

# Zoning Board of Appeals

## Regular Meeting Agenda

Monday, April 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, Henry, Manley, Paull, Wheeler, Wittkop, Ingersoll  
Absent: None

### 3. Approval of Agenda

Motion by Wittkop, second by Apotheker to approve the April 23, 2012 meeting agenda as presented.

All in favor. Motion carried.

### 4. Approval of Minutes – February 27, 2012

Motion by Wittkop, second by Manley to approve the February 27, 2012 regular Meeting Minutes as written.

All in favor. Motion carried.

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

None at this time.

### **NEW BUSINESS**

**Zachary Bossenbroek**, representing Thayer Properties LLC, requests variances for two (2) properties located at 42 Lakeshore Drive. The properties are individually identified as 42 Lakeshore Drive North and 42 Lakeshore Drive South.

#### 6a. 42 Lakeshore Drive North – A request to either 1.) receive a variance for a front yard setback to permit a second story balcony that would encroach into the required front yard or, 2.) receive a front yard setback variance to construct a deck with a

three (3) to four (4) foot elevation within the required front yard. The second option would also require a variance to allow no off street parking spaces.

- 6b. 42 Lakeshore Drive South** – A request to either 1.) receive a variance for a front yard setback to permit a second story balcony that would encroach into the required front yard or, 2.) receive a front yard setback variance to construct a deck with a three (3) to four (4) foot elevation within the required front yard. The second option would also require a variance to allow no off street parking spaces.

Ingersoll invited the applicant's representative to explain the requests.

**Zach Bossenbroek: representing Thayer Properties** stated that there are two properties and the request is the same for both properties. The property owner is presently in a quiet title action to seek fee title ownership for the right-of-way which for forty years has been used by the property owners for their own use. City Council, according to Bossenbroek, asked Thayer Properties to go before the Zoning Board of Appeals to help resolve this issue of the six to nine feet of right-of-way up to where the wall had stood.

There were two (2) alternative variances presented in the application. Ingersoll explained that the Zoning Board is not in the business of picking which alternative to consider, "So for the purposes of the variances tonight, pick one". Bossenbroek said the applicant's preference is to have the second story deck and to be able to provide the off-street parking underneath. Bossenbroek noted that the city's attorney told the applicant to submit their request with alternatives. Ingersoll said, "We do not want the liability, so we do ask that you pick one and the board will go from there".

Ingersoll said if you get the three (3) feet up to the property line and you want another nine (9) feet beyond that it means the deck would go out twelve (12) feet from the front of the building. Bossenbroek stated that what he calls "the disputed area" does not go evenly up to nine (9) feet; however, that is subject to City Council's decision.

Henry asked Bossenbroek to refer to the large map displayed and stated that he is a bit confused as to what parcel is being talked about. Bossenbroek noted the large map is dated while the survey maps in the packet might be clearer. Ingersoll asked if the intent was to sell these individually. Bossenbroek said that has not been decided yet but it is probable that they would sell them individually. Ingersoll asked the width of the lots, which Bossenbroek said are in excess of thirty-three feet.

Paull said he wants to be clear that the Zoning Board is going to be discussing, by Bossenbroek's request, the higher level deck to the lot line. Bossenbroek restated that, "Just for the record, I did provide the alternative request because I was told to by the City Attorney".

Wittkop asked if the applicant has any building plans. Bossenbroek said the plan is, "We are trying to add a deck that will add value to the property. Ideally you put the deck on the front like you see in Key West and other coastal communities". Bossenbroek explained that this is to allow the owners to sit on their deck and look out at the Lake like their neighbors do; Bossenbroek wants to maximize the use of the property by bringing the deck out to the property line.

Anderson noted that everything the applicant provided is in your packet. After a question from the board, Anderson agreed that the second-story deck is the best

option due to providing the off-street parking. Anderson noted that she did have calls and emails from some neighbors regarding how this will affect their view. Anderson noted that the Zoning Board of Appeals cannot grant variances that are in the right-of-way; the Zoning Ordinance states that the applicant may only ask for variances on land that is under his control.

Regarding the lot split, Anderson noted that was a legal land division, which was done last year, and the parcels under discussion are zoning compliant lots.

Ingersoll opened the public hearing and asked if there was anyone who wished to speak to this matter.

**Karen Cagen; 82 Esplanade** noted that it was her property for over forty years. Cagen explained that there was a trade between Mr. Hunter and Cagen. Cagen said she did not know that Mr. Hunter's granddaughter told a friend and it got back to Cagen that the swap was done because they intended all along to do a split and build two houses on the subject property. Cagen explained that makes it possible for the applicant to build up to six feet from her lot line; it will directly affect her by having the building so close and by going up high enough to block the view from the upstairs octagonal bedroom. Cagen noted that this proposed project will also cause an occlusion of view for most of the neighbors in that area.

Ingersoll asked if most of the houses in the area are two-story. Cagen said Mr. Hunter's house was a story and a half, another neighbors is one story with an attic, and yet another is two-story. Cagen said her cottage is from 1890, there are a lot of charming homes and as variances are granted to make things higher she wonders where it is going to stop. The people of South Haven have a beautiful little seaside town.

**Wendy Schilcariof, 92 Esplanade** stated that she purchased her property in, she believes, 1982, and she was thrilled. Schilcariof stated that she sees less and less of the lake. While Schilcariof understands that progress needs to take place and people sell to make money and buy to make money. However, Schilcariof noted, a trend is happening where variances keep being granted and she wonders when or if it is going to stop. Schilcariof understands somebody being in a house or owning property for several years and wanting to add on as their family grows. Schilcariof said people buy a property and it appears the property was bought it with the intention of building something that would need variances. Some of these houses go up and within three months they are for sale. Schilcariof asked, "Why are they building these houses if they don't want to enjoy them?"

Ingersoll asked if in that area, there are a lot of homes that are built out to the property line. Schilcariof said the whole north beach at one time had white cement block fences to the property line. Slowly, styles changed, people changed and the block walls have gradually been eliminated. Schilcariof noted that the stone fence was gone when she bought her property. Barb Adler still has a semi-one. Schilcariof noted that the owner of the green house was not allowed to extend his balconies; at least that is what Schilcariof was told by the owner.

Ingersoll asked Schilcariof if the variance would affect her property. Schilcariof responded, "That is not the point; the board is setting a trend."

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

All in favor. Motion carried.

Paull said the only reason for this request is that it would enhance the value of the property. Paull said the enhancement and loss of the value of the property is not something the Zoning Board of Appeals should consider.

Manley asked Anderson if he understands correctly that this property was one lot that was split into two, and then asked, "Does that affect these variances? This seems self-created."

Anderson noted the lot splits were legal lot splits and those lots could be built on without variances. Manley asked, if it is possible, then, to build two legal structures without variances, and the split was requested by the applicant, "Is this a self-created problem?" Anderson said, "I cannot say that; that is a decision the board would have to decide." Anderson explained that even if there was one lot and one house, the applicants might still decide to ask for a variance to bring the house forward and have the view.

Manley asked if it would be possible to build on this property without being granted a variance. Anderson said the lots do narrow at the back but are sufficiently wide at the front for a residence. Ingersoll said he is not used to granting something like this without seeing a house on the property. Anderson reminded the board that the balcony will be covered so it will be considered part of the house. Anderson said they are essentially asking to build a house in the front lot line and asked Bossenbroek for confirmation as to whether the balcony would be covered. Bossenbroek concurred that at least part of the balcony would have a roof over it. Anderson said it would be considered a part of the house because it would not be open to the sky. So the request, Anderson explained, is to make the wall of the house go to the lot line. Wittkop asked if that means the steps would go into the right-of-way if the house were built to the lot line. Bossenbroek said to remember that the concrete wall was out to the right-of-way so we are not asking for anything that was not historically there.

Ingersoll asked how that historical wall lines up with the neighbor's properties. Bossenbroek showed on the historic aerial that the wall that was on the subject properties lines corresponding with the remaining walls. Wittkop stated, "If you tear it down it is no longer there." Manley said that is how the Zoning Ordinance says it; once it is removed it is no longer there to be considered. Ingersoll said this area has a lot of unusual things, so this would not be unusual in that area. Apotheker said when he drove down there he noted houses that are beyond the lot line.

Ingersoll asked Wheeler if he had any comment. Wheeler said he is not comfortable with all of this so he is still listening.

Ingersoll asked Bossenbroek if he has anything else to add to the conversation. Bossenbroek said the exceptional circumstance is that we are trying to maintain a view like what the neighbors have. We do not want to be set back so we have a bowling alley view. Paull said the problem with that argument is that you are telling the board that we need to depend on your argument with the City of South Haven to decide if the lot line will move or not. Paull said he does not like to make decisions based on "what if" this and "what if" that. Paull said the request is to build to the limits of the front lot line and my feeling is "No."

Ingersoll asked if it is true that the applicant does not care whether the Zoning Board grants this or not because you are just exhausting all your avenues before going

back to the City Council. Bossenbroek said he thinks it does matter; he likes to avoid litigation, as does his client. Bossenbroek pointed out that this deck is all of twelve feet, if not more, there are houses that encroach at least eight feet and noted a deck that encroaches. Bossenbroek stated that this is not a right that other people in the neighborhood do not possess therefore Bossenbroek thinks it is a fair request.

Henry stated that had the property not been split, would there be sufficient flexibility in the square footage of the lot to accomplish what needed to be accomplished without requesting a variance. Bossenbroek responded, "As Ms. Anderson rightly said, even with a bigger lot, we would still want to have our house set forward instead of to the property line."

Henry asked if the board came up with the decision to be in conformance with the standards and refused the variance, how many years going forward, until all the other properties will be torn down and in line with the appropriate standards. Several members of the board agreed it would probably not be on their watch.

Manley stated that he has concerns; 1.) The proposal appears to be for financial gain; in fact the applicant has stated so. Manley said he understands the desire to enhance the property, no matter who owns it. 2.) Can houses be built on these properties that are in compliance? Yes, they can. Manley asked if the existing houses are torn down in the future as this one was, what direction does the board want to go, toward compliance in the future or allow what happened before the ordinance was even developed. Manley assumes the ordinance is there for a purpose however agrees that the area under discussion is a special area and neighborhood. Manley reminded that the charter of the Zoning Board of Appeals is, at least in most cases, to defend the ordinance and commented, "When we don't we see the bitter fruits of some of that." Manley said the future trend needs to be seriously considered by the board. There is no one that defends the ordinances other than this board; we are the judicial body of the City of South Haven. Our decisions are not able to be appealed except to the Circuit Court. Manley concluded, "Just some thoughts, gentlemen."

Apotheker said in my experience in the building business and putting additions in, clients want to bring an addition in to the property line as close as possible. Apotheker noted that while the front set back may be twelve feet, the two neighbors on each side are considered, and the difference between the two neighbors setbacks are averaged to determine the setback of the new house or addition. Ingersoll said that is correct. Manley said no one has presented the neighbors set backs to this board.

Ingersoll said he needs to present the other side. There are various houses there that have parts of their structure up to and over the property line. Ingersoll noted that when you look at that, the precedent has already been set in that area. There are non-conformances. This is what the board went through when looking at Oak Court. There were a number of structures up to the property line. That should be a consideration, especially here; this is a unique area. Ingersoll said this is even more unique than North Shore. Ingersoll concluded, "That is the other side we might want to look at. We don't want to put this property at a disadvantage to other properties in the area."

Wheeler asked if all the members of the board agree that this is not self-created. Wittkop said it is definitely self-created. Manley said that is the question he was

asking. Manley went on to say, "There is no self-creation in the depth; it may be true that if they had not split the lot and were rebuilding, they probably would still want to come out to the property line or beyond. The applicant alluded to that. The self-created part is that they want to build something that is not in compliance with the ordinance even though they can build something that would be in compliance."

Ingersoll said there is a slippery slope if you follow that line of thought, too. If someone just builds with the Zoning Ordinance and later wants to put a balcony out because fifteen of their neighbors have it. Wittkop noted that as presented it is not a balcony; it is part of the house.

Henry asked if there were not a roof on it, then would the structure be in conformance. Anderson said remember Oak Court, the balconies were going to come out to the lot line; the applicants still had to come in for a variance. Anderson said if anything comes out to the lot line it requires a variance. Ingersoll clarified that without the roof it is a balcony, with the roof, the house would be out to the zero lot line.

Manley pointed out the standard thought on the view; "It is the sad truth that no one owns the view. You may have a view, but unfortunately if someone builds to the right or left or in front of your view, they have every legal right to do so."

Ingersoll said right now regardless of where the house is built or the deck or anything there will be almost a panoramic 180 degree view. The discussion is about two houses and two balconies or "additions" to the house. If the board were to approve this, it would be required that the house proper would be off the lot line and only the part of the house that pertains to the balcony and roof would extend to the lot line. Paull said they have to have it open under the balcony to provide the parking underneath. Henry has seen houses built like this in the south and they are handsome structures.

Paull said it is true that this area is very unique. The setbacks from house to house are each different, unique and special. Probably the zoning should be changed and an overlying zone of some type should be placed on this area. However, at this point, such an overlay does not exist. The place is identified as a particular zone with certain setbacks at front, rear and side. If the board does not defend that everyone that tears down a house and rebuilds will want to do the same until it is no longer unique. Paull said, "This is speculation. They are not talking about 'this is a wonderful area and I want to build my home here and live here in my retirement.' These are spec houses. Let's hold them to the zoning ordinance."

Henry said he personally does not care if they are building for spec houses. That does not bother him at all. Wittkop said we do have a structure (the Zoning Ordinance) and if the board starts passing variances we lose that structure.

Motion by Paull that the request be denied on both properties for the following reasons as provided in zoning ordinance section 2205: 1.) Does not conform to, and will impair the intent of, the zoning ordinance; 2.) Is driven by financial gain, and 3.) The properties as they exist could be developed as single-family residences without undue hardship.

Second by Wittkop.

A roll call vote was taken with a yes vote denying the request.

Yes: Manley, Paull, Wheeler, Wittkop

No: Henry, Apotheker, Ingersoll  
Motion carried.

**8. Change of Meeting Date – May Meeting**

Ingersoll stated that if there is a May meeting it will be May 21<sup>st</sup>.

**9. Adjourn**

Motion by Paull, second by Henry to adjourn at 7:55 p.m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom  
Recording Secretary