

Zoning Board of Appeals

Regular Meeting Agenda

Monday, October 22, 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 – September 24, 2012
5. Interested Citizens in the Audience Will be Heard on Items Not on the Agenda

NEW BUSINESS –Variance Request

6. Kal-Haven Bikes, Inc., (represented by David Nixon), 1073 E. Wells Street, request 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 a private road/easement. The parcel number for the applicant's property is 80-53-870-010-00.
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.
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, September 24, 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, Wheeler, Wittkop, Ingersoll
Absent: Henry, Lewis

3. Approval of Agenda

Motion by Paull, second by Apotheker to approve the agenda as presented.

All in favor. Motion carried.

4. Approval of Minutes – August 27, 2012

Motion by Wittkoop, second by Apotheker to approve the August 27, 2012 minutes as written.

All in favor. Motion carried.

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

There were none.

NEW BUSINESS –Variance Requests

6. Dennis and Jari Kral, 127 Clinton, request a rear yard pool setback variance. The ordinance requires pools to be ten (10) feet from rear property lines (Section 1725-2). The applicant is asking to install a pool six (6) feet from the rear lot line instead of the required ten (10) feet. The parcel number for the property is 80-53-033-015-00.

Anderson gave an overview of the request, noting that everyone within 300' was notified and no responses were received.

Dennis Kral, 127 Clinton. Explained that his family just moved from the north side to the south side, from a small condo to a house near St. Basil's school. They want a garage and a pool in the back yard. The contractor has been working with them to lay it out so they have room for everything, including a small set of steps to enter the house and enough turning radius for a car to turn into the garage.

The public hearing was opened.

Paull asked if there is a fence on the back lot line and how high it is. Kral said it is tall, maybe 5.5' to 6'; he has not measured it but noted that the fence surrounds the house on three (3) sides. Kral noted that he is not sure who owns the fence on the rear lot line, but the adjacent neighbors on each side own the fences that are on the side lot lines.

Ingersoll pointed out a couple of things the applicant can do to minimize or eliminate the need for a variance: Locate the pool 2 feet from the garage and take a foot off the pool and a foot off the garage. The board discussed the required turning radius of the driveway, which is quite narrow; the contractor said the 22 feet suggested wouldn't work, even though that was what was proposed originally. According to Kral, the pool contractor is the one who asked Kral to request the variance.

The board heard the explanation for a single-car garage; the applicant is vision impaired so only have one car and his wife does all the driving.

Apotheker suggested moving the garage to the east. Anderson noted since the house is already non-conforming the applicant could bring the line of the side of the house straight back. Kral said he was not aware of that but if that is an option that could be done.

Motion to close the public hearing by Wheeler; second by Apotheker.

Apotheker noted it is a self-created problem and, if the garage were moved, the applicant could still get the same size pool without getting too close to the property line. Ingersoll noted the problem with the turning radius.

Paull said reconfiguring the garage could solve the problem. Pools are attractive nuisances sitting in your back yard. Maintaining enough clear distance around a pool is important. If the applicant could reconfigure his plan, he could still get a reasonably sized pool without a variance. Wheeler commented that his thought was that this appeared to be a self-created problem and the board has helped him determine that is correct.

Wittkop agreed with Apotheker that the applicant has a self-created problem and can change things around and still get a reasonably sized pool.

Ingersoll said if we look at the lesser of two evils, the trade-off here would be the 6 feet off the property line or making the garage two feet closer to the property line. The board asked for and received confirmation that the garage would move, not grow larger.

Apotheker noted the applicant could move the garage to the east, to match the existing house line. The applicant likes that idea and was not aware of that option.

Motion by Paull, second by Wittkop to deny the variance request due to there being no exceptional or extraordinary circumstances or conditions; the need for a variance was self-created and the variance amount was the not the minimum amount required.

A Roll Call Vote was taken.

Ayes: Paull, Wheeler, Wittkop, Apotheker, Ingersoll

Nays: None

Motion carried.

7. Member Comments

The board heard about a case that may come before them next month.

8. Adjourn

Motion by Apotheker, second by Wittkop to adjourn at 7:30 p.m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom
Recording Secretary



Agenda Item #6 Nixon Variance Request

City of South Haven

Background Information:

Kal-Haven Bikes, Inc., (represented by David Nixon), 1073 E. Wells Street, request a variance from zoning ordinance section 1716-2 to permit nonresidential access through residential property (Black River Road).

In September, Mr. Nixon appeared before the ZBA to obtain an interpretation as to whether the easement he held to his property could be considered a private street. The ZBA determined that that was the case. Now Mr. Nixon is asking to use that easement to access his property at the end of the easement for a commercial use. Commercial uses permitted in that zoning district include boat launches, campgrounds, planned developments, recreation areas and retail uses. The property is in a wetland/floodplain area but some of the uses permitted could be developed on the parcel if access is approved.

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.

Recommendation:

Staff recommends that ZBA members carefully review the response from the attorney and consider all public comments received at the meeting.

Support Material:

Completed application
City Attorney response letter
Letter of opposition

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: KAL-HAVEN BIKES, INC., a Michigan Corporation Date: Oct. 2, 2012

Address: 1073 E. Wells St., South Haven, MI 49090 Phone: _____

Address of Property in Question: vacant, Tax Parcel: 80-53-870-010-00 Present Zoning of Property: B-3

Name of Property Owner(s): Kal-Haven Bikes, Inc., a Michigan Corporation

Present Zoning of Neighboring Properties to the :

North R1B South B3 East B3 West B3

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): 1716-2 NO nonresidential access through residential property.

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.

SEE ATTACHMENT A

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

SEE ATTACHMENT A

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).

SEE ATTACHMENT A

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.

SEE ATTACHMENT A

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.

SEE ATTACHMENT A

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.

SEE ATTACHMENT A

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.

SEE ATTACHMENT A

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

SEE ATTACHMENT A

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

SEE ATTACHMENT A

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.

By: David King

October 2, 2012

Its: *president*

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.

KAL-HAVEN BIKES, INC.

By: David King

October 2, 2012

Its: *president*

CITY OF SOUTH HAVEN

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

ANSWER: The requested use variance will not be detrimental to adjacent property or the surrounding neighborhood. The Applicant's Property is bounded on the South and East by the Kal-Haven Trail, on the West by the Black River, and on the North by a small area of residentially zoned property that is located adjacent to Blue Star Highway.

There is an existing private road that is used by the residential property owners to gain access to their properties from Blue Star Highway and has been used by the Applicant and its predecessors in title since prior to September 29, 1987, when the Property was purchased on land contract. Use of this existing private road to gain access to the Applicant's Property from Blue Star Highway will be limited by the land uses that are permitted in the B-3 zoning district, as well as the existing topography of the property where the road is located, and should have no detrimental impact on the adjacent properties and on the surrounding neighborhood.

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

ANSWER: Issuance of this use variance will permit the use of Applicant's Property as it is currently zoned. Without a use variance, the South Haven City Zoning Ordinance effectively prohibits the use of the Applicant's Property for any use permitted in the B-3 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).

ANSWER: When Applicant's predecessors in title purchased this property by land contract in 1987, there was no prohibition contained in the South Haven City Zoning Ordinance on crossing residentially zoned property to reach the Premises. The exceptional and extraordinary circumstances which are present in this case were created solely by the adoption of an amendment to the South Haven City Zoning Ordinance in 1998. The enforcement of Section 1716 (2) will do more than simply create a

practical difficulty in using the Applicant's Property. The literal enforcement of Section 1716 (2) will deprive the Applicant/Owner of any meaningful use of its Property.

The Applicant's immediate predecessor in title, Blue Star Harbor, Inc., a Michigan Corporation, took title to the premises by deed dated March 5, 1994, recorded January 27, 2005 in Liber 1430 on Page 268, Van Buren County Records. Blue Star Harbor, Inc. conveyed the premises to Kal-Haven Bikes, Inc. by deed recorded January 27, 2005 in Liber 1430 on Page 269. Copies of the land contract, deed to Blue Star Harbor, Inc. and deed to Kal-Haven Bikes, Inc. are attached as Exhibits 1, 2, and 3, respectively.

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.

ANSWER: The denial of this requested use variance would place the Applicant/Owner in a position where it cannot use the subject Property for any use permitted under the zoning district that it is located in. This will in effect result in the "taking" of the Applicant's 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.

ANSWER: The Applicant is not aware of any other commercially zoned property in South Haven that can only be accessed over a private road that is located partially or completely in a residential zoning district. There are public roads that cross residentially zoned properties and provide access to commercial properties, but the Applicant assumes that the City does not take the position that Section 1716 (2) prohibits the use of these public roads for commercial purposes, since the use of public roads by commercial vehicles can be controlled by traffic laws and regulations.

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.

ANSWER: The present limitations on the Applicant's use of its Property are not self-created. The existing restrictions are the direct result of the City's adoption of Section 1716 (2).

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.

ANSWER: This portion of the application refers to non-use variances, sometimes referred to as dimensional variances. The Applicant's problems with its Property do not involve area, setbacks, frontage, height, bulk or density. Section 1716 (2) does unreasonably prevent the Owner from using its Property for any permitted purpose in the B-3 zoning district.

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

ANSWER: The Applicant is not aware of any alternative to this requested use variance. As long as Section 1716 (2) is deemed to apply to the Applicant's Property, the Applicant will be deprived of the reasonable use of its Property.

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

ANSWER: The variance will only relate to property under the control of the Applicant.



This Contract, made September 29, 1987, BETWEEN STANLEY OLEN, DIANE D'AMBROSIA and TAMMY D'AMBROSIA, of 716 Pulaski Road, Calumet City, Illinois

hereinafter referred to as the "Seller" and DAVID WARD NIXON and JENNIFER ANN NIXON, husband and wife, 280 Oak Street, South Haven, Michigan, and BLUE STAR HARBOR, INC., A Michigan Corporation

hereinafter referred to as the "Purchaser,"

WITNESSETH, That in consideration of the mutual covenants to be performed between the respective parties hereto as hereinafter expressed and the sum hereinafter stated to be duly paid by the Purchaser to the Seller, as hereinafter specified, it is agreed between the parties hereto as follows:

1. The Seller hereby sells and agrees to convey unto the Purchaser all that certain piece or parcel of land situated in the City of South Haven, County of Van Buren, and State of Michigan, and described as follows, to-wit:

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 376 feet.

Together with all easements and rights benefitting the premises, whether or not such easements and rights are of record, and all tenements, hereditaments, improvements and appurtenances, including all lighting fixtures, plumbing fixtures, shades, venetian blinds, curtain rods, storm windows, storm doors, screens, awnings, if any, ~~mark~~ now on the premises, and subject to all recorded easements, conditions, encumbrances and limitations and to all applicable building and use restrictions, zoning laws and ordinances, if any, affecting the premises.

2. Said Purchaser hereby purchases said premises of the Seller and agrees to pay the Seller therefor the sum of One Hundred Thousand (\$100,000.00) -----Dollars in the manner following: Twenty Thousand (\$20,000.00) -----Dollars on delivery of this contract, the receipt whereof is hereby confessed and acknowledged by said Seller, and the remaining Eighty Thousand (\$80,000.00) -----Dollars, the sum which is secured by this contract, together with interest on the whole sum that shall be from time to time unpaid at the rate of Ten (10%) per cent, per annum, payable as follows:

\$1,057.21 on the 29th day of October, 1987, and the same amount on the same day of each and every month thereafter, until the principal and interest shall be fully paid. Interest to be computed monthly and deducted from payment and balance of payment to be applied on principal, said Purchaser to have the right to pay larger installments than above provided for and to pay the whole or any part of the balance remaining unpaid on this contract at any time before the same, by the terms hereof, becomes due and payable, PROVIDED, however, the entire purchase money, interest and other sums due hereunder shall be paid in full within 5 years from the date hereof, anything herein to the contrary notwithstanding. Interest shall commence to run on the unpaid balance of principal as of September 29 1987, and payments shall be made at 716 Pulaski Road, Calumet City, Illinois 60409 until Purchaser is given written notice to the contrary. Notwithstanding the prepayment of any installments, the Purchaser is not relieved of the requirement that the Purchaser make the monthly payments described above.

3. Said Purchaser shall promptly pay, when due, all taxes and assessments of every nature which shall become a lien on said premises after the date hereof, and any installments of special assessments becoming due after the date hereof, ~~excepting~~

and shall, during the continuance of this contract, maintain liability insurance on the premises, naming the Seller as an additional insured, keep insured the buildings now on said premises, or which shall hereafter be placed thereon, in the name of said Seller against loss by fire and windstorm, in such company or companies and for such amount as the Seller shall approve, and forthwith deposit all policies of insurance with the Seller, with loss, if any, payable to the Seller, as his interest may appear under this contract. Should the Purchaser fail

Parties

Description

Price and Terms of Payment

Taxes and Insurance

Interest and Insurance
Premises
Acceleration Clauses
Evidence of Title
Mortgage by Seller

to pay any tax or assessment, or installment thereof, when due, or to keep said buildings insured, the Seller may pay the same and have the buildings insured, and the amounts thus expended shall be a lien on said premises and may be added to the balance then unpaid hereon and be due at once and bear interest until paid at the rate of the per cent per annum above specified in Paragraph 2.

In case of damage as a result of which said insurance proceeds are available, the Purchaser may, within sixty (60) days of said loss or damage, give to the Seller written notice of Purchaser's election to repair or rebuild the damaged parts of the premises, in which event said insurance proceeds shall be used for such purpose. The balance of said proceeds, if any, which remain after completion of said repairing or rebuilding, or all of said insurance proceeds if the Purchaser elects not to repair or rebuild, shall be applied first toward the satisfaction of any existing defaults under the terms of this contract, and then as a prepayment upon the principal balance owing, and without penalty, notwithstanding other terms of paragraph 2 to the contrary. No such prepayment shall defer the time for payment of any remaining payments required by said contract. Any surplus of said proceeds in excess of the balance owing hereon shall be paid to the Purchaser.

~~(Following paragraph applies unless deleted. See footnote 1. e. if this Contract is being used under Michigan Land Sales Act.)~~

~~Notwithstanding the provisions of the foregoing paragraph, the Seller herein shall, while this contract is not in default, pay all taxes (but not special assessments) levied on the above described premises and premiums on insurance on the buildings on said premises and the amounts so paid shall be added to the principal then unpaid thereon. It is understood that \$ _____ is included in each monthly payment as a credit to cover taxes and insurance premiums as they mature. The monthly payment required shall be increased from time to time, as necessary, to cover any increase in cost of taxes and insurance incurred over such costs as of the time of execution of this contract.~~

4. All buildings, trees or other improvements now on said premises, or hereafter made or placed thereon, shall be a part of the security for the performance of this contract and may not be removed therefrom. Purchaser shall not commit, or suffer any other person to commit, any waste or damage to said premises or the appurtenances and shall keep the said premises and all improvements in as good condition as they are now.

5. Should default be made by the Purchaser in any of the provisions hereof, the Seller may immediately thereafter declare this contract void and forfeited and the said buildings, improvements and all payments made on this contract shall be forfeited to the Seller as rental for the use of the premises and as stipulated damages for failure to perform this contract and the Seller shall be entitled to immediate peaceable possession of said premises without notice and remove the Purchaser and all persons claiming under him therefrom, and the Seller may, without notice to the Purchaser, declare all money remaining unpaid under this contract forthwith due and payable, notwithstanding that the period hereinbefore limited for the payment of the said balance may not then have expired, and the Seller may thereafter enforce his rights under this contract in law or in equity, or may take summary proceedings to forfeit the interests of Purchaser or may enforce said contract in any other manner now or hereafter provided. In addition to any other remedy, Seller, on default being made, may consider Purchaser as a tenant holding over without permission and remove Purchaser from said premises according to the law in such case made and provided.²

6. If the Purchaser shall, in the time and manner above specified, make all the payments herein provided for, and shall observe and perform all the conditions and agreements herein made, the Seller shall thereupon, by good and sufficient warranty deed, convey the said premises to the Purchaser on the conditions herein agreed upon, and the Seller shall deliver with said deed a complete abstract of title and tax history of said premises certified to date of conveyance and showing a marketable title, subject to easements, conditions, encumbrances and limitations of record, in the Seller, or a fee simple title insurance policy guaranteeing title to the premises in the name of Purchaser; provided, however, that the warranty deed, the abstract and the tax history shall be limited so as to except acts or negligence of parties other than the Seller subsequent to the date of this contract. In the event an abstract is delivered, the Purchaser agrees to accept the abstract of title certified to date of conveyance, showing in the Seller a marketable title of record, subject to easements, conditions, encumbrances and limitations of record, as defined in Act 200 of the 1945 Public Acts of Michigan as amended.

7. Possession of said premises may be taken by said Purchaser on date of closing, and retained for so long as no default is made by said Purchaser in any of the terms or conditions hereof.

8. Purchaser further agrees that, notwithstanding any other provision herein contained, this land contract shall become immediately due and payable in the event Purchaser shall sell, assign, transfer or convey his interest or any part of his interest in the subject property by assignment, sub-land contract, or any other manner, without first securing the written consent of the Seller.

Purchaser further agrees that in the event Purchaser desires to lease the subject property for a period in excess of thirty (30) days, the Purchaser shall first provide the Seller with written notice of same and shall first obtain Seller's approval of the lease and the rental of the premises prior to executing any such lease.

9. The Seller reserves the right to convey his interest in the above described land and his conveyance hereof shall not be a cause for rescission.³

The Seller may, during the lifetime of this contract, place a mortgage on the premises above described, which shall be a lien on the premises, superior to the rights of the Purchaser herein, or may continue and renew any existing mortgage thereon, provided that the aggregate amount due on all outstanding mortgages shall not at any time be greater than the unpaid balance of the contract, and provided that the aggregate payments of principal and interest, whether periodic or final, required in any one month in such new or renewal mortgage shall not exceed those named in this contract; nor shall said new or renewal mortgage restrict the time of payments thereon to a date later than is provided for similar payments in this contract. To secure the priority of lien granted to a new or renewal mortgage as provided for in this paragraph, written notice shall be given to the Purchaser within fifteen (15) days of the execution of all such new mortgages and renewals containing the name and address of the mortgagee, the rate of interest of such mortgage, the amount and due date of payments and maturity of principal.

If the Seller's interest be that of land contract or is now or hereafter encumbered by mortgage, the Seller covenants that he will meet the payments of principal and interest thereon as they mature and produce evi-

Attorney Fees Profits of Premises Essence nouns Notices Costs

default and shall be reimbursed for so doing by receiving, automatically, credit on this contract to apply to the payments due or to become due hereon.

When payments on this contract have reduced the amount due hereon to the amount due by Seller on any such mortgage or land contract indebtedness, thereafter the Purchaser shall be entitled to make payments due on this contract directly to the mortgagee or land contract vendor for credit on such mortgage or land contract indebtedness and the Purchaser shall be reimbursed for doing so by receiving, automatically, credit on this contract to apply to the payments due or to become due hereon.

10. In the event that evidence of title in the Seller, by abstract of title or title insurance, has been furnished the Purchaser current with the date of this contract, Purchaser agrees that except for costs resulting from acts, negligence, or death of the Seller, the cost of additional evidence of title shall be the obligation of the Purchaser.

11. Until endorsed on this contract to the contrary, each of the parties hereto agrees that notices required hereunder may be sent to: Seller at 716 Pulaski Road, Calumet City, Illinois 60409 Purchaser at 280 Oak Street, South Haven, MI 49090 and when mailed, postage prepaid, to said address, shall be binding and conclusively presumed to be served upon said parties respectively. Notice of forfeiture of this contract shall be served as provided by law.

12. If more than one joins in the execution hereof as Seller or Purchaser, or either be of the feminine sex, or a corporation, the pronouns and relative words herein used shall be read as if written in plural, feminine or neuter respectively.

13. It is expressly understood and agreed by the parties hereto that time shall be deemed as of the very essence of this contract and all stipulations and agreements herein contained shall apply to and bind the heirs, executors, administrators, successors and assigns of the parties hereto.

14. Purchaser agrees that the Seller has made no representations or warranties and makes no representations or warranties as to the condition of the premises, the condition of the buildings, appurtenances and fixtures located thereon, and/or the location of the boundaries.

15. Notwithstanding any other provision herein contained or any provision of law, the parties expressly agree that in the event of default not cured by the Purchaser within fifteen (15) days after notice of intent to forfeit the contract is served upon Purchaser, Seller shall have the right to possession of the subject property, and to receive all rents and profits relative to the subject property from and after the date set in said notice for curing such default and such right of Seller shall continue during any period that forfeiture or foreclosure proceedings may be pending and during any period of redemption. Purchaser further agrees that Seller shall have the right to the appointment of a receiver to receive such rents and profits and such receiver may be Seller or an agent of Seller.

16. In the event of default, in addition to any remedies or rights of Seller, Purchaser shall pay to Seller, Seller's reasonable and actual attorneys' fees and expenses incurred by Seller in enforcement of any rights of Seller hereunder, which sums shall be payable prior to Purchaser's being deemed to have corrected any such default.

17. That during the terms of the land contract, Buyers cannot make any physical changes in the property or construct or have constructed any buildings, docks, piers, fixtures or structures, do any dredging, filling, or removing of soil, and further, cannot sell, transfer, assign, convey, mortgage, give liens or in any other way encumber the property without the express written consent of Sellers.

18. That Sellers make no representation, guarantees, or warranties that government agencies will or will not issue necessary / licenses and/or permits to allow dredging, filling and or/development upon said real estate and that Buyers have examined said property and agree to buy it in its "as is" condition and are not relying upon any representations or promises of Sellers.

In Witness Whereof, the parties hereto have signed and sealed this Land Contract on the day and year first above written.

Executed by Seller in the presence of

Stanley Olen (L. S.) STANLEY OLEN

Handwritten signatures of Diane D'Ambrosia and Tammy D'Ambrosia

Diane D'Ambrosia (L. S.) DIANE D'AMBROSIA Tammy D'Ambrosia (L. S.) TAMMY D'AMBROSIA

Executed by Purchaser in the presence of

Blue Star Harbor, Inc., by David Ward Nixon, Its President (L. S.) DAVID WARD NIXON, Individually JENNIFER ANN NIXON, Individually (L. S.)

NOTE: Land Contracts by statute, must be executed in the presence of two witnesses.

COUNTY OF _____

On _____, before me, a Notary Public, in and for said County, personally appeared

to me known to be the same person described in and who executed the within instrument, who acknowledged the same to be _____ free act and deed.

The Name and Business Address of the Person
Who Drafted this Instrument:

ROMAN T. PLASZCZAK
137 North Park Street
Kalamazoo, MI 49007
(616) 349-6777

Notary Public,
County, Michigan,

My commission expires _____, 19____

County, Michigan.

NOTES

1. Use under Michigan Land Sales Act (P. A. No. 286, 1972)
 - a. Add below the double line and above the commencement of the contract form: **CONTRACT FOR SALE OF LAND UNDER MICHIGAN LAND SALES ACT.**
 - b. If this contract is not used as a part of Doubleday Form No. 599 (Agreement for Sale of Real Estate—Michigan Land Sales Act), use Doubleday Form No. 594, **NOTICE TO PURCHASER UNDER MICHIGAN LAND SALES ACT**, and add Paragraph 14 to contract as follows: "Attached hereto and made a part hereof is Doubleday Form No. 594, **NOTICE TO PURCHASER UNDER MICHIGAN LAND SALES ACT**."
 - c. Complete and execute Doubleday Form No. 593, **CONSENT AND ACKNOWLEDGEMENT UNDER MICHIGAN LAND SALES ACT**, after expiration of five-day cancellation period.
 - d. Complete and execute Doubleday Form 1919A, **Addendum to Land Contract**.
 - e. See requirements of Rule 318.3341 under Michigan Land Sales Act.
 - f. Attach as part of this contract, disclosures required by Federal Truth-in-Lending Act (Public Law 90-111) and the rules promulgated thereunder.
 - g. All signatures of parties to this contract should be witnessed, acknowledged before a notary and the acknowledgment form should be completed.
- Names of witnesses, notary public and persons executing this instrument, must be printed, typewritten or stamped immediately beneath the signature of each person.
 - a. Show on contract the name and business address of person who drafted the instrument.
 2. The acceleration clause in paragraph 5 is approved in *Brody vs. Crozier*, 242 Mich. 660.
 3. In re *Reason's Estate* 276 Mich. 376.
 - * If this Contract is to be recorded, **PRINT, TYPEWRITE OR STAMP** Names of Persons executing this instrument, also Names of Witnesses and Notary Public immediately under each signature.

NOTE: PURCHASERS ASSIGNMENT OF LAND CONTRACT, may be obtained by ordering Blank No. 5049
PARTIAL PAYMENTS FORM FOR ATTACHING TO LAND CONTRACT, may be obtained by ordering Blank No. 5048

1919—(Revised 1985)

TO

LAND CONTRACT

DOUBLEDAY BROTHERS AND COMPANY
KALAMAZOO, MICHIGAN

The Grantor(s) **DIANE D'AMBROSIA, a single woman, TAMMY D'AMBROSIA, a single woman,** who have survived **STANLEY OLEN, a single man,** whose death certificate is recorded at Liber 1430, Page 267, of 3245 West 97th Street, Evergreen Park, Illinois 60642 convey(s) and warrant(s) to **BLUE STAR HARBOR, INC., A Michigan Corporation,**

whose address is **Route #5, Box 137B, 70th Street, South Haven, MI 49090**

the following described premises situated in the **City** of **South Haven,** **County of Van Buren,**

and 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° 55' West 206 feet, thence South 3° 55' West 276 feet, to point of beginning, thence North 86° 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 North-easterly on said right of way line to said North and South Eighth line, thence North on said eighth line to a point South 86° 5' East from the point of beginning, thence North 86° 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° 55' West 206 feet, thence South 3° 55' West 276 feet.**

for the sum of **One (\$1.00) Dollar**

subject to easements and building and use restrictions of record and further subject to

Dated this **5th** day of **March**, 19**94**

Signed in presence of:

[Signature]
[Signature]

Signed by:

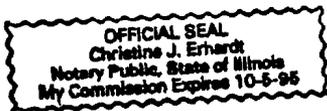
[Signature]
***DIANE D'AMBROSIA**
[Signature]
***TAMMY D'AMBROSIA**

* I certify that, as to the lands herein described neither the state nor any person holds a tax title or lien, and that all taxes levied for the five calendar years preceding the date of this instrument have been paid, except that if checked here, the certificate does not cover taxes for the most recent year because the delinquent tax roll for the same is not available.

[Signature] 1/24/2005
VAN BUREN COUNTY TREASURER DATED

STATE OF ILLINOIS }
COUNTY OF COOK } SS.

The foregoing instrument was acknowledged before me this **5th** day of **March** 19**94**, by **DIANE D'AMBROSIA and TAMMY D'AMBROSIA**



[Signature]
*** CHRISTINE J. ERHARDT**
Notary Public, Cook County, Illinois
My commission expires: 10/5/95

County Treasurer's Certificate

City Treasurer's Certificate

When Recorded Return To:

BLUE STAR HARBOR, INC.
(Name)
Route #5, Box 137B, 70th Street
(Street Address)
South Haven, MI 49090
(City and State)

Send Subsequent Tax Bills To:

BLUE STAR HARBOR, INC.
Route #5, Box 137B, 70th St.
South Haven, MI 49090

Drafted By:

ROMAN T. PLASZCZAK
Business Address:
137 North Park Street
Kalamazoo, MI 49007

Tax Parcel #

Recording Fee

[Signature]

Transfer Tax

* TYPE OR PRINT NAMES UNDER SIGNATURES.



LR-3110587
Page: 1 of 1
01/27/2005 01:09P

L-1430 Pg-268

I certify that, as to the lands herein described, neither the state nor any person holds a tax title or lien, and that all taxes levied for the five calendar years preceding the date of this instrument have been paid, except that if checked here, that a certificate does not cover taxes for the most recent year because the delinquent taxroll for the same is not available.

LR-3110588
Page: 1 of 2
01/27/2005 01:09P
Van Buren Co, MI 4900
D.MD
L-1430 Pg-269

David Nixon
VAN BUREN COUNTY TREASURER DATED

WARRANTY DEED

THIS INDENTURE, KNOW ALL MEN BY THESE PRESENTS THAT, the GRANTOR, to wit, Blue Star Harbor, Inc., a Michigan Business Corporation, of 1063 Phoenix Street, South Haven, MI 49090,

TRANSFERS, CONVEYS AND WARRANTS TO the GRANTEE, to wit, Kal-Haven Bikes, Inc. a Michigan Business Corporation, of 1063 Phoenix Street, South Haven, MI 49090,

THE FOLLOWING DESCRIBED PREMISES situated within the State of Michigan, County of Van Buren and City of South Haven, viz:

Specific description contained upon Exhibit A, attached hereto and made a part hereof by reference.

SUBJECT TO EASEMENTS, RESERVATIONS, RESTRICTIONS AND LIMITATIONS OF RECORD, IF ANY.

FOR THE CONSIDERATION OF One (\$1.00) Dollar. The value of the consideration of this transfer between related corporations being less that \$100.00 Dollars, this transaction is exempt from transfer tax pursuant to MCLA 207.505 (a) abd MCLA 207.526 (a).

The Grantor(s) also grants to the Grantee(s) the right to make all available division(s) under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967.

This indenture dated this 26th day of January, 2005.

Signed and Sealed:
Blue Star Harbor, Inc.
Jennifer Nixon
BY: Jennifer Nixon
ITS: Secretary/Treasurer
David Nixon
BY: David Nixon
ITS: President

STATE OF MICHIGAN)
) ss.
COUNTY OF VAN BUREN)

The foregoing instrument was acknowledged before me this 26th day of January, 2005 by Blue Star Harbor, Inc. by David Nixon and Jennifer Nixon, its officers.

Lori A. Gougar
Notary Public,
Van Buren County, MI
My Commission Expires:
LORI A. GOUGAR
Notary Public, Van Buren County, Michigan
My Commission Expires Nov. 30, 2006

Drafted By and When Recorded Return To:
James Shek (P37444)
Attorney at Law
72459 CR 388, Suite 3
South Haven, Michigan 49090

David Nixon

Marsha Ransom

From: Matt Petter [Matt@riveer.com]
Sent: Friday, October 12, 2012 1:27 PM
To: Linda Anderson
Subject: [EmailDefender SPAM suspect] October 22nd zoning board of appeals hearing

Dear Linda,

Following is a revision to the email I sent a couple of days ago concerning Kal-Haven Bikes request for zoning variance. I have toned it down just a bit and wonder if you would be willing to read this version into the record rather than the more acerbic version sent previously. I have noted the changes in [blue](#)

Dear Linda,

I would like to object to the granting of a variance to Kal-Haven bikes to gain access to a commercial property via a residential easement.

Over the years Kal-Haven Bike, has repeatedly [grossly misled](#) the zoning board of appeals about its intentions. For example, several years ago Mr. Nixon came before the board and requested permission to open a bike rental business on his adjacent Wells street property. I pointed out to the board that Mr. Nixon had installed sewer connections every 10 feet or so and it looked like he was planning on putting in a trailer park or something. Mr. Nixon's lawyer got up and told me I was ignorant and that any house set back as far as Mr. Nixon's was from Wells street would put in periodic cleanouts. The zoning board granted Mr. Nixon a variance to allow him to have a residential property on this site to manage his "bike rentals" ([to my knowledge has never rented a bike](#)). Within a very short time Mr. Nixon returned to the board and asked for permission to put in a Park Model park. Turned down he then requested and got permission to put in an RV park. Conveniently Mr. Nixon was able to use the periodic clean-outs as sewer hook-ups for his trailer park.

Mr. Nixon's history of deception before the zoning board and his repeated violations of permit requirements at this property show us, his neighbors, that he should not be allowed any special consideration such as variances of the zoning regulations. In fact, granting Mr. Nixon additional variances will directly effect and diminish my enjoyment of my property.

Thank you for your consideration.

Matt Petter
matt@riveer.com
269 637 1997

Matt Petter
matt@riveer.com
269 637 1997



Agenda Item #7 Roth Variance Request

City of South Haven

Background Information:

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. Mr. Roth intends to construct an addition to his house which includes a bedroom and a wrap around, covered porch. If the porch, or part of the porch (approximately 268 square feet), were open to the sky or had a pergola style roof, the lot coverage would not be over the maximum.

Recommendation:

Staff recommends that ZBA members carefully review the application and any public comments received. Any motion made will need to include specific reference to the ordinance requirements for ZBA variance decisions.

Support Material:

Completed application
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: Julie and Michael Roth Date: 10/2/2012

Address: 214 Huron St., South Haven / 256 Adella St., Elmhurst, IL Phone: (630) 217-1011

Address of Property in Question: 214 Huron St. South Haven, MI 49090 Present Zoning of Property: R-1A

Name of Property Owner(s): Julie and Michael Roth

Present Zoning of Neighboring Properties to the :

North RIA South RIA East RIA West RIA

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 (40% lot coverage)

Under Article 10(11), 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.

The proposed improvements will be on the interior of the lot and will not encroach upon existing set-backs. The improvements are consistent with the character of the existing house and the surrounding neighborhood, which mainly consists of significantly bigger houses than ours on smaller lots.

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

The 4% variance will not result in the appearance of too much improvement on too little of a lot. We have tried to keep the design of the house substantially unchanged, with the proposed improvements in the same footprint as the existing house, and still retain the neighborly screened porch that we enjoy so much. The property has curb and gutter and the incremental lot coverage will not create any drainage issues. Our intent is to increase the overall lawn size.

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).

This 2 bedroom house was built in 1934. Unknown to us at the time of purchase, the foundation is made of brick and mortar, and it has been determined by our contractor that it will not support the addition of a second level (to allow a third bedroom). As a result, the improvements require a new foundation extending beyond the existing foundation with the replacement porch being located just outside the existing footprint.

Re

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 addition of the screened porch will exceed the 40% lot coverage by 4%. A variance is therefore necessary. Most houses in the area are on smaller lots, and have screened porches, and we wish to maintain the same characteristic and enjoyment. The rear porch will be barely visible from other properties and will not create a "cramped" look. We have 4 children (1 daughter) and need a 3rd bedroom. The cost of the improvements will very likely exceed any increase in the value of the house, and our request is not for financial gain.

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.

It is doubtful that other houses are constructed such that the existing foundation will not support a second level addition. Therefore, the variance in this case will not set any general, compromising precedent for the City. Also, we have tried to design the improvements so that they will be consistent with the lot coverage standard, and the excess will be barely visible from other properties.

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 brick foundation was not created by the current owners, and we did not know of this structural issue when we purchased the 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.

A 3 bedroom single-family residence with a modest screened porch is a permitted use and purpose. Our house is the smallest house in the neighborhood, which consists of 3, 4, and 5 bedroom homes. It would be an unfortunate and unnecessary burden for us to have to forgo an additional bedroom or the porch, when they both have no adverse impact on the neighborhood.

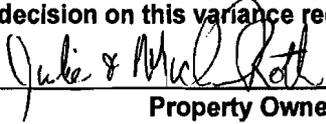
8. That the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the hardship.

The variance is minimal (4%) and allows us to reasonably and respectfully mitigate the difficulty inherent in the existing house, and still maintain its character, consistent with that of the neighborhood.

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

This is the only property under our control, and the variance will only relate to this property.

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



Property Owner

Oct. 2, 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.



Applicant Signature

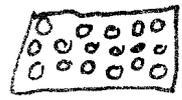
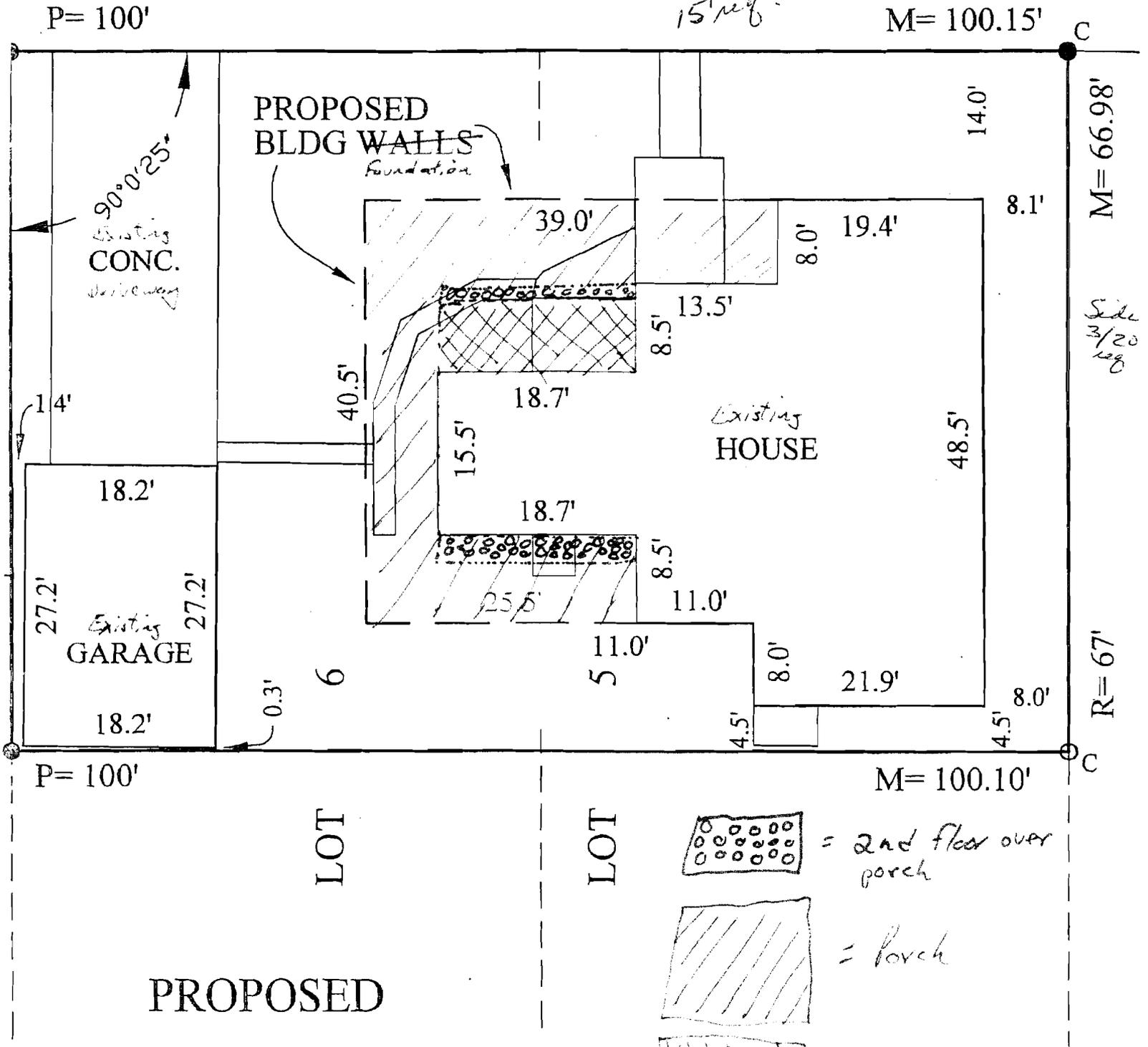
Oct. 2, 2012

Date

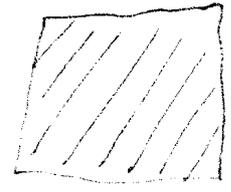
214 Huron

RIA

HURON STREET (66' WIDE)



= 2nd floor over porch



= Porch



= Added family room

PROPOSED

South Haven City

Parcel No.: 80-53-022-005-00

Plate No.: A236

For more information or to view a map, click on the map below.

Parcel Address: 214 HURON ST

Name: ROTH MICHAEL M & JULIE C

Owner Address: 256 ADELIA ST

ELMHURST, IL 60126

Current Class: 401

Current Assessment: 154800

Previous Assessment: 154800

Taxable Value: 154800

Homestead %: 0

School District Code: 80010

Calculated Acreage: 0.2

Property Legal Description

A236 1-17 720-867 757-902 941-532 1175-957 1434-946 1535-875 N 67 FT OF LOTS 5 & 6. BLOCK 22 ORIGINAL PLAT OF SOUTH HAVEN.

[Print](#) | [Close](#)

Linda Anderson

From: Roth, Michael [Michael.Roth@icemiller.com]
Sent: Monday, October 01, 2012 4:35 PM
To: Linda Anderson
Subject: 214 Huron

Hi Linda. Thanks for taking my call again this afternoon. Attached is a copy of our survey, and a copy of our building plans, which include existing and proposed renderings.

Our plan is to put a year-round family room in place of the existing screen porch, and to put 2 bedrooms above the new family room. We'd be eliminating one of the two existing bedrooms, so the house would then have 3 bedrooms. My wife and I have 4 kids. Then, we'd love to keep the character of the screened porch by including a wrap-around porch. We're trying to keep the very same character as what is existing. You'll see that we are not extending the building lines beyond what's there now, so I think we're okay as far as setbacks go (under Section 1913c) and ours will certainly remain the most modest house on the block. The issue we're facing is the 40% lot coverage. As designed, I think we're at 44%.

I would greatly appreciate your review and comments, so we can take the appropriate steps. Feel free to e-mail me or call me on my cell phone at (630) 217-1010. Thanks again.

Sincerely,

Mike Roth

CIRCULAR 230 DISCLOSURE: Except to the extent that this advice concerns the qualification of any qualified plan, to ensure compliance with U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including any attachments, is not intended or written by us to be used, and cannot be used, by anyone for the purpose of avoiding federal tax penalties that may be imposed by the federal government or for promoting, marketing or recommending to another party any tax-related matters addressed herein.

CONFIDENTIALITY NOTICE: This E-mail and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of this E-mail or any attachment is prohibited. If you have received this E-mail in error, please notify us immediately by returning it to the sender and delete this copy from your system.

Thank you.

ICE MILLER LLP



STAFF FINDINGS OF FACT

CITY OF SOUTH HAVEN ZONING BOARD OF APPEALS

DATE: October 22, 2012
ADDRESS: 214 Huron Street
ZONING DISTRICT: R-1A Residential
LOT DIMENSIONS: 67x100
LOT AREA: 6700 square feet
LOT COVERAGE: 35% current; 44% proposed; 40% maximum allowed
REQUIRED SETBACKS: Side – 3/15 feet; Rear – 25 feet; Front – 15 feet
EXISTING SETBACKS: Side – 8/25 feet; Rear – NC; Front – 14 feet
PROPOSED SETBACKS: Rear – NC; Side – 25+8 feet; Front – 14 feet
VARIANCE REQUEST: 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 addition involves the construction of a wrap-around covered porch. The parcel number for the applicant's property is 80-53-022-005-00.

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 residential zoned land on all sides and the addition of a covered porch will not be out of place or detrimental to the neighborhood.

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 porch will improve the appearance of the property and will not impair the intent of the residential purpose.

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 proposed porch will be within the setback requirements for the zone. The applicant describes an issue with the age of the house and the foundation which requires a new foundation. That does not specifically address the need for the porch to be completely covered.

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.

Many residences in the city have large porches. The size of the porch and the fact that it is completely covered are choices made by the applicant. 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 an increase in the maximum lot coverage. 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 large 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.

Without the requested variance, the applicant would need to either reduce the size of the proposed covered porch or open part of the porch to the sky. Denial would require an adjustment to the plans but whether it is unnecessarily burdensome is a decision for the ZBA.

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

The reason the applicant needs the variance is that the covered porch, as proposed, is considered part of the house and is therefore included in the lot coverage calculation. If a part of the roof were either left open to the sky or replaced with a pergola style roof, the variance would not be needed.

The area needed to remain uncovered is approximately 268 square feet or a piece 12 feet x 23 feet.

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.