

Zoning Board of Appeals

Regular Meeting Agenda

Monday, August 27, 2012
7:00 p.m., Council Chambers



City of South Haven

1. Call to Order
2. Roll Call
3. Approval of Agenda
4. Approval of Minutes – July 23, 2012
5. Interested Citizens in the Audience Will be Heard on Items Not on the Agenda

NEW BUSINESS –Variance Requests

6. Kal-Haven Bikes, Inc., (represented by David Nixon), 1073 E. Wells Street, request an interpretation of two (2) zoning ordinance sections. The sections in question are found in Article XVII General Provisions, Section 1716, Access Standards and involve the definition of a private road as used in the city and the right of access through private roads/easements.
7. Deb La Penna of Kalamazoo, MI requests a front setback variance for property at 64 Lakeshore Drive. Section 404-1 of the zoning ordinance requires a three (3) foot minimum front yard building setback. Ms. La Penna is asking to extend a deck to the property line on the north side of the house. The parcel number for the property is 80-53-805-016-00.
8. Todd Johnson, 317 Superior Street, request variances from zoning ordinance sections 402 - §2 and 5 in order to construct garage two (2) feet from the west property line and to exceed the maximum lot coverage by four (4) percent. The parcel number for the property is 80-53-016-014-00.
9. Robert and Maryanne Schultz, 615 Church Street, request a front setback variance to allow construction of a covered porch. Section 404-1 of the zoning ordinance requires a 25 foot minimum front yard building setback. The applicant is asking to extend the porch to within 12.5 feet from the street right-of-way. The parcel number for the property is 80-53-767-012-00.

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.

10. Member Comments

11. Adjourn

RESPECTFULLY SUBMITTED,

Linda Anderson
Zoning Administrator

Zoning Board of Appeals

Regular Meeting Minutes

Monday, July 23, 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, Paull, Wittkop, Ingersoll, Lewis
Absent: Henry, Wheeler (excused)

Chair Ingersoll introduced and welcomed new member Dennis Lewis.

3. Approval of Agenda

Motion by Wittkop, second by Apotheker to approve the July 23, 2012 Regular Meeting Agenda as presented.

All in favor. Motion carried.

4. Approval of Minutes – June 25, 2012

Motion by Apotheker, second by Wheeler to approve the June 25, 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

NEW BUSINESS – Site Plan Review Extension Request

6. The City of South Haven requests a variance from zoning ordinance section 1406-2 in order to allow a continuation of a previously granted site plan approval. The project requiring the extension is the proposed improvements to the Northside Marina at 148 Black River Street. The parcel number for the property is 80-53-745-001-00. The city intends to begin construction immediately following the summer season in order to avoid a nuisance or inconvenience to the public. The city is asking for the extension to be in effect until December 31, 2012.

Anderson introduced the request and explained the reason the variance was needed. She also explained that the appeal was before the ZBA as the applicant had exhausted all planning commission opportunities for extension.

Ingersoll opened the public hearing at 7:07 PM.

Marilyn Miller, 119 South Street, asked about scheduling for the project. She said the city manager had told her it would begin in mid-October. Ingersoll responded that the ZBA was not aware of a starting date but would defer to the city manager's statement. Ms. Miller then asked about where equipment would be stored during construction. She was informed that that issue was not the immediate concern of the ZBA and that she should contact city engineering for additional information.

With no other public comments, the hearing was closed at 7:09.

Motion by Paull to extend the site plan approval until December 31, 2012 based on unavoidable delays in the state review process and the city's desire to not inconvenience boaters during the summer season. Motion seconded by Lewis. All ayes. Motion carried.

7. Adjourn

Motion by Wittkop, second by Paull to adjourn at 7:14 p.m.

All in favor.

Motion carried.

RESPECTFULLY SUBMITTED,

Linda Anderson (for Marsha Ransom, Recording Secretary)



Agenda Item #6

Nixon Zoning Ordinance Interpretation Request

City of South Haven

Background Information:

Kal-Haven Bikes, Inc., (represented by David Nixon), 1073 E. Wells Street, request an interpretation of two (2) zoning ordinance sections. The sections in question are found in Article XVII General Provisions, Section 1716, Access Standards and involve the definition of a private road as used in the city and the right of access through private roads/easements.

Given the complexity of this request, staff asked the city attorney to review the application and prepare a review/response. That response is included in this agenda packet.

This is not an appeal of a planning commission decision nor is it a variance request. It is merely a request for interpretation of two (2) zoning ordinance passages.

Recommendation:

Please review the letter from Mr. Nixon's attorney and the city attorney's response. Staff agrees with the city attorney opinion regarding both interpretations.

Support Material:

Application w/ attorney letter
Clark-Hill response (Confidential)

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: DAVID NIXON Date: AUG 8 2012
Address: 1073 E WELLS ST. Phone: 269-244 0303
Address of Property in Question: BLACK RIVER RD. Present Zoning of Property: B-3
Name of Property Owner(s): KAL HAVEN BIKES INC

Present Zoning of Neighboring Properties to the :
North R-1B South B-3 East S.H. TOWNSHIP West B-3

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): INTERPRETATION ONLY

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.
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).

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.

KAL HAVEN BIKES INC
Property Owner

Aug 8, 2012
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.

David Kipon
Applicant Signature

Aug 8, 2012
Date

CITY OF SOUTH HAVEN
ZONING BOARD OF APPEALS
REQUEST/APPLICATION FOR INTERPRETATION
OF ZONING ORDINANCE

APPLICANT: KAL-HAVEN BIKES, INC.
1073 E. Wells Street
South Haven, MI 49090

DESCRIPTION: Tax Parcel: 80-53-870-010-00
(see attached map showing location of premises)

JURISDICTION OF
ZONING BOARD OF APPEALS: Under Section 604 of the Zoning Enabling Act,
MCL 125.3604 (5), the South Haven Zoning Board
of Appeals is authorized and directed to review and
act upon written requests for interpretations of the
provisions of the Zoning Ordinance for the City of
South Haven, as follows:

“If the zoning board of appeals receives a written
request seeking an interpretation of the zoning
ordinance or an appeal of an administrative
decision, the zoning board of appeals shall conduct
a public hearing on the request. Notice shall be
given as required under Section 103.”

BACKGROUND
INFORMATION:

Applicant owns real property in the City of South
Haven which is bordered along the West by the
Black River and along the South by the Kal-Haven
Trail. The legal description of Applicant’s
property is attached to this Request as Exhibit A
and the Applicant’s property is referred to in this
written request as the “Property”.

Access to the Property from Blue Star Highway is
provided by means of an easement for ingress and
egress and for the installation of public utilities that
extends to the Property, is commonly known as the
Black River Road and is referred to in this Request
as the “Easement”. This Easement was established
by judgments entered in the Van Buren County
Circuit Court, and by recorded documents. The
Easement is located over real property owned by
Thomas Shamka, and a portion of the Easement
provides access for ingress and egress

from Blue Star Highway to several residential parcels which are located in the R-1 B Residential Zoning District.

The Property owned by the Applicant is located in the B-3 Waterfront Business District. The real property over which the Easement for ingress and egress and public utilities is located is classified as R-1 B under the South Haven Zoning Ordinance and Map.

SUMMARY OF QUESTIONS
PRESENTED TO ZONING
BOARD OF APPEALS:

The Applicant has two questions regarding interpretations of the South Haven Zoning Ordinance that have a material impact on the value and use of Applicant's Property, as follows:

(A) Is this Easement for ingress and egress and installation of public utilities held by the Applicant a "private road" as that term is used in the South Haven Zoning Ordinance?

(B) Does Section 1716 (2) "Nonresidential Access" of the South Haven Zoning Ordinance prohibit the use of this Easement to provide access from Blue Star Highway to the Applicant's Property by motor vehicles in order to use Applicant's Property for commercial purposes in the B-3 Waterfront Business District?

STATEMENT OF APPLICANT'S
POSITION CONCERNING EACH
QUESTION:

(A) THE EASEMENT IN QUESTION IS A "PRIVATE ROAD" AS THAT TERM IS DEFINED IN THE SOUTH HAVEN ZONING ORDINANCE.

The Easement which provides access to Applicant's Property was established and confirmed by two judgments entered in the Van Buren County Circuit Court. The first judgment was entered on August 23, 2010 in File No.: 10-59-588-CH, and confirmed the existence of an easement for ingress and egress for pedestrian and vehicular traffic and for utilities. The easement awarded in said judgment was 16 feet wide and extended from Blue Star Highway to the Applicant's Property. A second judgment was entered on December 12, 2011, File No.: 11-61-432-CZ, awarding Applicant an easement for ingress and egress for pedestrian and vehicular traffic and for utilities over an 8 foot wide

strip of land lying adjacent to and South and East of the existing 16 foot wide easement established in the earlier judgment.

The Easement which provides access to Applicant's Property is 24 feet wide and allows the Applicant to use the Easement for ingress and egress, for pedestrian and vehicular traffic as well as for the installation and maintenance of public utilities. Copies of the two judgments are submitted with this Request.

The Easement also provides access to other property owners who own residential parcels that adjoin the Black River. Those owners' easements were established by a series of judgments entered in Van Buren County Circuit Court in 2004, 2005, and 2007, as well as by grants of easement contained in recorded deeds and recorded grants of easement.

Under Michigan law, an easement has been defined as "an interest in land" through which an individual or individuals have the right to use the land of another person for a particular purpose. Peaslee v. Saginaw County Drain Commissioner, 365 Mich 338, 344 (1962); Mumaugh v. Diamond Lake Cable, 183 Mich App 597, 606 (1990). The Applicant and the other easement holders who are entitled to use the Easement have the obligation to maintain the Easement, including any road located on the Easement, in usable condition. The court in Bowen v. Buck Hunting Club, 217 Mich App 191, 193 (1996) held that the following rule of law is applicable in Michigan:

"The owner of an easement must generally bear the entire cost of maintaining it, absent an express agreement to the contrary. When the dominant tenant and servient tenant both use an easement, however, the court may apportion the cost of repairs between them accordingly."

In legal terms, the owner of an easement is considered the "dominant" owner and the owner of the property subject to the easement is considered the "servient" owner.

The South Haven Zoning Ordinance contains definitions of the terms "right of way", "street", and "private road". A "right of way" includes streets, alleys and easements "permanently established for passage of persons, vehicles or the location of utilities". A "private road" is defined as:

"A private way or means of approach to provide access to two (2) or more abutting lots, and which is constructed and maintained by the owner or owners and is not dedicated for general public use."

The Easement that provides access from Blue Star Highway to the Applicant's Property meets all of the requirements of a private road under the South Haven Zoning Ordinance:

- (1) It is a "private way or means of approach";

- (2) It provides access to two or more abutting lots;
- (3) It is constructed and maintained by the owner or owners of the Easement; and
- (4) It is not dedicated for general public use.

The term "owner" is also defined in the South Haven Zoning Ordinance. The Applicant and the other property owners who have the legal right to use the Easement are the "owners" of the Easement under Michigan law because they own and hold a permanent property interest in the real estate on which the Easement is located. Thies v. Howland, 424 Mich 282 (1985). As holders of the "dominant estate" in the Easement, the Applicant and the other Easement owners control the use of the Easement for ingress, egress and the installation and maintenance of public utilities. The rights of the owner of an easement are paramount, to the extent of the grant or order establishing the easement, to the rights of the owner of the real property in which the easement is located. Blackhawk Development Corp., v. Village of Dexter, 473 Mich 33, 41 (2005).

(B) SECTION 1716 (2) OF THE SOUTH HAVEN ZONING ORDINANCE IS INAPPLICABLE TO THE APPLICANT'S PROPERTY.

Applicant requests the Zoning Board of Appeals to determine that Section 1716 (2) of the South Haven Zoning Ordinance does not prohibit Applicant from using the Easement to gain access to Applicant's Property when Applicant's Property is used for commercial purposes permitted in the B-3 Waterfront Business District.

The only usable access Applicant's Property has to a public roadway is by way of the Easement. Applicant's Property is located in the B-3 Waterfront Business District, and in that district, there are no residential uses that can be made of the Property, except a dwelling located above a permitted commercial use (see Section 901 (6), South Haven Zoning Ordinance) or in connection with a Planned Unit Development which contains a mix of at least one permitted commercial use and residential units (see Section 901 (11), South Haven Zoning Ordinance).

If the Applicant is unable to use this private road in order to gain access from Blue Star Highway, the Applicant will not be able to use its Property for any permitted use under the South Haven Zoning Ordinance, and the Property will therefore have little, if any, market value. The City of South Haven will have, in effect, taken Applicant's Property without compensation.

The Applicant requests the Zoning Board of Appeals to determine as part of this request that the only feasible and available access to the Applicant's property is by way of the private road/Easement commonly known as the Black River Road.

Applicant also requests the Zoning Board of Appeals to interpret Section 1716 (2)

of the South Haven Zoning Ordinance to mean that no nonresidential access shall cross residentially-zoned property *unless this restriction will deprive an owner of any commercially zoned property of the reasonable use and enjoyment of such property under the provisions of the South Haven Zoning Ordinance.*

Finally, Applicant requests the ZBA to specifically determine that Section 1716 (2) of the South Haven Zoning Ordinance does not apply to the Easement as it relates to Applicant's use of its Property for purposes permitted in the B-3 Waterfront Business District because the Easement provides the only access from a public road to the Property and without such access the Applicant will be deprived of the use and enjoyment of its Property as presently zoned.

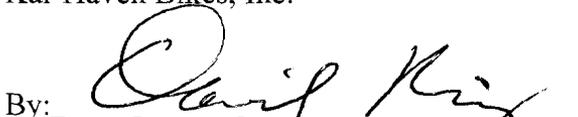
Respectfully submitted,

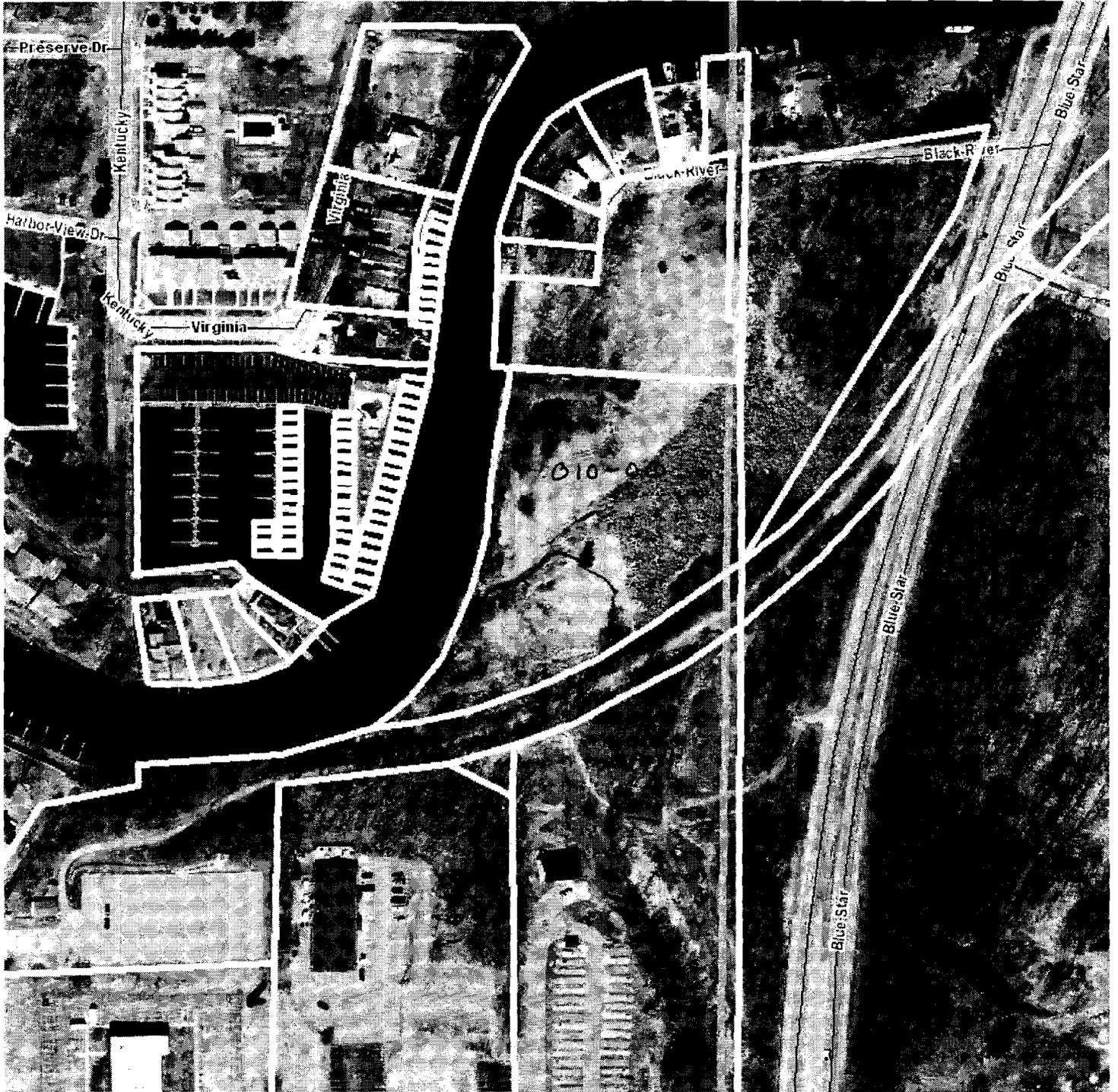
ORTON, TOOMAN, HALE,
McKOWN & KIEL, P.C.


Stephen B. McKown (P 25675)
Attorneys for Kal-Haven Bikes, Inc.

Kal-Haven Bikes, Inc.

Date: Aug. 7, 2012

By: 
David Nixon





LR-3110588
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Van Buren Co, MI ROD
 D.WD

L-1430 Pg-269

EXHIBIT A

80-53-870-010-00

City of South Haven, County of Van Buren, State of Michigan:
 Commencing at a point on the North and South Eighth line 1474 feet North of the Southeast corner of the West fractional Half of the Northwest fractional Quarter of Section 2, Town 1 South, Range 17 West, according to the Government Survey thereof, thence South 76 degrees 55' West 206 feet, thence South 3 degrees 55' West 276 feet, to point of beginning, thence North 86 degrees 5' West to Black River, thence Southerly on same to the Northerly line of the Michigan Central Railroad right of way line, which point is not more than 40 rods West of said North and South eighth line, thence Northeasterly on said right of way line to said North and South Eighth line, thence North on said eighth line to a point South 86 degrees 5' East from the point of beginning, thence North 86 degrees 5' West to beginning, together with right of ingress and egress in common with others over and across a strip of land 16 feet in width, the Northerly and Westerly edge of which is described as commencing at a point on the North and South Eighth line 1474 feet North of the Southeast corner of the West Fractional Half of the Northwest Fractional Quarter of said Section 2, thence South 76 degrees 55' West 206 feet, thence South 3 degrees 55' West 276 feet. Being in the State of Michigan, County of Van Buren, and City of South Haven.

EXHIBIT A

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

KAL-HAVEN BIKES, INC., a
Michigan Corporation,
Plaintiff,

File No. 10-59-588-CH

HON. WILLIAM C. BUHL

~VS~

**ANDRZEJ ARKUSZEWSKI and ALEXIS
ARKUSZEWSKI,** husband and wife, and
their unknown heirs, devisees, and assigns,
Defendants.

DEFAULT JUDGMENT

Robert E. Lee Wright (P32279)
99 Monroe Ave., NW, Ste 1200
Grand Rapids, MI 49503
(616) 454-8656

At a session of said Court held in the Van Buren County
Circuit Court, Paw Paw, Michigan, on the 23rd day of
August, 2010.

PRESENT: Honorable William C. Buhl, Circuit Judge.

This quiet title action was filed on April 22, 2010, and service was made on the Defendants by certified mail as appears from the Proofs of Service on file; Defendants having been defaulted, and the Plaintiff having filed a Motion for Entry of Default Judgment, and the Court being fully advised in the premises;

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Judgment is hereby entered granting Plaintiff an easement as follows:

An easement for ingress and egress for pedestrian and vehicular traffic and for utilities legally described as being situated in the Township of South Haven, County of Van Buren, State of Michigan, to wit:

A 16 foot easement described as follows: Beginning at a point found by commencing at the West 1/4 post of Section 2, Town 1 South, Range 17 West, South Haven Township, Van Buren County, Michigan, thence North 88°43'09" East, on East and West 1/4 line, 1158.22 feet; thence North 01°16'51" West at right angles to said 1/4 line, 1431.00 feet; to the point of beginning of this description; thence South 03°59' West, 276.00 feet; thence South 86°10' East 16.00 feet;

Default Judgment

Case No. 10-59-588-CH

thence North 03°59' East 264.16 feet; thence North 76°59' East, 190.44 feet; thence North 00°04' East, 16.43 feet to a point on the North and South 1/8 line, 1484.00 feet North of the East and West 1/4 line, thence South 76°59' West 206.00 feet to place of beginning.

This Grant of Easement will run with the land and will bind and inure to the benefit of the parties to this instrument, their heirs, successors and assigns.

(the "Easement Parcel").

2. The Court finds that process and notice of this action to quiet title was duly served on the Defendants, the Defendants have been properly defaulted and their interests in the Easement Parcel, including the interests of their heirs, successors or assigns, are subject to the easement granted herein.

3. A certified copy of this Default Judgment and Order to Quiet Title may be recorded with the Van Buren County Register of Deeds pursuant to MCL 600.2935 and/or 565.411, and shall serve as full and complete grant of easement in favor of the Plaintiff, its successors and assigns.

4. This Court shall retain jurisdiction to enforce this Judgment and Order.

5. This Default Judgment and Order to Quiet Title resolves all issues and closes the case pursuant to MCR 2.602(A)(3).

WILLIAM C. BUHL

Honorable William C. Buhl, Circuit Judge

TRUE COPY

AUG 23 2010

TINA LEARY
Van Buren County Clerk



Van Buren Co, MI ROD
JUDGE

LR-3240667
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L-1559 Pg-436

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

KAL-HAVEN BIKES, INC., a
Michigan Corporation,
Plaintiff,

File No. 11-61-432-CZ-H

~vs~

HON. WILLIAM C. BUHL

ANDRZEJ ARKUSZEWSKI and his
unknown heirs, devisees, and assigns,
Defendant.

DEFAULT JUDGMENT

Robert E. Lee Wright (P32279)
77 Monroe Center, NW, Ste 507
Grand Rapids, MI 49503
(616) 682-7000

DEFAULT JUDGMENT

At a session of said Court held in the Van Buren County
Circuit Court, Paw Paw, Michigan, on the 12th day of
December, 2011.

PRESENT: Honorable William C. Buhl, Circuit Judge.

This quiet title action was filed on September 27, 2011, and service was made on the Defendant by certified mail as appears from the Proofs of Service on file; Defendant having been defaulted, and the Plaintiff having filed a Motion for Entry of Default Judgment, and the Court being fully advised in the premises;

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Judgment is hereby entered granting Plaintiff an easement as follows:

An easement for ingress and egress for pedestrian and vehicular traffic and for utilities legally described as being situated in the Township of South Haven, County of Van Buren, State of Michigan, to wit:

AN EIGHT FOOT WIDE STRIP OF LAND LYING ADJACENT TO THE SOUTH AND EAST OF AN EXISTING SIXTEEN FOOT WIDE EASEMENT IN THE NORTHWEST QUARTER OP SECTION 2, TOWN 1 SOUTH, ,RANGE 17 WEST, CITY OF SOUTH HAVEN AND SOUTH HAVEN TOWNSHIP, VAN BUREN COUNTY, MICHIGAN WHICH IS LOCATED BY COMMENCING AT THE WEST QUARTER POST OF SAID SECTION 2 IN SAID CITY; THENCE NORTH 90°00'00" EAST ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER, 1148.63 FEET; THENCE NORTH 00°00'00" EAST PERPENDICULAR TO SAID SOUTH LINE, 1155.59 FEET TO A MONUMENTED PROPERTY LINE AND PLACE OF BEGINNING OF THIS EASEMENT BEING THE MOST SOUTHERLY CORNER

OF SAID EXISTING EASEMENT; THENCE NORTHERLY AND EASTERLY ALONG THE EASTERLY AND SOUTHERLY LINE OF SAID EXISTING EASEMENT THE NEXT TWO CALLS: NORTH 05°04'0 1" EAST (RECORDED NORTH 03°55' EAST), 263.89 FEET AND NORTH 78°07'20" EAST (RECORDED NORTH 76°55' EAST), 187.83 FEET TO THE NORTH AND SOUTH GOVERNMENT EIGHTH LINE OF SAID NORTHWEST QUARTER AND LINE BETWEEN THE CITY OF SOUTH HAVEN AND SOUTH HAVEN TOWNSHIP; THENCE ENTERING SAID TOWNSHIP AND CONTINUING ALONG SAID EXISTING LINE THE NEXT TWO CALLS: NORTH 78°20'48" EAST, 52.63 FEET AND NORTH 87°32'11" EAST, 272.39 FEET TO THE WESTERLY LINE OF BLUE STAR MEMORIAL HIGHWAY; THENCE SOUTH 2052'39" WEST ALONG SAID WESTERLY LINE, 8.71 FEET; THENCE SOUTH .87°32'11" WEST, 268.29 FEET; THENCE SOUTH 78°20'48" WEST, 53.85 FEET TO SAID GOVERNMENT EIGHTH LINE; THENCE RE-ENTERING SAID CITY AND PROCEEDING SOUTH 78°07'20" WEST, 180.01 FEET; THENCE SOUTH 05°04'01" WEST, 257.95 FEET TO SAID MONUMENTED PROPERTY LINE; THENCE NORTH 85°04'20" WEST (RECORDED NORTH 86°05' WEST) ALONG SAID PROPERTY LINE, 8.00 FEET TO THE PLACE OF BEGINNING.

The said easement shall run with the land and shall bind and inure to the benefit of the Plaintiff and its successors and assigns.

2. The Court finds that process and notice of this action to quiet title was duly served on the Defendant, the Defendant have been properly defaulted and their interests in the Easement Parcel, including the interests of their heirs, successors or assigns, are subject to the easement granted herein.

3. A certified copy of this Default Judgment and Order to Quiet Title may be recorded with the Van Buren County Register of Deeds pursuant to MCL 600.2935 and/or 565.411, and shall serve as full and complete grant of easement in favor of the Plaintiff, its successors and assigns.

4. This Court shall retain jurisdiction to enforce this Judgment and Order.

5. This Default Judgment and Order to Quiet Title resolves all issues and closes the case pursuant to MCR 2.602(A)(3).

12/12/11

PAUL E. HAARE

Honorable William C. Buhl, Circuit Judge



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Van Buren Co, MI ROD
JUDG

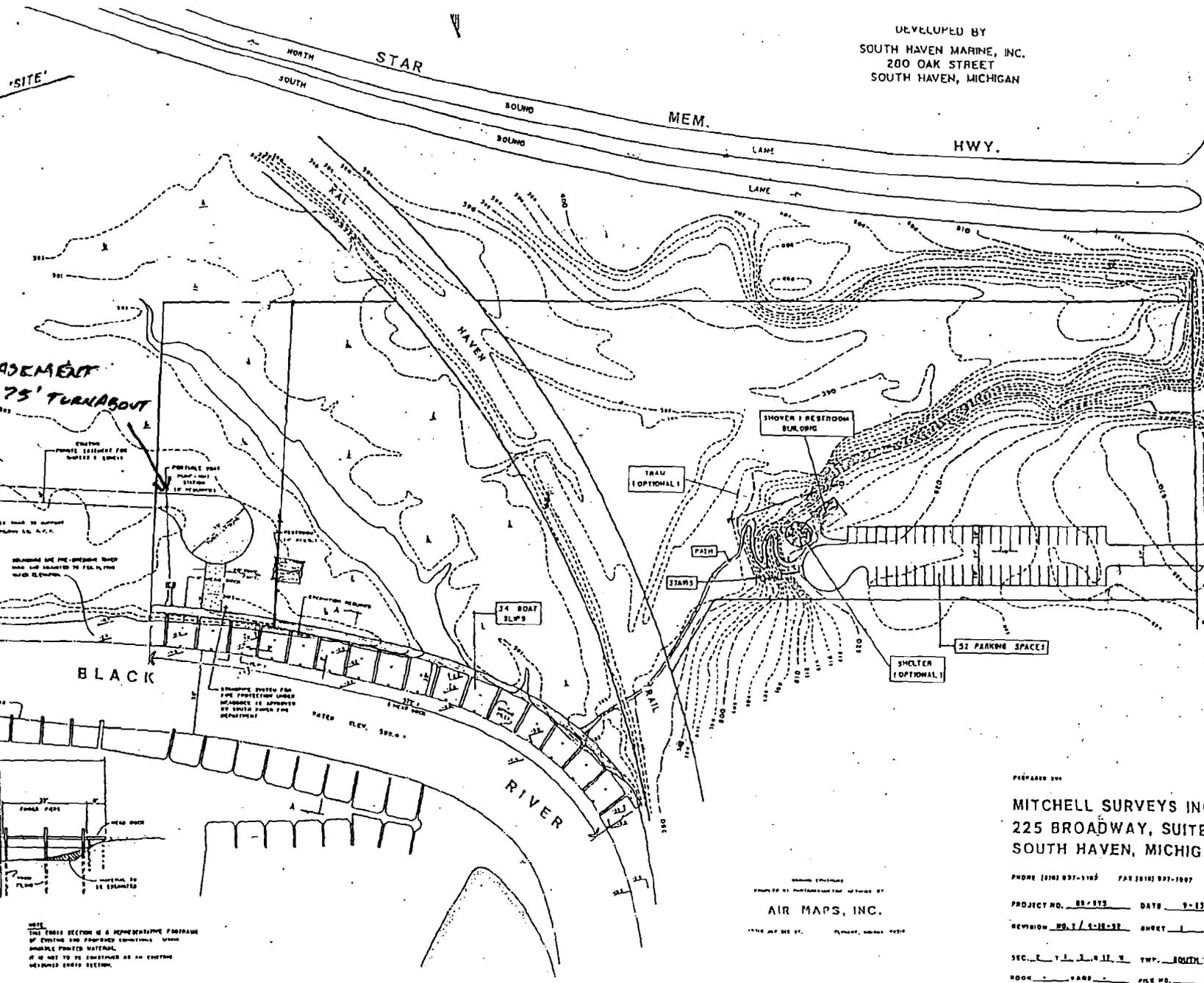
L-1559 Pg-436

I certify that I have compared this copy with the original on file in this office and that it is a correct copy of the whole of such original
Faw Paw, Van Buren County, Michigan

DEC 12 2011

TINA LEARY, Van Buren County Clerk
By Elizabeth McDonald
DEPUTY CLERK

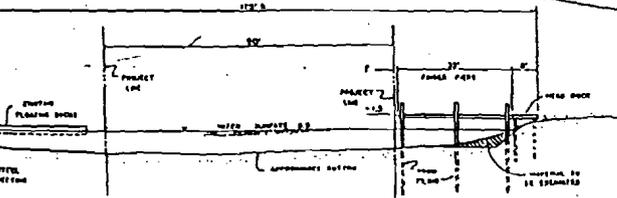
DEVELOPED BY
SOUTH HAVEN MARINE, INC.
200 OAK STREET
SOUTH HAVEN, MICHIGAN



LOCATION MAP

24' EASEMENT
75' TURNABOUT

BLACK RIVER



SECTION A - A

SCALE 1" = 20'

NOTE:
THIS CROSS SECTION IS A REPRESENTATIVE EXAMPLE
OF EXISTING AND PROPOSED CONDITIONS. USUAL
DIMENSIONS FOR THIS MATERIAL,
IF IT IS NOT TO BE CONSIDERED AS AN EXISTING
MEMBER CROSS SECTION.

PREPARED BY
MITCHELL SURVEYS INC
225 BROADWAY, SUITE
SOUTH HAVEN, MICHIGAN
PHONE (248) 937-1105 FAX (248) 937-1007
PROJECT NO. 88-073 DATE 9-13
REVISION NO. 1 / 4-18-97 SHEET 1
SEC. 1 T. 3. N. 11. W. TWP. 30N. 11W.
BOOK PAGE FILE NO.

DESIGNED BY
DRAWN BY
CHECKED BY
APPROVED BY
AIR MAPS, INC.
1000 1/2 1/2 ST. PLYMOUTH, MICHIGAN 48170

On
JM
PLW



Agenda Item #7 LaPenna Variance Request

City of South Haven

Background Information:

Deb LaPenna of Kalamazoo, MI requests a front setback variance to construct a deck to the lot line. Section 404-1 of the zoning ordinance requires a three (3) foot minimum front yard setback. The residence is currently 1.1 foot from the lot line. Ms. La Penna is asking to extend a deck to the property line on the north side of the house. The applicant hopes to obtain a license agreement with the city council to extend the deck into the right-of-way (ROW) but will first need a variance from the ZBA to construct to the property line. The parcel number for the property is 80-53-805-016-00.

Recommendation:

This is a very congested area but there is a permanent wall separating the ROW from the residence. The variance, if granted, will not permit extension beyond the wall. Staff recommends the ZBA consider all information in this agenda packet as well as neighbor comments received during the public hearing.

Support Material:

Completed Application
Aerial Photo of the neighborhood
Staff Findings of Fact

Applic. Rep. Michael Parker
637-8366

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: Deb LaPenna Date: 8-7-12

Address: 2428 Parkways Drive Kal. MI 49008 Phone: 249.349.3851

Address of Property in Question: 64 Lake Shore Drive Present Zoning of Property: RIC

Name of Property Owner(s): Robert + Debra LaPenna

Present Zoning of Neighboring Properties to the :

North RIC South RIC East RIC West RIC

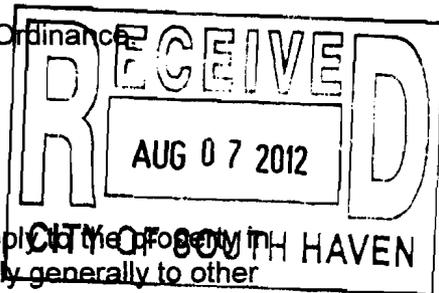
Which Sections of the South Haven Zoning Ordinance are you requesting a variance from? Please indicate Section and Paragraph numbers. (City staff will help determine which variance(s) are required).

Section(s): 404-1 front yard setback

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. NO. THERE IS AN EXISTING CONC WALL AROUND THE PROPERTY. THE DECK WILL BE WITHIN THE EXISTING WALL.

2. Such variance will not impair the intent and purpose of this Ordinance. NO.



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). ON THE SURFACE IT WOULD APPEAR THE COTTAGE & CONC WALL WAS IN EXISTANCE BEFORE ACTUAL BOUNDRIES WERE DETERMINED.

40-53-505-016 00

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. *MOST PROPERTIES IN THE AREA HAVE VERY SIMILAR SITUATIONS.*

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.

ALL THE PROPERTIES IN THE AREA ARE SMALL AND AT THE TIME OF ORIGINAL CONSTRUCTION THERE DID NOT APPEAR TO BE ANY RESTRICTIONS TO THE BUILDING LOCATIONS.

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.

NO EXISTING BUILDING & LOT SINCE 1950

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.

PROPERTY COULD CONTINUE AS IS.

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

A MINIMUM AMOUNT.

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

ONLY THE APPLICANT & IMMEDIATE FAMILY.

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.

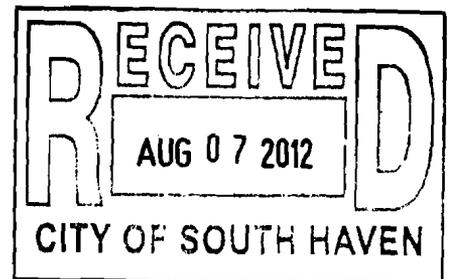
Robert Johnson
Property Owner

8-7-12
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.

Robert Johnson
Applicant Signature

8-7-12
Date



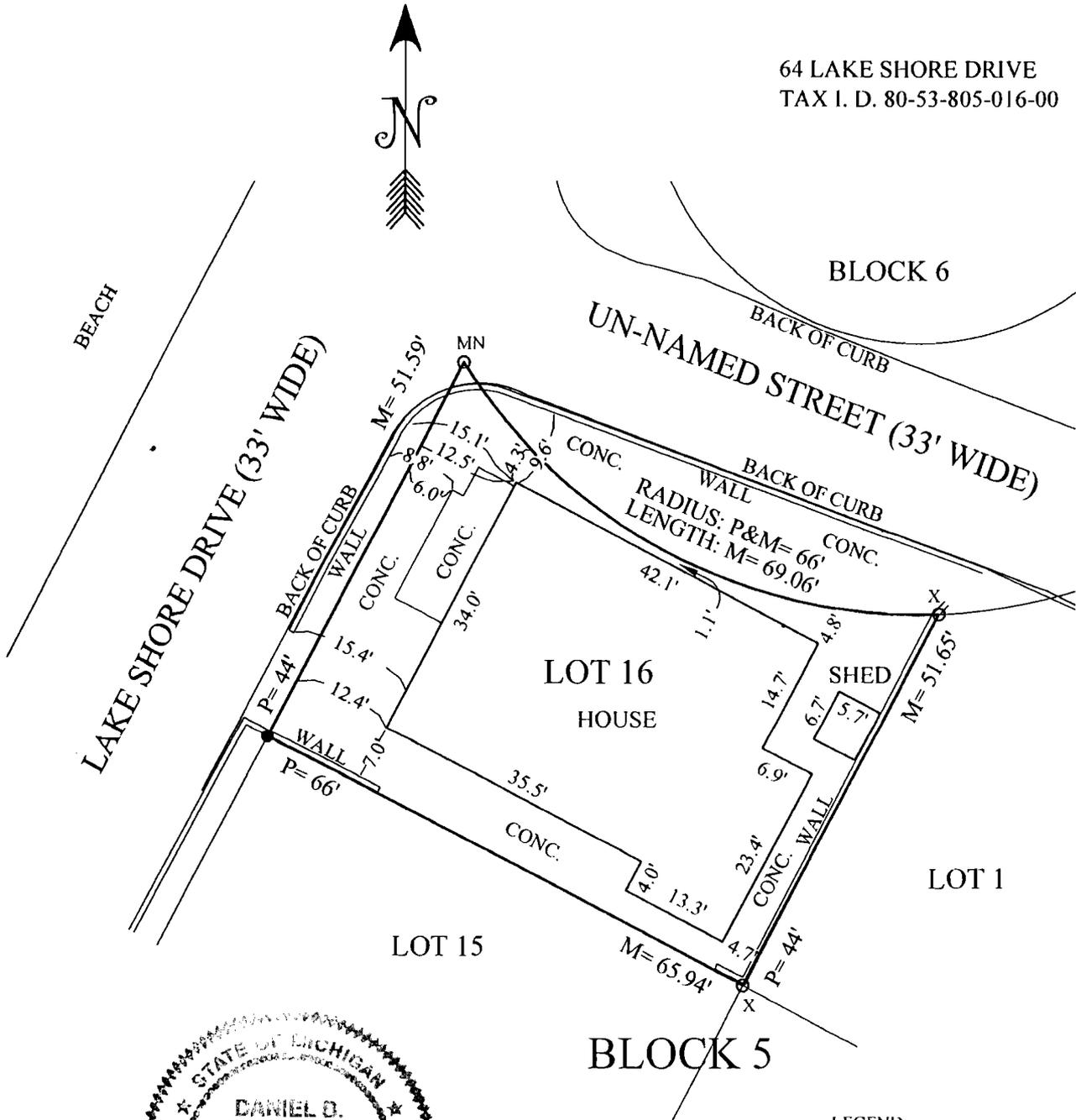
Nov. 2010

SURVEYOR'S CERTIFICATE

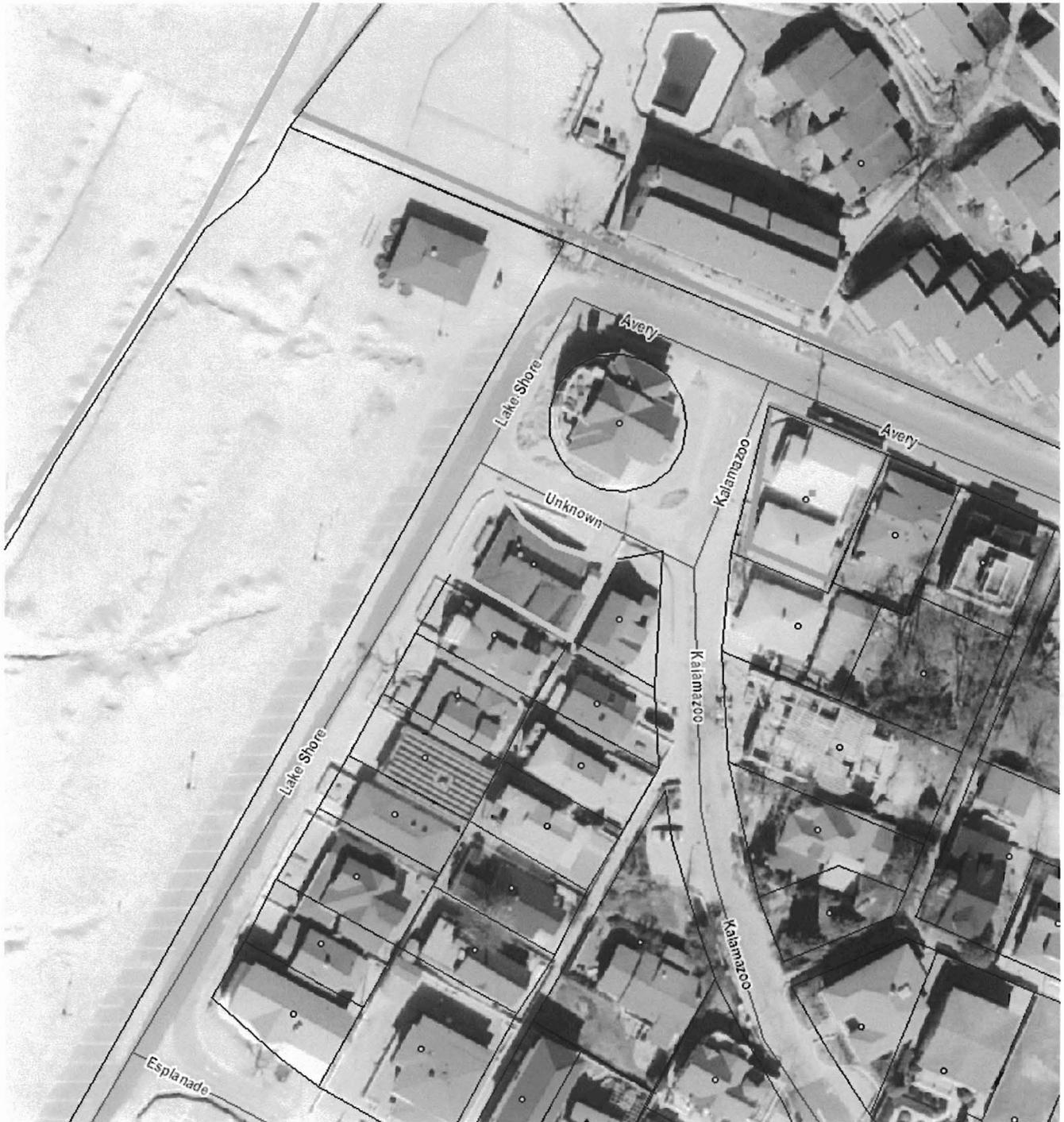
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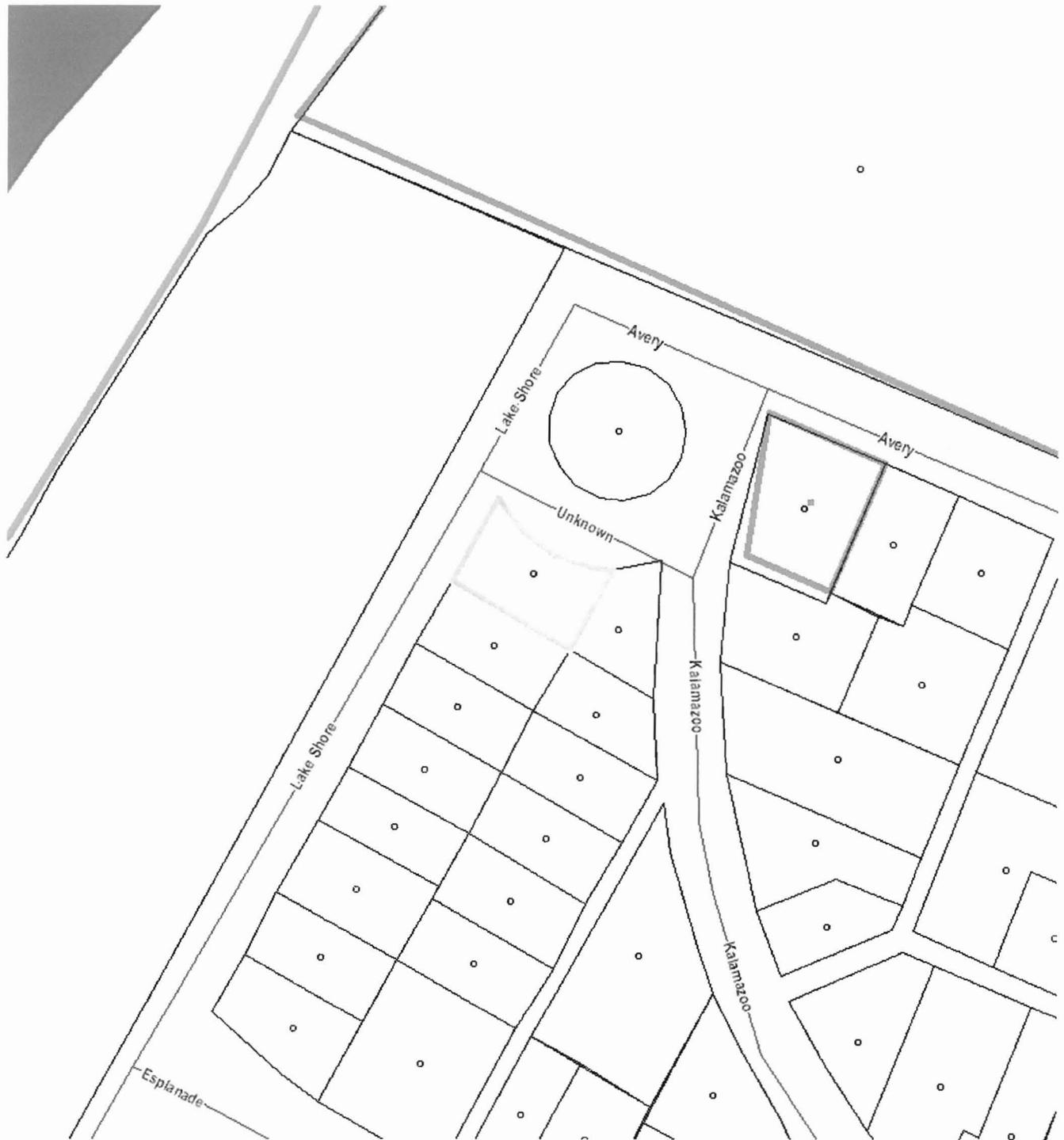
LOT 16, BLOCK 5, MONROE PARK SUBDIVISION, ACCORDING TO THE RECORDED PLAT THEREOF, BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 3, TOWN 1 SOUTH, RANGE 17 WEST, CITY OF SOUTH HAVEN, VAN BUREN COUNTY, MICHIGAN.

64 LAKE SHORE DRIVE
 TAX I. D. 80-53-805-016-00



- LEGEND:**
- = HEARD IRON/ SET "X" OVER
 - C ● = FND CAPPED IRON BAR
 - MNO = SET MAGNAIL
 - XO = SET CHISELLED "X"
 - = SET 1/2" CAPPED IRON BAR
 - P = PLATTED
 - M = MEASURED





STAFF FINDINGS OF FACT

CITY OF SOUTH HAVEN ZONING BOARD OF APPEALS

DATE: August 27, 2012
ADDRESS: 64 Lakeshore Drive
ZONING DISTRICT: R-1C Residential
LOT DIMENSIONS: 66'x50'
LOT AREA: 3300 +/- square feet (<0.1 ac.)
LOT COVERAGE: NA
REQUIRED SETBACKS: Side, front and rear 3 feet minimum
EXISTING SETBACKS: Front (shown as Un-named street) = 1.1'
PROPOSED SETBACKS: Front = zero
VARIANCE REQUEST: Deb La Penna of Kalamazoo, MI requests a front setback variance. Section 404-1 of the zoning ordinance requires a three (3) foot minimum front yard setback. Ms. La Penna is asking to extend a deck to the property line on the north side of the house. The applicant hopes to obtain a license agreement with the city council to extend the deck into the right-of-way (ROW) but will first need a variance from the ZBA to construct to the property line. The parcel number for the property is 80-53-805-016-00.

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 proposed deck will not be out of character for the neighborhood in the respect that it is a residential use in a residential zone/neighborhood. Looking at the aerial photo of the area, it may be seen that a number of residences have porches and decks close to the lot lines.

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 structure is an addition to an existing residential building and is compatible with the residential character. It should be noted that the ZBA has denied similar requests in the past based on the limited lot size and the fact that the lot does have significant value without granting a variance.

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 lot size and shape is not atypical for the neighborhood. This lot does have a very tight front yard on the north side given the boundary of the street ROW. The ROW does not follow the original platted street (Unnamed) but curves well into the front yard of 64 Lakeshore. The location of the existing ROW could be interpreted as exceptional or extraordinary conditions as far as lot size or configuration.

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.

There does not appear to be any financial motive for the improvements the applicant has requested. The applicant is constructing the deck for his personal use.

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 zoning regulations in this R-1C zone have already been reduced to the smallest in the city with the exception of the central business district. The overall three (3) foot setback was established to accommodate the very small lots. Staff does not recommend amending the zoning ordinance to permit a further decrease in setback for the zoning district. 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 residence and ROW were situated as they are when the applicant purchased the property. The problem is not self-created except in the sense that the applicant would like a deck on the front of the house.

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.

This residence is already in noncompliance with a 1.1' front setback where a three (3) foot setback is required. The nonconformance is the not the result of any action by the applicant but instead by an altered ROW line. Any addition to this side of the house would require a variance. Strict compliance with the zoning ordinance would prohibit any addition.

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

As stated previously, the front setback is currently 1.1'. Any addition would require a variance. The applicant is asking for a variance to extend to the lot line in order to open the way for obtaining a licensing agreement from the city to encroach into the ROW. There is no way this variance request could be lessened.

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.



Agenda Item #8 Johnson Variance Request

City of South Haven

Background Information:

Todd Johnson, 317 Superior Street, request variances from zoning ordinance sections 402 - §2 and 5 in order to construct garage two (2) feet from the west property line and to exceed the maximum lot coverage by four (4) percent. The parcel number for the property is 80-53-016-014-00.

Recommendation:

Staff recommends approving the variances for side setback and lot coverage as presented. The applicant has demonstrated reasonable evidence to support the requirements of unnecessary burden and exceptional conditions relating to the location of the house and driveway.

Support Material:

Completed Application
Aerial Photo of the neighborhood
Staff Findings of Fact

STAFF FINDINGS OF FACT

CITY OF SOUTH HAVEN ZONING BOARD OF APPEALS

DATE: August 27, 2012
ADDRESS: 317 Superior Street
ZONING DISTRICT: R-1A Residential
LOT DIMENSIONS: 50 x 100
LOT AREA: 5000 square feet
LOT COVERAGE: 37% current; 44% proposed
REQUIRED SETBACKS: Side and rear 3 feet minimum (Accessory buildings only)
EXISTING SETBACKS: NA
PROPOSED SETBACKS: Rear 3 feet; side 2 feet
VARIANCE REQUEST: Todd Johnson, 317 Superior Street, request variances from zoning ordinance sections 402 - §2 and 5 in order to construct a garage two (2) feet from the west property line and to exceed the maximum lot coverage by four (4) percent. The parcel number for the property is 80-53-016-014-00.

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 proposed garage will not be out of character for the neighborhood in the respect that it is a residential use in a residential zone/neighborhood. Looking at the aerial photo of the area, it may be seen that a number of residences have detached garages close to the side and rear lot lines.

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 structure is an accessory to an existing residential building and is compatible with the residential character.

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 lot size and shape is not atypical for the neighborhood. While there are some larger lots, many are of similar size as the subject lot. Staff does not find exceptional or extraordinary conditions as far as lot size or configuration.

The reason for the variance request is related to the location of the existing driveway. It is very close to the property line and in order to maneuver a vehicle around the house and into the garage, the garage needs to be located closer to the lot line. The driveway cannot be moved as it runs very close also to the residence. The applicant will be removing a portion of the house that extends into the proposed driveway extension to allow vehicular passage. This situation is presented as the extraordinary circumstance as required.

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.

There does not appear to be any financial motive for the improvements the applicant has requested. The applicant is constructing the garage for his personal use.

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 the city. Staff does not recommend amending the zoning ordinance to permit a decrease in setback for accessory structures in the R1A zoning district. 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 residence and driveway were situated as they are when the applicant purchased the property. The problem is not self-created except in the sense that the applicant would like a garage.

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 layout of the house and driveway create difficulty in meeting the three (3) foot setback. Strict compliance with the zoning ordinance would likely mean the garage could be constructed.

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

The garage is typical size for two (2) cars. The garage, as presented, increases lot coverage to 44 percent where 40 percent is the ordinance maximum. The variance could be lessened if the garage was decreased in size but that is a decision for the ZBA following discussion with the applicant.

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.

RIA

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: Todd Johnson

Date: 7/13/2012

Address: 317 Superior SH Mi

Phone: 269-214-2129

Address of Property in Question: 317 Superior SH Mi

Present Zoning of Property: RIA

Name of Property Owner(s): Todd Johnson

Present Zoning of Neighboring Properties to the :

North _____ South _____ East _____ West _____

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): 402 s/s 2 + 5 Side setback / lot coverage

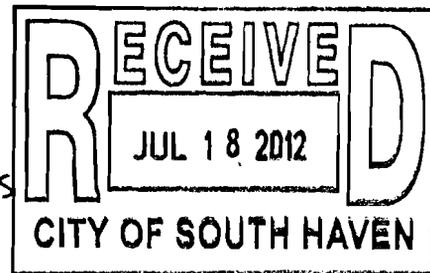
Under Article XXII, Section 2205 of the South Haven Zoning Ordinance, the Zoning Board of Appeals may not grant a variance from the regulations within the Ordinance unless certain conditions exist. No variance in the provisions of this Ordinance shall be authorized unless the Board finds, from reasonable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

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

This variance will allow use of said property as directly compared to neighboring property and will have no detrimental affect to their use or access

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

The ordinance allows for such variances



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).

per attached sketch the placement of the home on said property causes the side setback to be 2' to allow entrance into garage. Size of house and garage will be 4% over allowed lot coverage.

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.

All neighboring properties have garages with similar situations and comparable size. Variance will allow same right to said 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.

Unique shape of home and location on property create the need for variance to allow construction and use of garage

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.

Specific conditions are currently present on said property.

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.

Due to shape of home and placement on lot compliance is unachievable without variance.

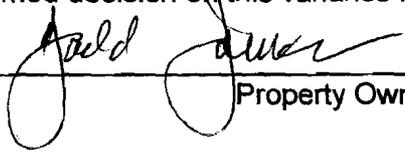
8. That the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the hardship.

Variance is minimum necessary to allow access and intended use for 2 car parking or garage

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

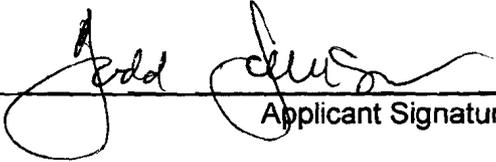
The variance relates only to said property at 317 Superior and has no ²₁₉ adverse effect on neighboring. Applicant is in control of said property.

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.

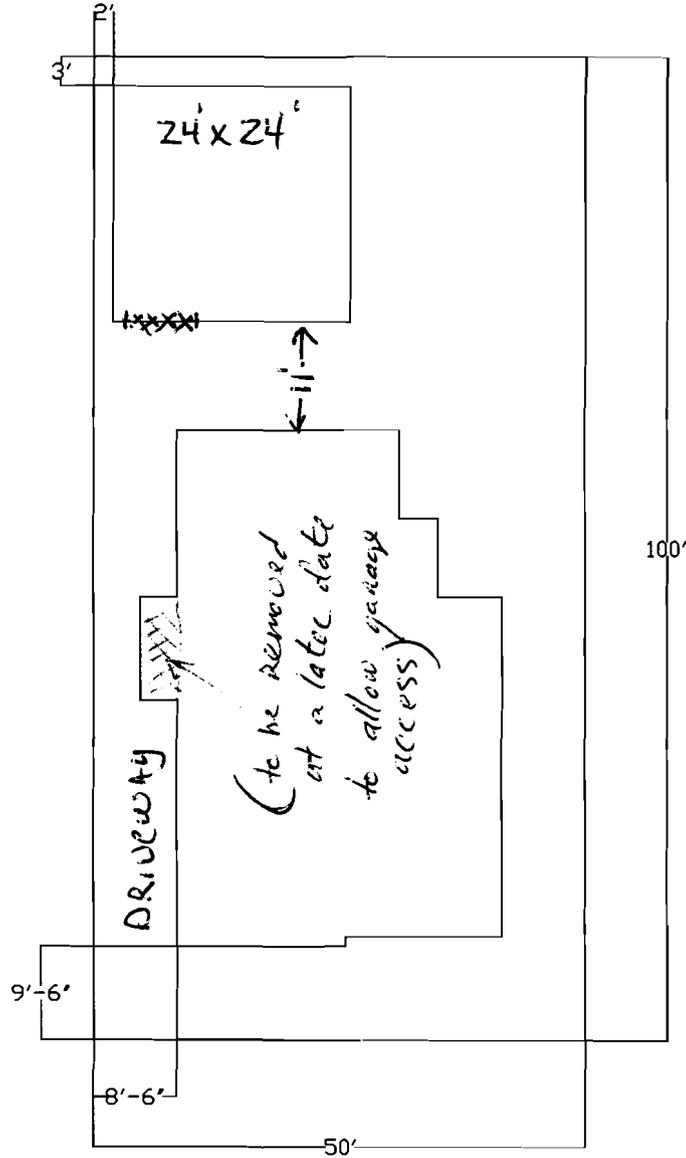


Property Owner _____
Date

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



Lot 5000 sq ft
House 1609 sq ft (32%)
Garage 576 sq ft (12%)

total lot coverage
applied for 44%

317 Superior



--	--	--	--	--	--	--	--

Erie

o	o	o	o	o	o	o
o						o
o	o	o	o	o	o	o

Superior

o	o	o	o	o	o	o	o
o							o



Agenda Item #9 Schultz Variance Request

City of South Haven

Background Information:

Robert and Maryanne Schultz, 615 Church Street, request a front setback variance to allow construction of a covered porch. Section 404-1 of the zoning ordinance requires a 25-foot minimum front yard building setback. The applicant is asking to extend the covered porch to within 12.5 feet from the street right-of-way.

Recommendation:

The applicants are proposing a wrap-around porch which will dramatically improve the appearance of the residence and property. Staff recommends that the ZBA members visit the subject property and make their own evaluation on the impact the addition would have on the neighborhood. Staff does not have problem with this variance based on the proximity to a commercial zone and the limited front setback seen on other properties in the neighborhood.

Support Material:

Completed Application
Aerial Photo of the neighborhood
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: Robert + Maryanne Schulte

Date: 8-6-12

Address: 615 Church St, South Haven

Phone: 708-860-7822

Address of Property in Question: SAME

Present Zoning of Property: R-1B

Name of Property Owner(s): SAME

Present Zoning of Neighboring Properties to the :

North R-1B South R-1B East R-1B West C-2

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): Sec 40 3-1 front yard setback

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.

Variance will not be detrimental to surrounding area.

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

True

2nd
65 x 132
8580

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).

FALSE. There are no exceptional circumstances.

Rev. 2/04

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. *We believe it will beautify the neighborhood.*

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.

We feel the esthetics of home will be upgraded.

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.

*There is no problem with the house.
We are adding the porch for
recreational use only.*

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.

No, it would not.

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

Yes.

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

Yes.

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.

Robert C. Scholtz
Property Owner

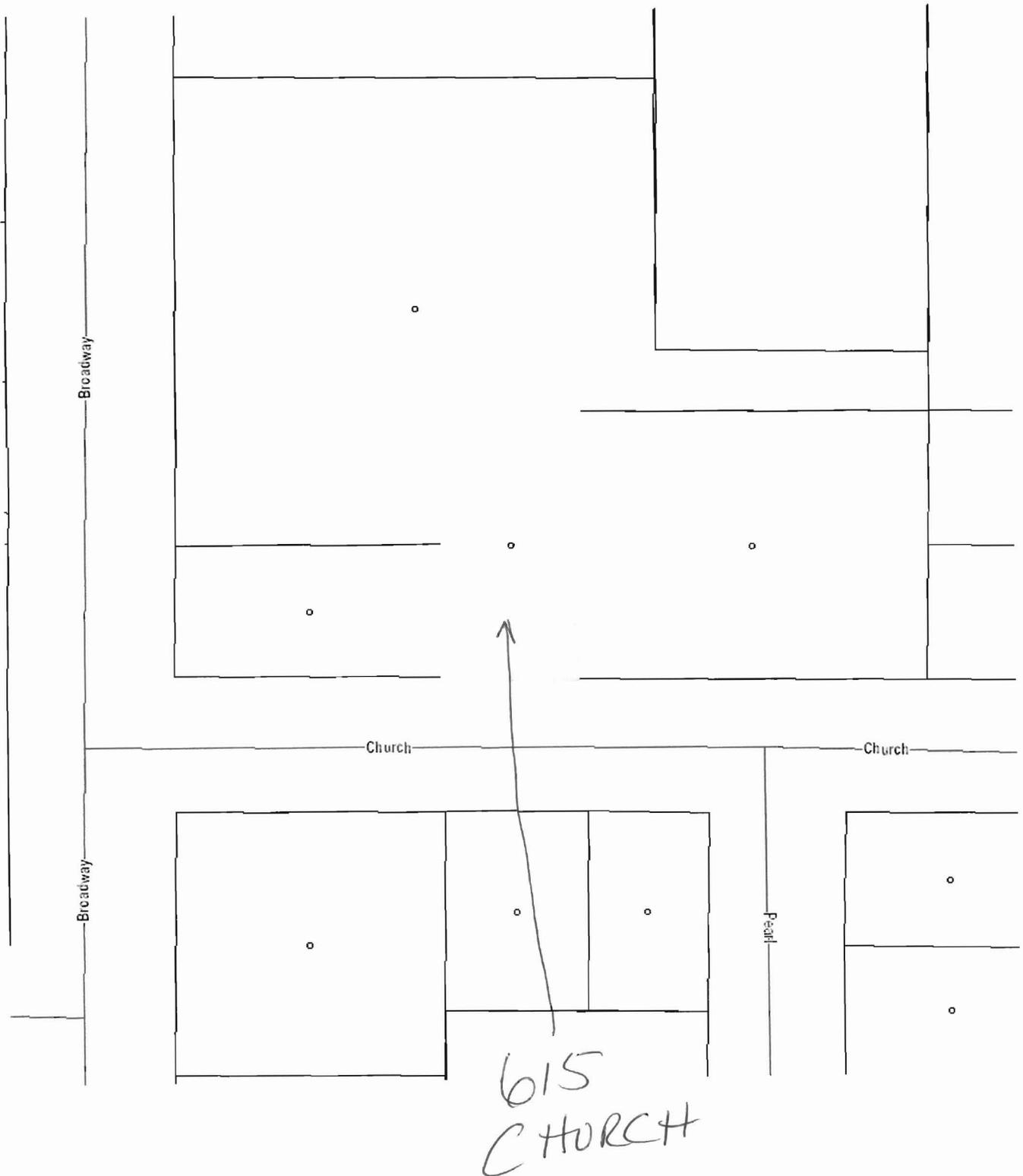
8-6-12
Date

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.

Robert C. Scholtz
Applicant Signature

8-6-12
Date





STAFF FINDINGS OF FACT

CITY OF SOUTH HAVEN ZONING BOARD OF APPEALS

DATE: August 27, 2012
ADDRESS: 615 Church Street
ZONING DISTRICT: R-1B Residential
LOT DIMENSIONS: 66x132
LOT AREA: 8712 square feet
LOT COVERAGE: 15% current; 30% proposed (incl. covered porch)
REQUIRED SETBACKS: Front – 25 feet
EXISTING SETBACKS: Front - 20 feet, 6 inches
PROPOSED SETBACKS: Front – 12 feet, 6 inches
VARIANCE REQUEST: Robert and Maryanne Schultz, 615 Church Street, request a front setback variance to allow construction of a covered porch. Section 404-1 of the zoning ordinance requires a 25-foot minimum front yard building setback. The applicant is asking to extend the covered porch to within 12.5 feet from the street right-of-way. The parcel number for the property is 80-53-767-012-00.

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 has commercial zoned land to the west and north and residential to the south and east. The property is one lot east of the Broadway commercial corridor. There are two (2) residences directly across Church Street with front yards as limited as the applicant has proposed. To the east side of the subject property is a fence that extends almost to the ROW. Next to the fence is a home under reconstruction. This house does not appear to encroach on the ROW.

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

It is the intent of the R1B zoning district to preserve the character of the single-family neighborhoods. The proposed addition will enhance the appearance and character of the property.

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).

Staff does not find exceptional or extraordinary conditions as far as lot size or configuration. The only unusual situation is the proximity of the house to the sidewalk edge (public ROW). The house is currently nonconforming in that it is 20 feet, six inches from the front lot line where 25 feet is required. The existing open steps extend another five (5) feet into the front yard. Since the existing steps are open to the sky, there is no problem with this encroachment.

The applicant proposes to construct a covered porch on the front of the house extending an additional eight (8) feet into the nonconforming front yard. This will result in a front yard of 12 feet, six (6) inches, one-half of what is required.

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.

There does not appear to be any financial motive for the improvements the applicant has requested. The applicant would construct the porch for personal use.

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. Staff does not recommend amending the zoning ordinance to permit a decrease in setback for principal structures in the R1B zoning district. 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 the sense that the applicant would like a covered porch.

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 applicant would be able to add the side porches and decks as proposed without variances. Other houses in the immediate area do not have covered front porches, although they are in noncompliance with front yard setback requirements. It is the front covered porch that creates the problem. If the front porch were not covered, it would still need a variance, as it will be closer to the ROW than the limited 19 feet. A variance would be required for any front addition.

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

As stated previously, a variance would be required for any front porch addition.

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.