

Zoning Board of Appeals

Regular Meeting Minutes

Monday, March 24, 2014
7:00 p.m., Council Chambers



City of South Haven

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

2. Roll Call

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

3. Approval of Agenda

Motion by Bugge, second by Wittkop to approve the March 24, 2014 Regular Meeting Agenda as presented.

All in favor. Motion carried.

4. Approval of Minutes – October 28, 2013

Motion by Bugge, second by Miller to approve the October 28, 2013 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.

6. New Business – PUBLIC HEARING

Gerald Webb requests a rear yard variance for property located at 109 Brockway.

Anderson introduced the request for variance per the chairperson's request, as follows: Gerald Webb, 66 Lakeshore Drive, is asking for a rear yard variance for his property located at 109 Brockway. The variance will reduce the required rear yard setback from 25 feet to six (6) feet, four (4) inches. This is requested so that the applicant may adjust the property line to include the encroaching driveway on the

neighbor's property. The parcel number for the subject property is 80-53-837-008-00.

Anderson stated that this application seeks a variance from zoning ordinance section 403-c. and noted it is an unusual request. Noted there were different ways to approach this but the most logical approach is a rear setback variance. According to the applicant, the requested lot line adjustment will result in the applicant not having the required 25 foot setback.

Anderson noted one letter in opposition was received from Michael and Louise Kenny. ZBA members had a copy of that letter emailed to them.

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

All in favor. Motion carried.

Lewis asked if the applicant was present to state his case.

Gerald Webb, 66 Lakeshore Drive. Noted that his objective is to obtain a variance to obtain a cleaner set of circumstances for future property owners of either parcel. The construction of the single family home is not particularly prohibited, but as easements and other options were discussed with his attorney, he was advised to go with a lot line adjustment rather than an easement to prevent confusion for future property owners.

Lewis asked which properties the applicant owns. 109 Brockway and 508 North Shore, per Webb, are family owned. Bugge asked if this was purchased as a single property. Webb stated it was a single purchase for two properties. Bugge asked how it was listed; Webb cannot recall how it was listed but stated it was a single transaction.

Lewis asked for any other comments.

Pat Lennon, Honigman law firm, Kalamazoo, representing Jay and Julie Alexander of 108 Brockway: Reviewed all the information and feels this application does not meet the standards required for a variance. The scope of the request is eighteen and one half (18.5) feet off a twenty-five (25) foot setback; that is a seventy-five percent (75%) request for relief. Lennon stated that is way too large and doubts if historically the board has granted variances of that scope.

Regarding considerations one (1) through nine (9) in the ordinance, Lennon does not think any of the criteria are met; "granted, if even one standard is not met you must deny the request." Lennon identified the request as inconsistent because the applicant can build on the property as it is if he meets the standards of the zone. The structure the applicant wants to build wraps around the corner; our client's view is that it is not consistent with the Brockway neighborhood. When you look at the

intended use of the property, Lennon and his clients see all of the issues as entirely self-created. The applicant wants to build something bigger because that is his preference and that is the core reason Lennon and his clients think the board should deny the request plus the absence of topographical, physical or other issues that would create the need for a dimensional variance. This should be very influential to the decision. They strongly believe that the application should be denied.

Lennon stated that he thinks the city has an obligation to enforce its ordinance and noted, "I have been before you before and heard that from you." Noted he is glad to answer any questions the board might have. Stated that he has some questions for the city regarding easements, lot line adjustments, and so forth, but that is for another day. Tonight our discussion is about the variance request and we encourage you to deny the variance.

Michael Kenny, 3765 Fleetwood Drive, Portage Michigan has a cottage or house on lot #C490 at the corner of Brockway and Park Avenue. Request that the movement of the northern boundary of lot #C519, moving south, requiring a six foot (6') setback in order to put a house there, be denied. When Kenny built his house, he was required to have a thirty-five foot (35') rear yard setback and while he would have built his house bigger he was unable to do that. Kenny stated that he knew the previous owner, Evert Harrison, personally and Harrison's intent was that those properties formed an estate, which is why the driveway was so far south. Kenny stated that Webb knew this and all the conditions and boundaries when he purchased the properties. Kenny stated, "I feel this request is a lot of gerrymandering and the person who purchased the pig in a poke should live with the lot sizes and find some other way to build a house he wants."

Webb requested a rebuttal. Stated that he is not clear on what the opposing parties' objectives or opposition is on the construction of this home as proposed. "Construction of the home as proposed does not seem to go against the ordinances as they are today; this request provides no individual benefit to myself. This is a responsible act to help future owners avoid conflict. What impact will this request have on the opposition? The home can still be built as proposed without the variance. The home is consistent with the size of other homes in the neighborhood. What is the particular issue? I have not heard anything but general objection." According to Webb, the opposition did not articulate to any of the nine points other than discussing variance conditions that he felt were off topic to be required. The request, as the applicant read it, was not addressed by topographical issues or otherwise. The most important issues, if the neighbors have particular issues, whether the variance is granted or not, Webb stated he would like to work with them.

Lewis requested discussion by the board.

Bugge: On the survey, clarify whether currently this property actually has frontage on both Brockway and North Shore Drive, and is over 11,000 sq. ft. Webb could not respond as he did not have the survey in front of him. Anderson provided Webb with

a copy of the survey. Bugge pushed for an answer. Webb responded, "Yes, it does appear that the property is as stated." Bugge asked why, on the survey, the surveyors indicate a portion as "parcel two"? Webb responded the surveyors did it that way. Bugge commented that the surveyors would have drawn it the way Webb requested it. Webb stated that his request of the surveyors was to take portions of the land where paving were encroaching and relieve the encroachment. Bugge asked if the boundary lines are as they were originally. Webb stated that the boundary lines as indicated on the survey are correct.

Webb noted, in regards to the setback, if the nineteen feet (19') or so that is being requested, if we were to adjust the boundaries and comply with both of those setbacks, would remove nineteen feet (19') off the structure which would be smaller and more inconsistent with the neighborhood.

Bugge asked if different parts of the parcel could be used differently. Webb stated that it could be done, but the house would be much smaller, more like a shed or garage. Bugge suggested that perhaps the structure could be located elsewhere on the lot.

Wittkop noted that the person who buys the property where you propose to build the house would be stuck with a six foot (6') rear setback. Webb explained that the alternative Anderson suggested is an easement, but that would just make that land essentially no ones and everything would stay the same and they would still have a 6' backyard. It would just be a condition of how the land was titled and used. 508 North Shore could still use the driveway, but it would be owned by the owner of the property on Brockway. Webb noted that he thinks his variance request is a more responsible way to approach the situation.

Lennon stated that his clients welcome the opportunity to work with the neighbors, but as we hear the objections it is a reminder that the ordinance is supposed to be upheld and only rarely should a variance be granted. Webb stated that he could still build without the variance but it would be smaller.

The board advised that if the applicant can build something that complies that is what he should do; the applicant could do a variety of things on that property, such as place the home on the North Shore property line.

Lennon pointed out, "Tonight we are here to talk about whether you (the board) should grant this application and my clients and I say 'no' because none of the criteria have been met. Not only have they not been met, the applicant has even admitted that he could build something there without the variance being granted.

Bugge asked which properties the Kenny's own which Anderson noted is Lot 7 on the survey and "right next door" per Lennon.

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

All in favor. Motion carried.

Lewis called for discussion from the board.

Anderson reminded the board that discussion has to include discussion of the standards.

Lewis began by reading Standard 1.

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

Bugge noted that the requested backyard setback changes the character of the surrounding neighborhood.

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

Lewis stated the intent of the ordinance is to keep the neighborhood character.

3. Exceptional or extraordinary circumstances or conditions apply to the property in question or to the intended use of the property that do not apply generally to other properties in the same zoning district. Such circumstances shall create a practical difficulty because of unique circumstances or physical conditions such as narrowness, shallowness, shape or topography of the property involved, or to the intended use of the property. See Section 2204(2).

Bugge pointed out that there are no physical conditions existing such as shape or topography of the property that requires a variance for a house to be built, and the encroachment could be improved in alternate ways.

Wittkop noted that Harrison owned all of the property in question.

Lewis pointed out that there is only a fifty foot (50') frontage on either street, Brockway and North Shore Drive, while sixty feet (60') is required.

Bugge noted this is a platted lot.

No other comments received.

Standard 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.

Bugge believes that without the variance a residence can still be built there.

No other comments received.

Standard 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.

Lewis said this request is not usual; the board does not get this type of request every day.

No other comments received.

Standard 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.

Lewis said since the property owner owns both pieces and is currently using them as one piece, this is essentially a self-created situation.

Bugge added that although the current owner did not create this condition, the property was purchased knowing of this condition; it could be called self-created in that he wants to split off a portion of one lot to make room to build another structure on the adjacent lot.

No other comments received.

Standard 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.

Lewis noted the property could still be built upon; it might be small but could still be built.

No other comments received.

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

No comments received.

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

This is true, per Lewis.

No other comments received.

Lewis called for discussion.

Bugge expressed her feeling that there are other options the owner could explore in order to have greater flexibility with the property.

Wittkop stated, "I would agree with that; the property is buildable but restricted on what could be built. That is true of many properties."

Lewis stated that only once during his many years on the Zoning Board of Appeals, was a variance granted for a new building on a property that is buildable.

Lewis called for a motion.

Motion by Wheeler to deny the variance request for 109 Brockway because it does not meet Standard #3 or Standard #7. Second by Bugge.

A roll call vote was taken. A yes vote is to deny the variance request.

Ayes: Bugge, Miller, Wheeler, Wittkop, Lewis

Nays: None

Motion carried.

Variance denied.

7. Other Business – Approval of 2014 Meeting Schedule

After discussion, motion by Wittkop, second by Bugge to approve the 2014 Meeting Schedule as adjusted:

January	27
February	24
March	24
April	28
May	19
June	23
July	28
August	25
September	22
October	27
November	17
December	15

All in favor. Motion carried.

8. Member Comments

There were none.

8. Adjourn

Motion by Miller, second by Bugge to adjourn at 7:42 p. m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom
Recording Secretary