

# Zoning Board of Appeals

## Regular Meeting Minutes

Monday, June 24, 2013  
7:00 p.m., Council Chambers



City of South Haven

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

### 2. Roll Call

Present: Bugge, Miller, Paull, Wittkop, Lewis  
Absent: Boyd

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

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

All in favor. Motion carried.

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

Motion by Miller to nominate Wittkop for Vice-Chair.

Wittkop declined.

Motion failed.

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

All in favor. Motion carried.

### 4. Approval of Agenda

Motion by Bugge, second by Wittkop to approve the agenda as amended.  
All in favor. Motion carried.

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

Bugge abstained since she did not attend that meeting.

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

All in favor. Motion carried.

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

None at this time.

### NEW BUSINESS –Variance Request

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

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

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

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

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

All in favor. Motion carried.

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

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

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

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

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

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

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

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

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

Lewis called for other comments.

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

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

All in favor. Motion carried.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Lewis called for a motion.

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

A roll call vote was taken:

Yays: Bugge, Miller, Paull, Wittkop, Lewis

Nays: None

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

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

Yays: Bugge, Miller, Paull, Wittkop, Lewis

Nays: None

All in favor. Motion carried.

## **8. Member Comments**

Lewis welcomed Bugge to the board.

## **9. Adjourn**

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

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom  
Recording Secretary