID MONUMENTED LINE, 132.23 FEET TO A FOUND IRON; THENCE NORTH 87°25'50" WEST ALONG A MONUMENTED LINE, 327.44 FEET TO A MEANDER LINE ALONG THE EAST SIDE OF THE BLACK RIVER; THENCE SOUTH 13°15'53" WEST ALONG SAID MEANDER LINE, 50.67 FEET; THENCE SOUTH 04°49'38" WEST ALONG SAID MEANDER LINE, 82.27 FEET; THENCE SOUTH 87°25'50" EAST, 347.89 FEET TO THE PLACE OF BEGINNING. CONTAINING 1.03 ACRES OF LAND, MORE OR LESS, TO THE MEANDER LINE, AND TOGETHER WITH ALL LANDS LYING WESTERLY FROM SAID MEANDER LINE TO THE CENTER OF THE BLACK RIVER BOUNDED BY THE NORTH AND SOUTH LINES OF THIS PARCEL AS DESCRIBED ABOVE.

**TOGETHER WITH A TWENTY FOUR (24) FOOT WIDE INGRESS AND EGRESS EASEMENT TO BLUE STAR MEMORIAL HIGHWAY DESCRIBED AS:**

PART OF THE NORTHWEST QUARTER OF SECTION 2, TOWN 1 SOUTH, RANGE 17 WEST, CITY OF SOUTH HAVEN AND TOWNSHIP OF SOUTH HAVEN, VAN BUREN COUNTY, MICHIGAN DESCRIBED AS COMMENCING AT THE WEST QUARTER POST OF SAID SECTION; THENCE NORTH 87°38'30" EAST ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER, 1319.37 FEET TO THE POINT OF INTERSECTION WITH THE HISTORICALLY HELD AND MONUMENTED EAST LINE OF THE WEST HALF OF SAID NORTHWEST QUARTER; THENCE NORTH 00°48'46" WEST ALONG SAID MONUMENTED LINE, 889.52 FEET TO A FOUND IRON ON THE NORTH LINE OF THE KAL-HAVEN TRAIL PROPERTY; THENCE CONTINUING NORTH 00°48'46" WEST ALONG SAID MONUMENTED LINE, 249.12 FEET TO A FOUND IRON; THENCE NORTH 87°25'50" WEST ALONG A MONUMENTED LINE, 194.20 FEET TO THE PLACE OF BEGINNING OF THIS EASEMENT DESCRIPTION; THENCE NORTH 02°42'31" EAST, 257.95 FEET; THENCE NORTH 75°45'50" EAST, 180.01 FEET TO THE LINE BETWEEN SAID CITY AND TOWNSHIP; THENCE ENTERING SAID TOWNSHIP AND PROCEEDING NORTH 75°59'18" EAST, 53.85 FEET; THENCE NORTH 85°10'41" EAST, 268.29 FEET TO THE WESTERLY LINE OF BLUE STAR MEMORIAL HIGHWAY; THENCE NORTH 18°31'09" EAST ALONG SAID WESTERLY LINE, 26.14 FEET; THENCE SOUTH 85°10'41" WEST, 280.58 FEET; THENCE SOUTH 75°59'18" WEST, 50.20 FEET TO AN OLD IRON AT SAID CITY/ TOWNSHIP LINE; THENCE REENTERING SAID CITY AND PROCEEDING SOUTH 75°45'50" WEST ALONG A MONUMENTED LINE, 203.49 FEET; THENCE SOUTH 02°42'31" WEST ALONG A MONUMENTED LINE, 275.74 FEET; THENCE SOUTH 87°25'50" EAST, 24.00 FEET TO THE PLACE OF BEGINNING.

**SUBJECT TO AN EASEMENT FOR INGRESS AND EGRESS DESCRIBED AS:**

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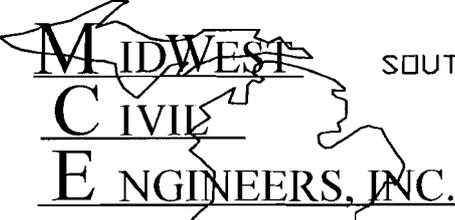
**PROPOSED SPLIT**

*Daniel B. Zwar*  
**DANIEL B. ZWAR**  
 LICENCED PROFESSIONAL SURVEYOR NO. 28435

I, DANIEL B. ZWAR, A LICENSED PROFESSIONAL SURVEYOR, NUMBER 28435, IN MICHIGAN, CERTIFY THAT THIS DRAWING IS AN ACCURATE REPRESENTATION OF A BOUNDARY SURVEY PERFORMED UNDER MY DIRECTION FOR THE HEREON DESCRIBED PARCEL OF LAND.

**NOTES:**

- 1.) THIS SURVEY WAS PERFORMED WITH AN ERROR OF CLOSURE NO GREATER THAN 1 IN 5000.
- 2.) EXCEPT FOR PAPER SIZE, THIS SURVEY COMPLIES WITH THE REQUIREMENTS OF SECTION 3 OF ACT 132 OF THE PUBLIC ACTS OF 1970, AS AMENDED, AND ACT 288 OF MICHIGAN PUBLIC ACTS OF 1967, AS AMENDED, SHOULD BE CHECKED TO SEE THAT ANY PROPERTY CONVEYANCE DOES NOT VIOLATE THIS ACT.

CERTIFIED TO: <p style="text-align: center;"><b>DAVID NIXON PROPOSED SPLIT</b></p>	 <p><b>MIDWEST CIVIL ENGINEERS, INC.</b></p>	13560 76TH STREET SOUTH HAVEN, MICHIGAN 49090 269-637-9205 (P) 269-637-9206 (F)
DRAWN BY: DBZ DATE: AUGUST 14, 2012 SCALE: 1" = 100' SEC. 2 T. 1 S. R. 17 W.	SHEET 2 OF 4 PROJ. NO. 12-154	

# SURVEYOR'S CERTIFICATE

**REMAINDER OF PARCEL 80-53-870-010-00 DESCRIPTION:**

PART OF THE NORTHWEST QUARTER OF SECTION 2, TOWN 1 SOUTH, RANGE 17 WEST, CITY OF SOUTH HAVEN, VAN BUREN COUNTY, MICHIGAN DESCRIBED AS COMMENCING AT THE WEST QUARTER POST OF SAID SECTION; THENCE NORTH 87°38'30" EAST ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER, 1319.37 FEET TO THE POINT OF INTERSECTION WITH THE HISTORICALLY HELD AND MONUMENTED EAST LINE OF THE WEST HALF OF SAID NORTHWEST QUARTER; THENCE NORTH 00°48'46" WEST ALONG SAID MONUMENTED LINE, 889.52 FEET TO A FOUND IRON ON THE NORTH LINE OF THE KAL-HAVEN TRAIL PROPERTY AND PLACE OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE CONTINUING NORTH 00°48'46" WEST ALONG SAID MONUMENTED LINE, 116.89 FEET; THENCE NORTH 87°25'50" WEST, 347.89 FEET TO A MEANDER LINE ALONG THE EAST SIDE OF THE BLACK RIVER; THENCE SOUTH 04°49'38" WEST ALONG SAID MEANDER LINE, 139.01 FEET; THENCE SOUTH 22°57'43" WEST ALONG SAID MEANDER LINE, 258.86 FEET TO A CURVE ON THE NORTHERLY LINE OF THE KAL-HAVEN TRAIL WITH A RADIUS OF 1174.00 FEET AND A CENTRAL ANGLE OF 25°43'06"; THENCE ALONG SAID CURVE TO THE LEFT, 526.97 FEET TO THE PLACE OF BEGINNING. CONTAINING 2.26 ACRES OF LAND, MORE OR LESS, TO THE MEANDER LINE, AND TOGETHER WITH ALL LANDS LYING WESTERLY FROM SAID MEANDER LINE TO THE CENTER OF THE BLACK RIVER BOUNDED BY THE NORTH AND SOUTH LINES OF THIS PARCEL AS DESCRIBED ABOVE.

**TOGETHER WITH A TWENTY FOUR (24) FOOT WIDE INGRESS AND EGRESS EASEMENT TO BLUE STAR MEMORIAL HIGHWAY DESCRIBED AS:**

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**ALSO TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS DESCRIBED AS:**

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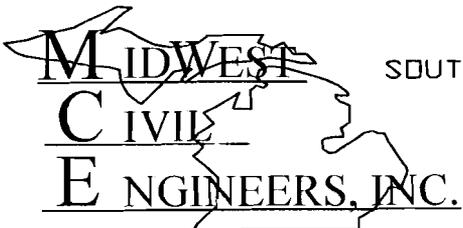
**REMAINDER OF PARCEL 80-53-870-010-00**

*Daniel B Zwar*  
**DANIEL B. ZWAR**  
 LICENCED PROFESSIONAL SURVEYOR NO. 28435

I, DANIEL B. ZWAR, A LICENSED PROFESSIONAL SURVEYOR, NUMBER 28435, IN MICHIGAN, CERTIFY THAT THIS DRAWING IS AN ACCURATE REPRESENTATION OF A BOUNDARY SURVEY PERFORMED UNDER MY DIRECTION FOR THE HEREON DESCRIBED PARCEL OF LAND.

**NOTES:**

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CERTIFIED TO: <h2 style="text-align: center; margin: 0;">DAVID NIXON PROPOSED SPLIT</h2>		13560 76TH STREET SOUTH HAVEN, MICHIGAN 49090 269-637-9205 (P) 269-637-9206 (F)
DRAWN BY: DBZ DATE: AUGUST 14, 2012 SCALE: 1" = 100' SEC. 2 T. 1 S. R. 17 W.		SHEET 3 OF 4 PROJ. NO. 12-154 August 26, 2013

# SURVEYOR'S CERTIFICATE

SUBJECT TO A TWENTY FOUR (24) WIDE INGRESS AND EGRESS EASEMENT DESCRIBED AS:  
 PART OF THE NORTHWEST QUARTER OF SECTION 2, TOWN 1 SOUTH, RANGE 17 WEST, CITY OF SOUTH HAVEN,  
 VAN BUREN COUNTY, MICHIGAN DESCRIBED AS COMMENCING AT THE WEST QUARTER POST OF SAID  
 SECTION; THENCE NORTH 87°38'30" EAST ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER, 1319.37  
 FEET TO THE POINT OF INTERSECTION WITH THE HISTORICALLY HELD AND MONUMENTED EAST LINE OF THE  
 WEST HALF OF SAID NORTHWEST QUARTER; THENCE NORTH 00°48'46" WEST ALONG SAID MONUMENTED LINE,  
 889.52 FEET TO A FOUND IRON ON THE NORTH LINE OF THE KAL-HAVEN TRAIL PROPERTY; THENCE  
 CONTINUING NORTH 00°48'46" WEST ALONG SAID MONUMENTED LINE, 116.89 FEET; THENCE NORTH 87°25'50"  
 WEST, 242.63 FEET TO THE PLACE OF BEGINNING OF THE EASEMENT DESCRIBED HEREIN; THENCE CONTINUING  
 NORTH 87°25'50" WEST, 26.77 FEET; THENCE SOUTH 23°42'22" EAST, 75.81 FEET; THENCE SOUTH 34°47'32" EAST,  
 147.62 FEET; THENCE SOUTH 00°55'43" EAST TO A CURVE ON THE NORTHERLY LINE OF THE KAL-HAVEN  
 TRAIL WITH A RADIUS OF 1174.00 AND A CENTRAL ANGLE OF 01°22'06"; THENCE ALONG SAID CURVE, 28.03 FEET;  
 THENCE NORTH 00°55'43" WEST, 44.15 FEET; THENCE NORTH 34°47'32" WEST, 152.59 FEET; THENCE NORTH  
 23°42'22" WEST, 61.63 FEET TO THE PLACE OF BEGINNING.



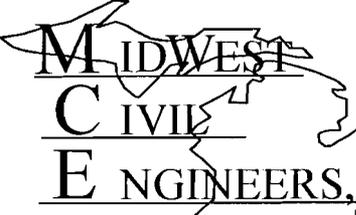
*Daniel B. Zwar*  
 DANIEL B. ZWAR  
 LICENCED PROFESSIONAL SURVEYOR NO. 28435

REMAINDER OF PARCEL 80-53-870-010-00

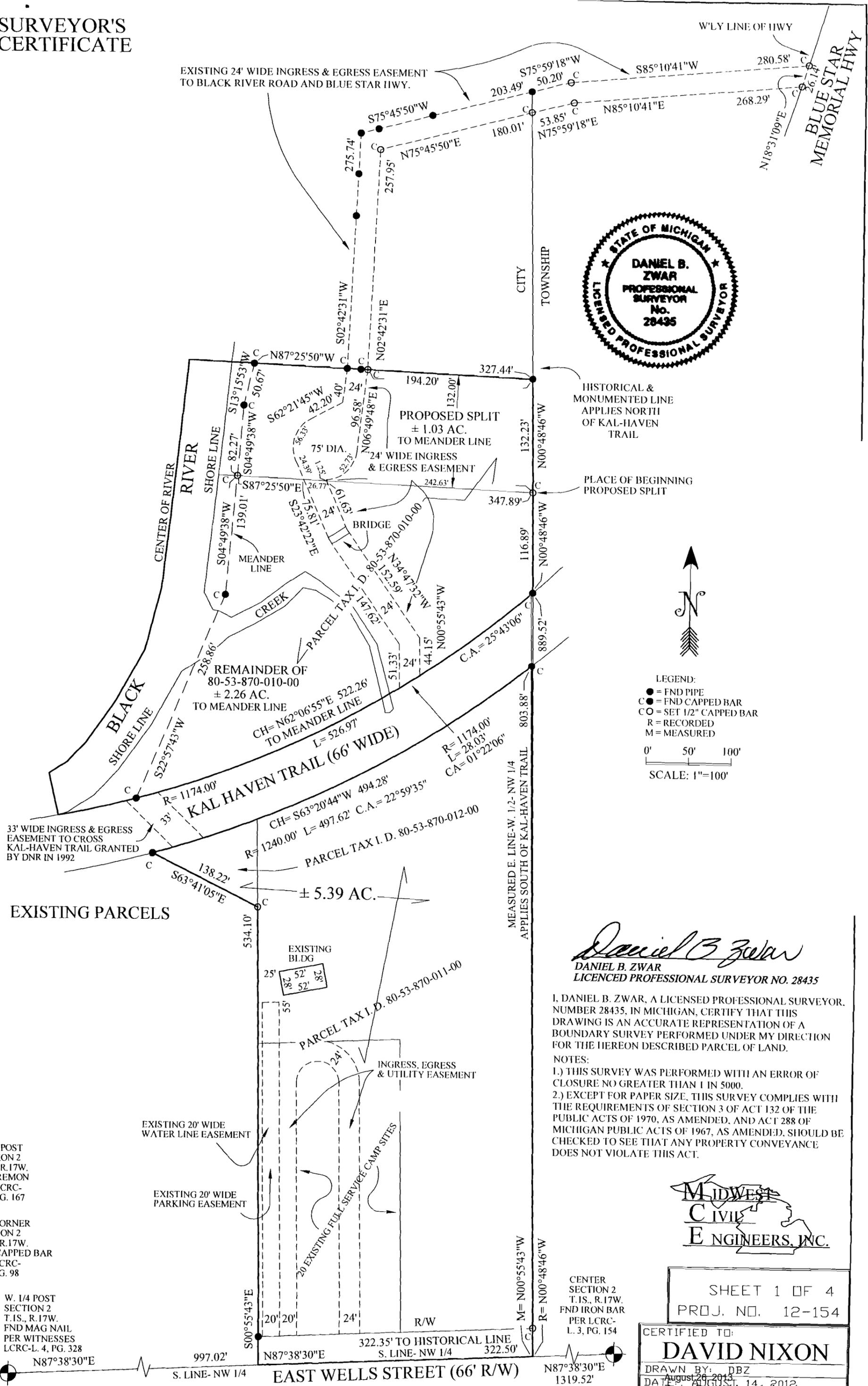
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DRAWN BY: DBZ DATE: AUGUST 14, 2012 SCALE: 1" = 100' SEC. 2 T. 1 S. R. 17 W.		Zoning Board of Appeals Agenda Page 23 of 46

# SURVEYOR'S CERTIFICATE



N. 1/4 POST SECTION 2 T.1S., R.17W. FND REMON PER LCRC-L. 6, PG. 167

NW CORNER SECTION 2 T.1S., R.17W. FND CAPPED BAR PER LCRC-L. 8, PG. 98

W. 1/4 POST SECTION 2 T.1S., R.17W. FND MAG NAIL PER WITNESSES LCRC-L. 4, PG. 328

N87°38'30"E 997.02' S. LINE-NW 1/4 322.35' TO HISTORICAL LINE S. LINE-NW 1/4 322.50'

*Daniel B Zwar*  
**DANIEL B. ZWAR**  
 LICENCED PROFESSIONAL SURVEYOR NO. 28435

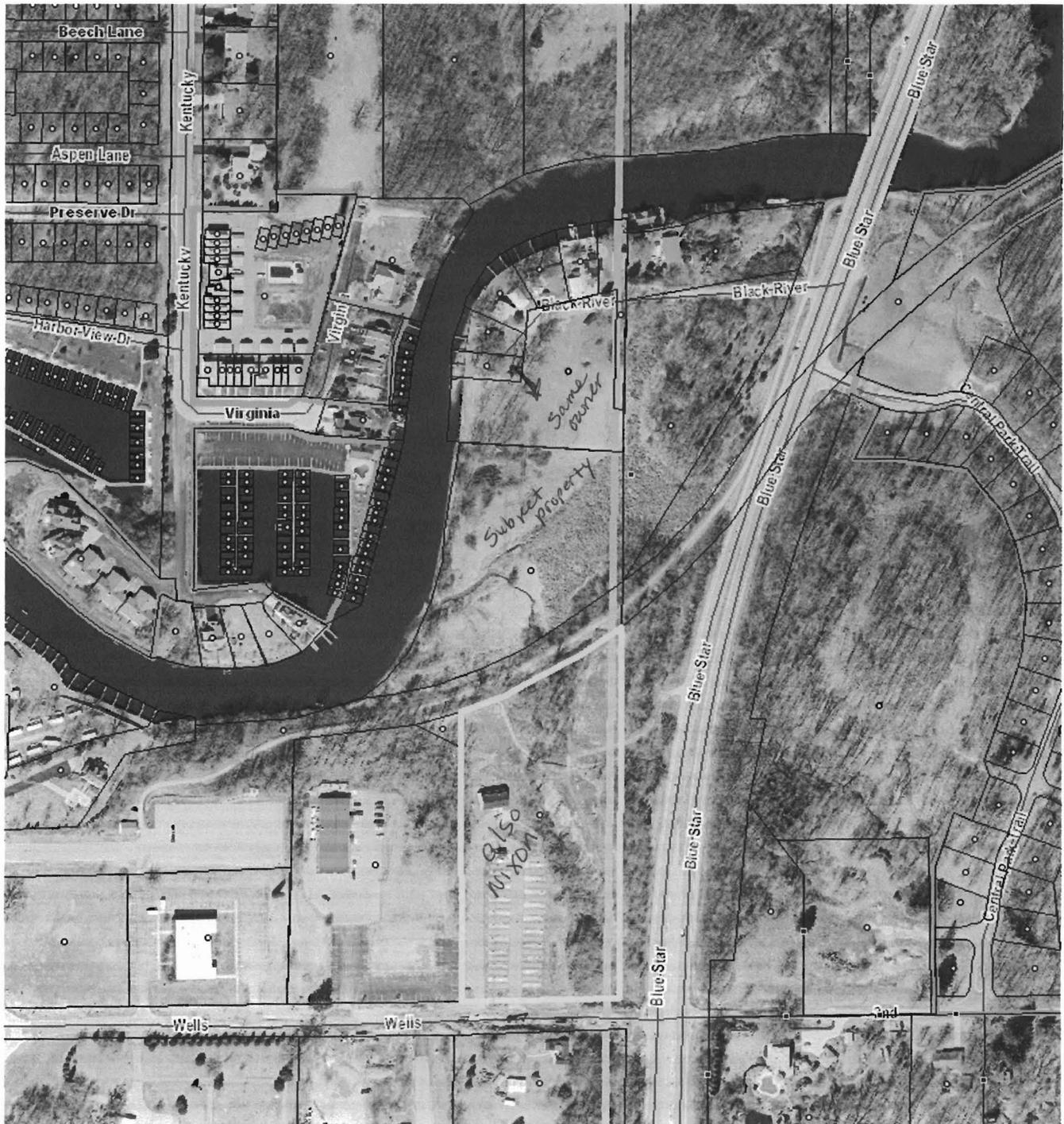
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NOTES:  
 1.) THIS SURVEY WAS PERFORMED WITH AN ERROR OF CLOSURE NO GREATER THAN 1 IN 5000.  
 2.) EXCEPT FOR PAPER SIZE, THIS SURVEY COMPLIES WITH THE REQUIREMENTS OF SECTION 3 OF ACT 132 OF THE PUBLIC ACTS OF 1970, AS AMENDED, AND ACT 288 OF MICHIGAN PUBLIC ACTS OF 1967, AS AMENDED. SHOULD BE CHECKED TO SEE THAT ANY PROPERTY CONVEYANCE DOES NOT VIOLATE THIS ACT.



SHEET 1 OF 4  
 PROJ. NO. 12-154

CERTIFIED TO:  
**DAVID NIXON**  
 DRAWN BY: DBZ  
 DATE: August 26, 2013  
 Zoning Board of Appeals Agenda  
 Page 24 of 46  
 SEC. 2 T. 1 S. R. 17 W.



**To:** Linda Anderson  
Zoning Administrator  
South Haven, MI

**Date:** August 7, 2013

**From:** Mike & Steph Henrich  
Owner/Residents  
845 Black River Road  
South Haven, MI

**Subject:** Zoning Variance request from David Nixon to provide access to a 34 slip marina on the Black River via Black River Road.

Dear Ms. Anderson and Zoning Board,

We are against the board granting this variance for the following reasons:

- Black River Road is an unimproved gravel road which is maintained by the 7 residents who live on it. The city provides some snow plowing in the winter.
- The dust raised by vehicle traffic during the summer is significant with just these residents and their visitors. The increased traffic would probably constitute a serious health hazard to the residents.
- The potholes created after a hard rain are significant with just these residents and their visitors.
- The increased traffic from this marina would probably destroy the road.
- Is it legal to route commercial traffic through a residential area?
- If the variance is granted, will the city build a new road, including street lights?
- Most of the property in the area of the proposed marina is wetland; is it legal to build on that type of property?
- We believe that granting this variance would effectively destroy the peace and quiet we currently enjoy in our neighborhood.

We are not against business or property development. We are against that if it is done at the expense of sacrificing our neighborhood.

August 15,2013

Linda Anderson  
City of South Haven  
ZBA

Dear Sir;

I am writing this letter in regard to the concern by the request of Kal –Haven Bikes which I believe is listed as a commercial enterprise? Doesn't appear to be –is more like a residential property tucked into the corner of the Moose Lodge Property adjacent to a trailer park.

I am in the process of obtaining approx 32 signatures of owners within the 300 ft limitation opposing the request for access to a commercial property through a residential area via a private rod/easement parcel number 80-53-870-010-00. I currently acting Secretary of the Board of Directors representing Oak Harbor. I am also representing the abundance of wildlife currently residing in the area.

It will be disruptive to the peaceful enjoyment that we have on these two dock fingers across the river from this parcel. It is an Emergent wetland so right now our neighbors are a pair of swans, several Egrets that fish there and an occasional boat fishing for the Northern Pike that use this area of the river due to the peace , quiet and selection as their breeding grounds. All of this will be jeopardized if a road access is granted.

Last weekend all we heard were power saws running on the parcel across the river. I am assuming already preparing for the road access to be granted?

Approving the access road will be disruptive to the quality of life we now enjoy at Oak Harbor both as property owners and disruptive to all the wildlife population that currently reside there. Wildlife populations should not be disturbed. Any buffers should be sufficient in size to ensure the quality of life we all enjoy both by humans and other creatures should not be degraded by maintenance, construction or future activities.

Michigan Dept of Treasury is actually one of the closest neighbors of the parcel. Keeping that thought in mind anyone who pays taxes in the State of MI has a right to input their thoughts on the whether or not this would be considered disruptive to their peaceful enjoyment of their property that all of our taxes support.

Maureen C Moravec  
[puremichigan@i2k.com](mailto:puremichigan@i2k.com)

**From:** Matt Petter  
**Sent:** Tuesday, August 06, 2013 2:18 PM  
**To:** Brian Dissette  
**Subject:** matt and connie petter and proposed Nixon waiver

Brian,

Could you please pass this email on to the zoning board of appeals. I see in the paper that they will be hearing another request from David Nixon on the 25<sup>th</sup> of August and I will be out of town but would like to be heard anyway.

The issue, as I understand it, is that Mr. Nixon would like a waiver to allow him to use the residential road off of Blue Star to transit to his commercial property on the river. Waiving this rule for Mr. Nixon would be a direct taking from the residents that live on the road. They purchased property in a zoned community wherein residential roads cannot be used as access roads to commercial properties. If you allow this variance you will be directly taking value from the residential owners on the road and if the city chooses to do this, you should plan to compensate these land owners for the decrease in the value of their properties.

If Mr. Nixon's request were to benefit his neighbors, they might be in favor of it. The fact that they are unanimously opposed to this variance which directly effects them, should carry the day with this board.

We don't own property on the road in question our interest is as owners of property across the river from this site. We have been to a half dozen zoning meetings over the past 10 years where Mr. Nixon asks for an inch, and once granted takes a mile. I would like to remind the board that Mr. Nixon's lawyer called me ignorant when I suggested that the multiple sewer hook-ups installed between his house/bike rental shop and the road looked like RV sewer hook-ups, a proposed use for the property that the board rejected. Within two years he had a "campground" with what his lawyer said were simply clean out access points conveniently functioning as sewer hook-ups. The point is, he will make a plea for a simple access to his property and in the end he will have cars coming and going all night for some purpose not yet disclosed.

Thanks for your service on the board,

Sincerely,

Matt and Connie Petter  
[matt@riveer.com](mailto:matt@riveer.com)  
[www.riveer.com](http://www.riveer.com)  
269.637.1997



## Agenda Item #7 Olson Setback Variance

City of South Haven

**Background Information:** The applicant seeks to build an addition to the rear of the house which is already nonconforming at 15'6" where 25 feet is required. The proposed addition will bring the house to within 8.5 feet of the north property line.

The applicant owns four (4) lots as shown on the survey in the application packet. Lots 12 and 13 have been combined as have lots 11 and 10. The subject parcel is the combined lots 11 and 10. The patio for the existing house extends over the line to the other property by approximately 15 feet.

**Recommendation:** Staff recommends that the ZBA members review the application, staff findings of fact and the physical property before making a determination on the variance. The members must find that the request complies with all standards of zoning ordinance section 2205 to approve a variance.

### Support Material:

Completed Application w/ support materials  
Survey  
Staff Findings of Fact

**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: Kristin Dibble (Olson Brothers Co.)

Date: 07/26/2013

Address: 829 Chambers St., P.O. Box 310

Phone: (269) 637-4494

Address of Property in Question: 1 Apache Court

Present Zoning of Property: R1-A

Name of Property Owner(s): Donald and Janet Olson

Present Zoning of Neighboring Properties to the :

North R1-B South R1-A East R1-A West none (lake)

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): Section 402, paragraph 3

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:

*(Please see attached sheets 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).

(please see attached sheets for responses.)

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.

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.

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.

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.

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

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

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.

Donald W. Olson,  
Property Owner

07/26/2013  
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.

K. H. Du  
Applicant Signature

07/26/2013  
Date

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

The property owner is requesting a variance for his rear yard. This addition will not be seen from the street side (South property line). To the East, there is a property line fence, landscaping and a yard house that blocks the view from the neighbor's home/yard. To the West is a separate, vacant lot which is owned by my client and beyond that, Lake Michigan. My client intends to keep the trees on the property line North property line between the proposed addition and the neighbor's yard, allowing the same privacy to his neighbor as is current.

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

My client's house was constructed approximately 45 years ago, prior to the established setbacks in the current zoning ordinance and thus already impedes into the current rear yard setback.

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.**

My client's house is a nonconforming structure, built prior to the current zoning. The West side of the house sits extremely close to the established property line. On the Northwest side of the house is a large stone patio. The garage, driveway and sidewalk to the front entry are located on the East side of the house. The South side of the house is the front yard, which conforms to current setbacks.

The proposed addition is adding on an accessible first floor bathroom and enlarging the current den into a room that can be used for a bedroom (pending any future health issues) on the North side of the property. Existing plumbing is available in the area of the proposed bathroom, both on the exterior of the North garage wall and also thru a half-bath adjacent to the den.

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.**

The requested variance would allow my clients to accommodate their future needs in their current home. Currently, there is no bedroom and or full bathroom on the first floor level of the house. With the addition of a bedroom and an accessible bathroom on the first floor, my clients will be able to receive care within their home rather than being located in an accessible facility elsewhere.

- 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 regulations for such conditions or situation.**

Each nonconforming house within the City of South Haven presents its own, unique challenges for the zoning board when alterations are proposed. My clients are requesting a variance to construct an addition on their home that will impede into the rear yard setback that was not established at the time the house was originally constructed. This nonconforming house is restricted by the lot size and location to other structures on the property, such as the patio, garage and driveway. Construction in these areas would be invasive to the current house and considerably more costly.

- 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 request for the variance is not due to a self-created situation.

- 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.**

By granting the requested variance, my clients will be able to make this home functional for their future needs. If the requested variance is not granted, the home will become physically more difficult to live in as appropriate space for a bedroom and full, accessible bathroom is not available on the first floor.

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

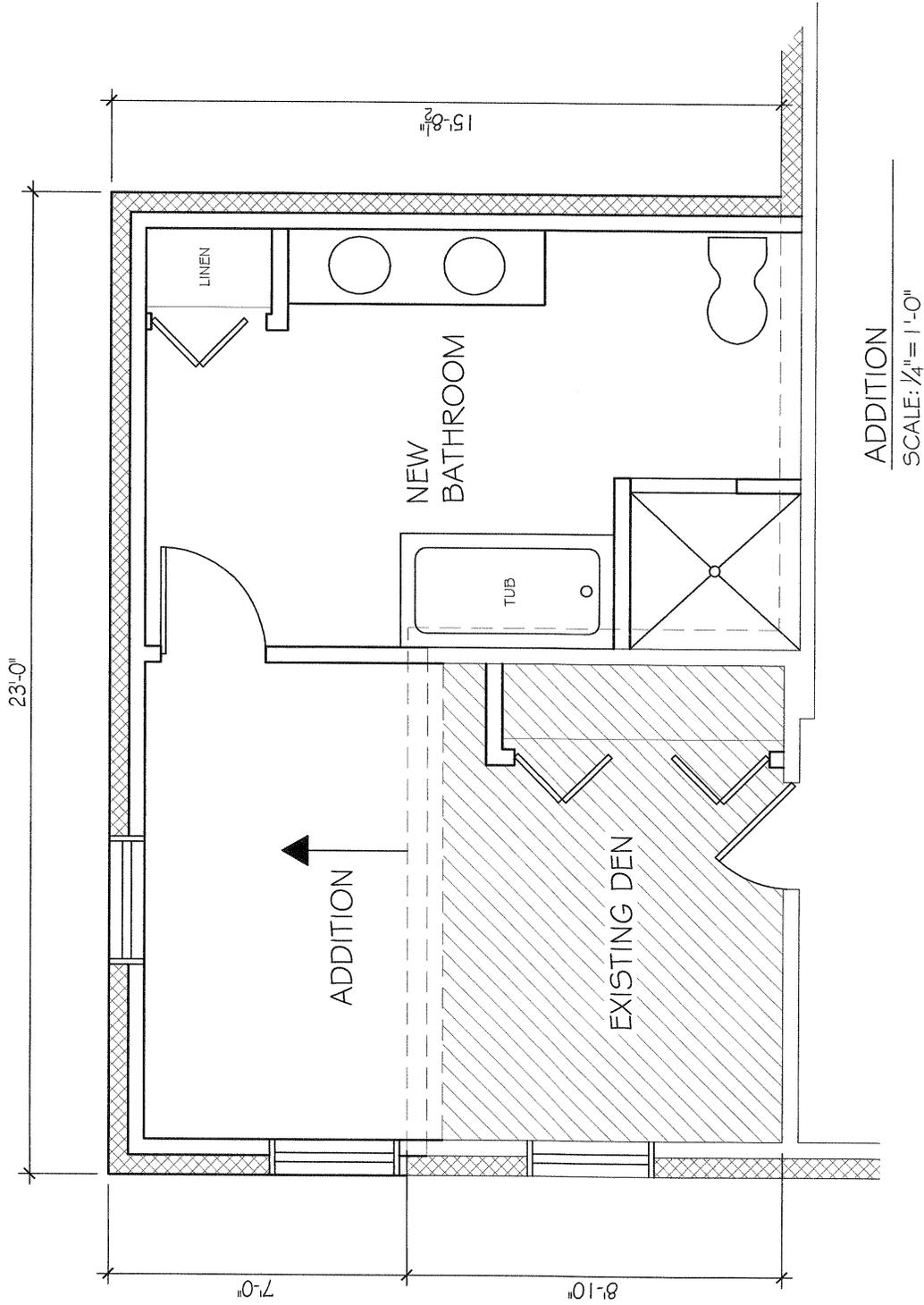
The proposed addition to the house will add approximately 250 s.f. of space that will be used for a bedroom, closet and an accessible bathroom. These proposed spaces are conservative in size and function, considering today's standards for housing.

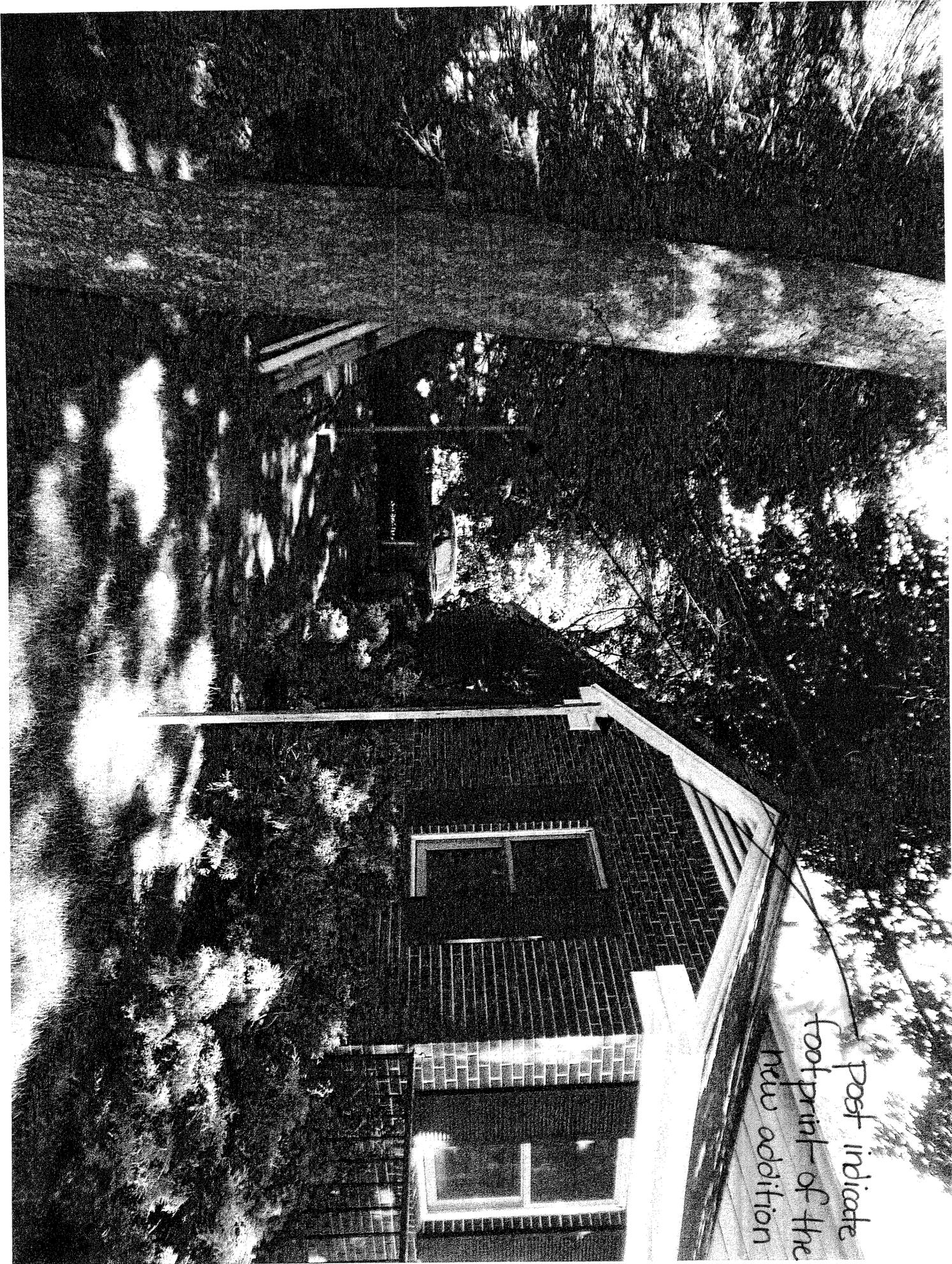
- 9. That the variance will relate only to the property under the control of the applicant.**

The approval of this variance will not affect or change other properties in neighborhood.

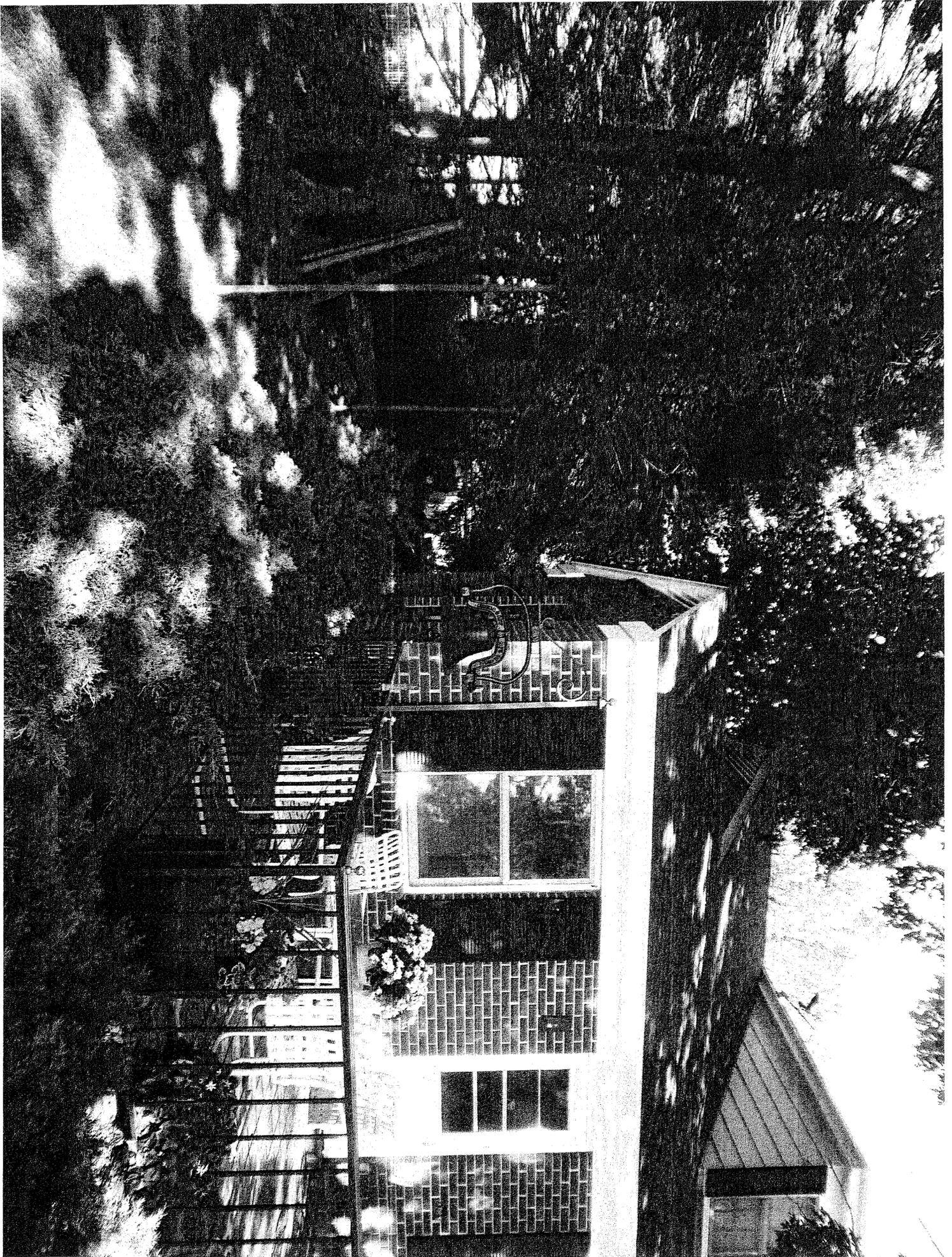
DESCRIPTION		DATE		<b>OLSON</b> <b>BROTHERS COMPANY</b> ■■■■ CONTRACTORS 829 Chambers Street, South Haven, Michigan 49090	
PLANNING		07/26/2013		Olson Addition Prelim Plan Scale: 1/4"=1'-0" Name: K. DIBBLE	

# A-1.0





View Looking East



Looking @ the North side of the house



Great Den

Trees to take



Front of house and driveway (street side)

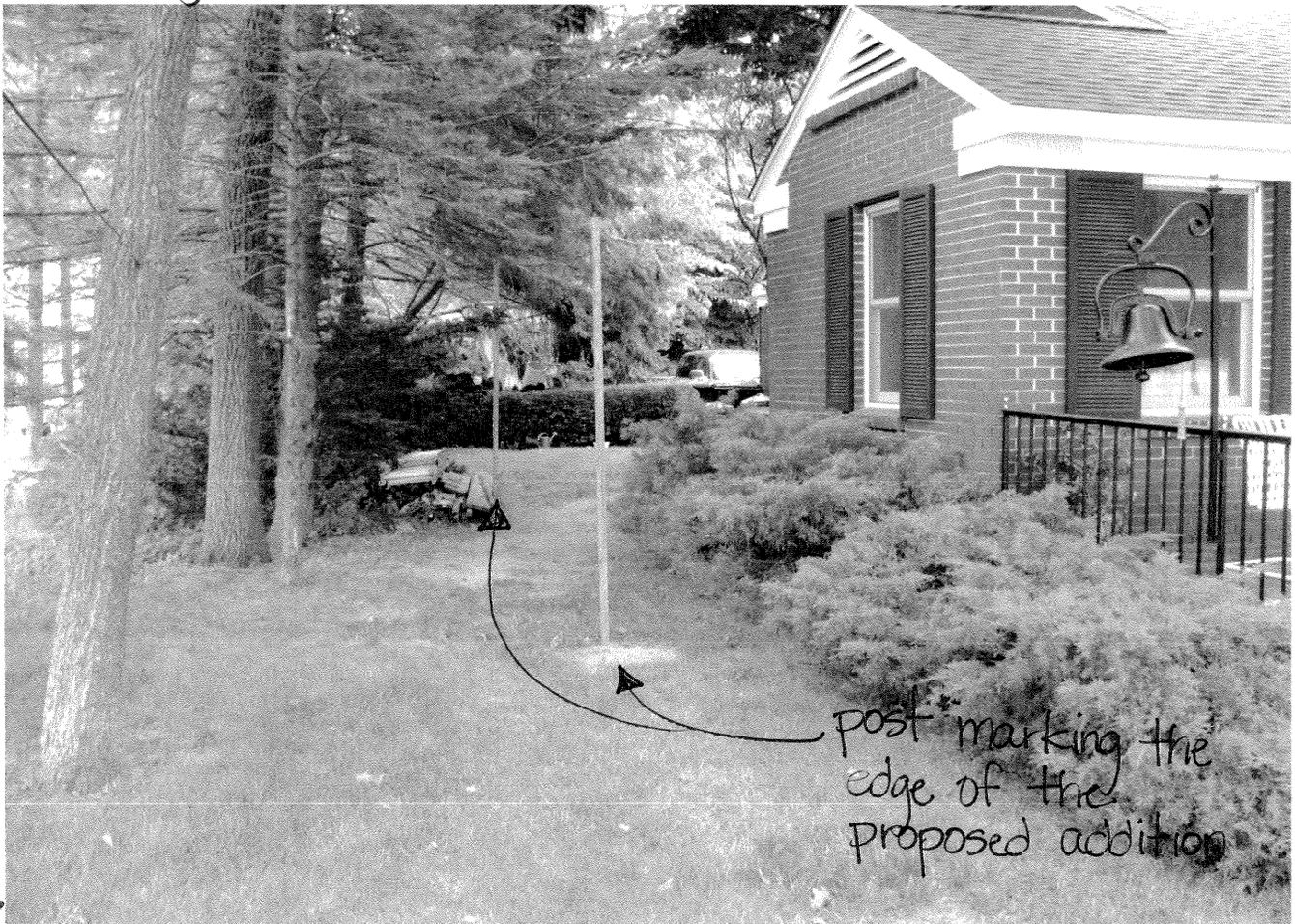


North side of house, looking West

post marking the edge of the proposed addition



← Looking @ North side of the house



post marking the edge of the proposed addition

← North side of house, looking East



West side of the house



West side of the house

June 18, 2013

To Whom it May Concern;

I am the property owner which abuts the north property line of Donald and Janet Olson and I have no objection to the approximately 7' addition they want to make to their den converting it into a bed room and bath. This will make their residence approximately 8'6" from my south property line.

Yours truly,

A handwritten signature in cursive script, appearing to read "Theodore Ploughman".

Theodore Ploughman

June 18, 2013 v

To Whom it May Concern:

We are the Property owners that abut Donald and Janet Olson's east property line. We have no objection to the addition they wish to construct converting their den into a bed room and bath. There is more than lot #10 between their addition and our common property line.

Yours truly,

Norine and Mickey Fuson

*Norine Fuson*  
*Mickey Fuson*

*35 Apache Court*  
*South Haven, MI*



## STAFF FINDINGS OF FACT

### CITY OF SOUTH HAVEN ZONING BOARD OF APPEALS

**DATE:** July 30, 2013

**ADDRESS:** 1 Apache Court

**ZONING DISTRICT:** R-1A Single Family Residential

**LOT DIMENSIONS:** Combined lot dimension (both owned by applicant) is 204.32 feet by 120 feet. Lot with the house and area of proposed variance is 120 feet by 120 feet.

**LOT AREA:** Combined lots total 39,204 sq. ft.; lot involving the variance is 13,068 sq. ft.

**LOT COVERAGE:** Allowed – 40%, Existing – 24%

**REQUIRED SETBACKS:** Front – 15'; Rear – 25'; Side – 3'/15'

**EXISTING SETBACKS:** Front – 30'; Rear – 15' 6"; Sides – 50'+ / zero

**PROPOSED SETBACKS:** Front – NC; Sides – NC; Rear – 8' 6"

**VARIANCE REQUEST:** The applicant seeks to build an addition to the rear of the house<sup>1</sup> which is already nonconforming at 15'6" where 25 feet is required. The proposed addition will bring the house to within 8.5 feet of the north property line.

The applicant owns four (4) lots as shown on the survey. Lots 12 and 13 have been combined as have lots 11 and 10. The subject parcel is the combined lots 11 and 10. The patio for the existing house extends over the line to the other property by approximately 15 feet.

#### 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.

**The applicant has included two (2) letters from neighbors stating that they have no issue with the variance. Staff does not believe that the addition will be detrimental to the surrounding neighborhood. The residence to the north (rear) is a significant distance from the applicant's house.**

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

**It is the intent of the R1A zoning district to preserve the character of the single-family neighborhoods. The proposed addition will not impair the intent of the residential zoning district.**

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 applicant is asking to construct an addition to the home in part to provide a full main floor restroom. The addition will also include a main floor bedroom.**

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<sup>1</sup> Ordinance Section 201.12 defines a rear lot line as being opposite the front lot line which is defined as, "that line separating said lot from the street, private road, or other access easement".

**According to the application, this variance will provide convenience to the applicant by making the home more accessible as the owners age.**

**There does not appear to be physical conditions related to the property which make the variance necessary. It could be argued that the variance relieves a practical difficulty due to the applicant age and abilities. The ZBA members will need to decide if that issue is just cause for a variance.**

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.

**Staff questions whether a main floor bed and full bath is a substantial property right warranting a variance but it does not appear there is an immediate financial motive.**

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.

**This does not appear to be a recurrent type of variance request in this zoning district as a whole. Staff does not recommend amending the zoning ordinance to permit a decrease in front setback for this particular neighborhood only. It is more prudent to consider these requests as they arise.**

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 problem is not self-created except in terms that the applicant built or purchased the residence with the existing floor plan.**

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.

**The fact that the house exists and the applicant has enjoyed several years of residency suggests that the property is suitable for a permitted use. The ZBA members will need to decide if the lack of a main floor bedroom and full bathroom are unnecessarily burdensome to the applicant.**

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

**Staff is not convinced that, if the main floor bedroom and full bath addition are found necessary, that it needs to be located as proposed. While it may be the most convenient option, it may not be the only option. It may be possible for the applicant to combine properties or adjust lot lines to accommodate an addition to the west.**

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

**The variance request only involves the property owned by the applicant.**