

# Planning Commission

## Regular Meeting Minutes Thursday, July 10, 2014 7:00 p.m., Council Chambers



City of South Haven

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

### 2. Roll Call

Present: Frost, Heinig, Miles, Peterson, Smith, Stimson, Webb, Paull  
Absent: Wall

Motion by Heinig, second by Smith to excuse Wall.

All in favor. Motion carried.

### 3. Approval of Agenda

Motion by Heinig, second by Miles to approve the agenda as presented.

All in favor. Motion carried.

### 4. Approval of Minutes – June 5, 2014

Motion by Smith, second by Heinig to approve the June 5, 2014 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 Hearings

- a) **A zoning ordinance text amendment to clarify the provisions of zoning ordinance section 901-17 which allows one family detached dwellings to be permitted by special use permit in the B-3, Waterfront Business Zone.**

Anderson introduced the item and reminded the Planning Commission of the January of 2014 public hearing on certain amendments to the B-3 waterfront Business zoning district.

One amendment included provisions to allow single family homes on individual lots in the B-3 zone. This ordinance amendment was adopted by the city council on March 17, 2014.

Upon closer review, the city council determined that modifications were required to the amendment to clarify that no lots splits for single family homes will be allowed in the B-3 zone and the special use requirement that the parcel could not be used for another permitted use could not be the result of any action of the property owner.

Anderson noted that City Council wants some clarifications to some language and additional language added. This amendment deletes the previous amendment and inserts new language.

These are the proposed changes City Council has suggested.

One family detached dwellings by special use permit, subject to the following conditions:

- a. The applicant must show that the proposed use will be of substantial benefit to the city of South Haven and the waterfront business community.
- b. The applicant must show that no other permitted use is possible on the lot due its size or configuration.
- c. The applicant's inability to use the lot for another permitted use cannot be self-created, for example, but not for limitation, created by the sale of a portion of the property or adjacent property.
- d. Special use permits shall not be granted under this subsection for any lot created by lot split after January 1, 2014.
- e. The site plan submitted with the application must satisfy all additional requirements for special use permits in Section 1502 of this ordinance.

Motion by Heinig, second by Smith to open the public hearing.

All in favor. Motion carried.

Paull called for comment. There were none.

Motion by Smith, second by Heinig to close the public hearing.

All in favor. Motion carried.

Peterson asked if a split would be allowed. Paull said it never really was, but this just reinforces that. The idea of allowing single family homes was not to cut the lots up, but to allow a use of lots that are too small for a business use.

Smith commented that the proposed amendments, a. through e. make sense to him.

Motion by Heinig, second by Miles to recommend approval of the following amendments (a through e) to the Zoning Ordinance to City Council:

One family detached dwellings by special use permit, subject to the following conditions:

- a. The applicant must show that the proposed use will be of substantial benefit to the city of South Haven and the waterfront business community.
- b. The applicant must show that no other permitted use is possible on the lot due its size or configuration.
- c. The applicant's inability to use the lot for another permitted use cannot be self-created, for example, but not for limitation, created by the sale of a portion of the property or adjacent property.
- d. Special use permits shall not be granted under this subsection for any lot created by lot split after January 1, 2014.
- e. The site plan submitted with the application must satisfy all additional requirements for special use permits in Section 1502 of this ordinance.

All in favor. Motion carried.

**b) A request from Tom Brussee to amend the official zoning map to rezone .35 acres (15,319 square feet) at 38 Northshore Drive from the B-3, Waterfront Business Zone to the R1-A Single Family Residential zone. The parcel number for the subject property is 80-53-823-002-10.**

Anderson read and introduced this request. Reminded commissioners that Brussee withdrew a previous request and submitted a new application. Anderson recommended that the planning commission review the application and narrative and carefully consider public comments before making any decision in this matter. Noted that any motion should be made in the format of a recommendation to city council.

Motion by Heinig, second by Peterson to open the public hearing.

All in favor. Motion carried.

Matthew VanDyke, Law Firm of Miller Canfield, and 277 South Rose Street, #5000, Kalamazoo, Michigan 49007: Van Dyke represents the applicant, Tom Brussee. Stated that he and Brussee mapped this request out regarding the tenets of the Zoning Ordinance. The parcel is located in a distinctly residential area; the Master Plan calls for a resort type use and, the way that is defined, is consistent with the Zoning Ordinance. The property is best used for the requested use and is consistent with both the Zoning Ordinance and the Master Plan.

Paull called for questions.

Smith asked if VanDyke understood the amendment just recommended for passage. VanDyke responded, "Yes, we are asking for something completely consistent with the Zoning Ordinance and Master Plan.

Paull asked what the potential uses could be to which VanDyke responded that any of the R1-A uses plus the ability to split. Paull asked if VanDyke was aware that Mr. Brussee wanted to split this land before and the only reason for the zoning to be changed is so it could be split. VanDyke feels this request satisfies the requirements; B-3 is inconsistent with surrounding area. The requested rezoning is consistent with the Master Plan; the primary B-3 uses are not usable on the site because of the site dimensions and parking requirement. "We think R1-A is the proper zoning for this area and that is why we are asking for it."

Paull asked if VanDyke knows if the objective is to split the property to which VanDyke responded, "We don't know; we are hoping to leave ourselves as many options as possible."

Motion by Miles, second by Heinig to close the public hearing.

All in favor. Motion carried.

Paull called for discussion from the commission.

Heinig noted that the current zoning on three sides is B-3; the commission did not want to compromise that particular zoning district. It seems that this request takes a chunk of the B-3 out so this parcel never could be used for that purpose again. And it is located in an area where B-3 uses are intended, along the river.

Smith stated that he struggled with this since he knows the history of this lot but also noted that there is a lot of residential around there. Peterson commented that it was nice to have a business there. Frost enumerated several restaurants that used to be located in that neighborhood, noting that there are none now. Smith pointed out that the area has changed.

Webb noted the owner could still build a single family dwelling there; he just wouldn't be able to split it. Paull explained that assuming City Council approves the amendment we recommended, the owner would only be able to build a single family dwelling. Frost asked, "Can you imagine the size of dwelling that could be built there?" Paull said B-3 does not limit the owner much; the zone certainly allows him to build a house on the property. Paul does not see the public advantage of the split. Miles suggested that the rezoning would provide splits with smaller houses.

Paull pointed out that the B-3 zone typically consisted of fairly large pieces of property. "The idea of being able to split it up into smaller parcels flies in the face of the original intent of B-3 zoning."

Smith asked whether City Council would have to approve this to which Anderson responded, "Yes, this is a zoning ordinance amendment."

Attorney Van Dyke informed that the way he and the owner have looked at it, even with the additional property across the street, this parcel would not work with any of the B-3 uses. On the Planned Unit Development, the mixed use requirement is extremely difficult to comply with on this particular site. That entire part of the community is residential right now; while VanDyke understands how B-3 makes some sense, going north along North Shore Drive, that is residential property, and the only reasonable use of this parcel is as residential.

Heinig questioned the proposed text change in light of this request. Anderson said when the parcel for parking was sold it did not constitute a lot split. The ordinance language is that the applicant's hardship cannot be self-imposed. This is really a discussion for the Planning Commission whether that sale of the parking lot parcel counts as a split.

Smith said that is not my understanding; the commission knows it was two distinct lots.

VanDyke noted that under the language just passed, we would not satisfy the requirement "inability to use the lot for another intended use cannot be self-created." Part of the argument was based on the owner selling the property across the street.

Paull interjected that the property across the street has no application whatsoever and that the commission is looking at Brussee's property.

Frost asked whether the applicant owned and sold the parking lot parcel to which VanDyke responded yes. Frost noted that amendment c. (The applicant's inability to use the lot for another permitted use cannot be self-created, for example, but not for limitation, created by the sale of a portion of the property or adjacent property) does not state a date, as in amendment d. (Special use permits shall not be granted under this subsection for any lot created by lot split after January 1, 2014).

Webb asked what the City Council's intent is. Anderson explained that Council wants to ensure that the smallness or uniqueness of the lot is not created by the owner. Webb asked whether the applicant would be able to build a single family home right now to which Anderson responded yes, with a special use permit.

Frost said the point he is making is that amendment 17.c. stating that one family dwellings "cannot be self-created" does not say "after Jan. 1, 2014". Frost noted that if the applicant were to sell this property someone else could build a single family home here because they did not create this problem. Frost's rationale is that the amendment, as approved, would allow some arrangement to be made using a straw man, to circumvent the ordinance.

Frost asked if the commission can revise the previous motion to which Paull responded, "Yes, as a separate action, not while considering this one."

Motion by Miles, second by Peterson to table this item until the text amendment to the Zoning Ordinance is resolved.

Discussion ensued among the commissioners whether a change to the text amendment must come before another public hearing. Paull noted that the intention has been lost along the way. Webb agreed. Anderson asked the commissioners if the issue is the desire for a point of time on this amendment, subsection c. Commissioners did not state a preference.

Tom Brussee, Owner/applicant: "We've owned that property for a period of time and looked into the commercial uses; studied the ordinance very closely; spoke with previous owners. As a restaurant, it was a great spot; unfortunately it was not economically feasible. It's a shame but it is the truth. We like to think things can stay the same but that's not the reality."

Brussee stated that he has not had one inquiry on that property since about 2008 regarding using that parcel for a commercial use. Noted that people understand that the city has done a

wonderful job on the main downtown area and a restaurant away from the downtown cannot compete. "On a busy weekend like last week, if you wanted to go to Fish Tails you would have had to park three (3) miles away. Brussee continued, "I know people are emotional about this issue; I appreciate that. Change is tough! But moving ahead we are trying to do the right thing. I think that my neighbors understand that we are sensitive to that. When we tore that building down it was a mess, it was full of asbestos. I just can't have my hands tied." Brussee pointed out, "With one lot we might end up with the monstrosity. I would rather see two homes there that fit with the environment. We don't need a sore thumb. I appreciate this town. That area supports two well-designed homes with lots of green space, with the proper setbacks. It will be beautiful. Brussee noted that he needs it to be marketable, that he understands that is not the commission's problem, but that is why they are looking for that flexibility.

Paull reminded that there is a motion on the table and called the question.

A roll call vote was taken on the motion to table this item until the amendment issue is resolved:

Yeas: Heinig, Miles, Peterson, Stimson, Webb, Frost, Paull.

Nays: Smith.

Motion carried.

As suggested in previous discussion there was a motion by Heinig, second by Miles, to withdraw the recommendation of the language amendments to the Zoning Ordinance in Agenda Item 6a.

Paull requested a roll call vote regarding withdrawing the recommendation of language amendments to City Council.

Yeas: Miles, Peterson, Smith, Stimson, Webb, Frost, Heinig, Paull

Nays: None

Motion carried.

## 7. Other Business

### a) Site Plan Review for new Goodwill Store, 340 73 ½ Street

Anderson noted that Goodwill Industries of Southwestern Michigan has made application to build a new facility at 340 73 ½ Street. The structure will be just over seven thousand (7,000) square feet and the use is permitted in the Zoning Ordinance. Anderson requested site plan review by the planning commission and the appropriate city departments. While the review from the Police Department did not get here in time to be included in the packet, Anderson noted that they reported no issue with the plan. Anderson also noted that the applicant and architect are working with the city engineer to correct things that were at issue. The missing items Anderson requested of the applicant have mostly been submitted. Still outstanding are larger island landscape coverage, a lighting detail and some setback issues. Anderson stated that side set back and landscaping variances will be sought. If the variances are approved the application will be set for approval.

Heinig asked if Anderson is comfortable with recommending approval with contingencies or should we delay. Anderson responded that the building department would not issue a building permit until the engineering issues are resolved; we are not responsible for the engineering end of things. Anderson noted that the big issue is the variances; if they get the variances they will be able to resolve the issues with the engineering department. Anderson is okay with approval with contingency of getting the variances, noting, "It is your decision; if you want to see it again with everything complete that is your call."

Paull pointed out that part of the problem creating the need for variances is this building is going into an area with the new overlay zone. Paull noted and Anderson agreed that they cannot speculate on what the board of appeals will do. Paull said he hates to pre-approve things without seeing the final plan, "even though I sit on the board of appeals."

Motion by Miles to postpone action on this request until the ZBA acts.

Kristopher Nelson, Schley Architects. 4200 South 9<sup>th</sup> Street, Kalamazoo, representing the owner: "We hope this is a project that is going to bring more value to the community on a parcel that has been vacant for a while now." Nelson is aware of items that came up in the review due to this project being in the new overlay district, noting that is where the variances will be needed. Nelson hopes to get an approval contingent on the variances.

Nelson had large scale plans on a tripod which he used to point out the various areas of the plan, noting that he tried to accommodate all the B-4 requirements without the overlay zone. By doing so, with a narrow site to work with, he tried to accommodate the setbacks as much as possible. Nelson noted that he pushed the building up on the site due to the neighboring building being only ten feet (10') from the property line. Noted that the loading dock is on an angle in the back area; had to cock it to allow access in that area. Nelson pointed out that that the site does not have the width to accommodate everything in the overlay zone. Nelson expressed that he knows that it is not the planning commission's job to approve the variances at this meeting.

Nelson drew the commissioners attention to the elevations, noting that the front façade is facing 73 ½ Street.

Nelson explained that one of the bigger things to work out in the engineering has to do with the storm water system. Through the process of working with the city and county engineers we learned this property is in the area of the county drain. We understood that the county would have approval. As such we went through the county and they have already approved it, with storm drain calculations, and Halberstadt has requested those items and we have sent them to him for his records. We are not trying to slide something by; we have gone through the approval process but we are trying to move things along.

Nelson stated he is hoping for at least a contingent approval, pointing out that they are not asking for everything to be excluded in our variance request; specifically the setback requirements, green belt area and building.

Paull noted there is an open motion on the floor to postpone a recommendation until the resolution of the variance requests.

The open motion by Miles to postpone action on this request until the next meeting was seconded by Peterson.

Stimson asked Anderson when the Zoning Board of Appeals (ZBA) meeting is to which Anderson responded July 28th, the last Monday of month, and the next Planning Commission meeting is August 7th.

Paull called the question. All in favor. Motion carried.

**b) Review of Draft Noise Ordinance amendments, City Code Article II, Sections 30-27 through 30-36; Set public hearing date**

Anderson noted that the sub-committee has been working on these amendments since March. They have talked with the city's mayor, the police chief, and directors/managers of the City Housing Commission and Old Harbor Village. They had a demonstration of decibel levels, which was very informative. Anderson thanked the subcommittee (Brian, Larry, Dave and Terri) for all their work on this.

Anderson pointed out that the biggest change in this ordinance is the decibel levels. The current ordinance had a number of different decibel levels depending on where the businesses were and the type of adjacent uses (residential next to commercial and commercial next to industrial, industrial next to residential and so forth). This community is so homogeneous that it made more sense to have just two zones; Industrial and Residential/Commercial. The sub-committee proposed for Residential/Commercial a maximum daytime decibel reading of seventy (70). The current approved level is ninety (90) and the difference between the two is very noticeable, according to Anderson. In the evening the old ordinance allowed seventy-five (75) decibels and the subcommittee propose dropping that down to sixty (60). Anderson noted that sixty (60) is what is being enforced right now in areas of Residential/Commercial mix.

Other changes were permitting only ambient noise from 1:30 a.m. to 7:00 a.m. That is the normal street noise, cars, quiet talking; it does not allow loud music and loud talking. From 11:00 p.m. to 1:30 a.m., dropping to ambient noise is seen in other resort areas in the state. In the industrial zone we had allowed decibel levels of ninety (90) going down to seventy-five (75) in evening. We are keeping Industrial at seventy-five (75) throughout the entire twenty-four (24) hours; that has not been an issue.

Anderson noted that the noise ordinance has been simplified it. "We kept hearing it was too hard to enforce, too complicated. We also get complaints of people using high-pitched leaf blowers and lawn mowers. Lawn maintenance and snow removal allowed for two hours at a time." Anderson noted that according to the old noise ordinance, you could only mow your lawn during the day. The sub-committee decided it was too restrictive.

Anderson noted that there will have to be a public hearing; everyone involved, bar owners, etc. will be encouraged to attend, comment or send their comments. "We may have more than one public hearing on this but we would like to start that process."

Anderson explained that police enforcement does not want to change ordinances in middle of the summer season. Thus it would be good to get it adopted so next year by the

summer season it is in place. That gives plenty of time to let owners know and help them understand the changes to the ordinance.

Paull thanked the members of the subcommittee for their work; resolving issues of recordable sounds levels, enforcement, perceived sound levels. Paul gave an example of an issue that will come up and we will get complaints about: "I notice the lawn maintenance companies that maintain my neighbors' yards, they arrive early and the noise continues all day; albeit on different lawns. It is more than two hours so we will have to decide how we are going to interpret that." Paull believes the new ordinance is way less complicated than before which Paull thinks is an improvement. "It will be easier for police to enforce and citizens to understand."

By consensus it was directed for the zoning administrator to set the first public hearing on August 7, 2014.

### **c) Discussion of mini-storage expansion at 1505 2<sup>nd</sup> Avenue**

This was a question whether the planning commission should decide this request or if it should instead go to the zoning board of appeals (ZBA).

Anderson was approached by the owner of the mini storage to put 1 ½ more units in place at 1505 2<sup>nd</sup> Avenue. Noting that this is not a permitted or special use in the B-2 zone, Anderson researched and found that in 1999 this facility was first approved through the use variance process. The board approved it based on no other use fitting there. Since then, there were extensions. The last extension was in 2005 as a special use under the "other similar uses" provision. Whether this is done as a special use or a use variance, the request has to go to the Planning Commission first.

Anderson noted that additional units could be allowed through the use variance process as was done initially or we could keep it at Planning Commission and hold a special use hearing as has happened the last couple times of expansion. The special use was permitted through Sec. 801-59 of the Zoning Ordinance which allows the Planning Commission to permit special uses through this process. Because it was already there, the previous zoning administrator must have felt that it was a similar use. Anderson does not have a problem doing this either way, but "I do feel that this may more likely is an issue for Planning Commission with the special use permit. This makes it a little easier, instead of going back to the use variance, since it hasn't been used for this property since 1999."

Heinig asked if the Planning Commission will be doing a site plan review to which Anderson responded, "Yes, we would have to have a site plan review either way."

The commissioners decided by consensus to have this application come to the Planning Commission for special use review.

### **Additional Item 6a. Discussion on rescinding the motion made for agenda item 6a.**

Paull noted that this item now sits in limbo. "What do you wish to do?"

Anderson noted that since this is an advisory commission this decision does not rest with the Planning Commission. "Do we want to add additional language or not? Anderson asked the board. "If you do, we will need to have a public hearing on that at the next meeting."

Paull proposed going down the table and see what issues with language or otherwise members have. Then they will formulate a small committee to come up with the appropriate changes at the next Planning Commission mtg.

Anderson reminded that the applicant's inability to use his property cannot be created by himself. Frost noted again that someone could sell off the piece of property and now it is not the person who created the problem applying. Frost noted that the committee should look at that as well. "We need to put a time frame on this for start and at least look at the idea of someone creating a work-around for the date."

Stimson asked, "If we change this, do we need to go back to the city attorney? Anderson explained that the city attorney would work with her on any changes the planning commission drafts.

Anderson pointed out that the current language actually takes care of the lot split issue John mentioned; maybe we need to have a realistic time frame or language that clarifies self-created.

Anderson noted that if that is the intent of the commission, she could work with the attorney to come up with language. Miles pointed out that in the township there is a ten year law. Peterson asked if the discussion is regarding B-3 to which Anderson responded yes.

Webb asked how we got here stating: "This was very simple. We were trying to allow single family homes and I don't know how this got so complicated, but that was our purpose." Paull agreed, "That's right, it was so property that is in the B-3 and is too small to have a business, could still have a house built on it. The other intent should be if you have a piece of property that is big enough for a business, the city doesn't want you to split the land and use it for houses."

Frost noted we need to look at these new amendments. For this particular property, it could potentially be two lots that could both seat a house but not quite big enough to put a business on it. Frost thinks the wording should be, "Unless the lot isn't able to be used as a business". He went on, "You can't put a business on this particular property, but it could be split and the owner allowed to put a house or two on it". Anderson said City Council was very interested in having people not be able to split lots regardless of original size. Anderson also noted that the attorney came up with the January 1, 2014 date. "Thus, if you have a lot split that was recorded by Jan. 1, 2014 the potential is there for a lot split."

Frost noted, "That's fine if that is city council's goal, they understand that on this property and maybe others, they are just under the size needed for a business, they are making it so you can only put a single house on it and that is all." Anderson agreed that is their intention. Smith asked if we are just supposed to draft text the way city council wants it with no planning commission input. "It is the Planning Commission that comes up with

this language, and recommends it to City Council”, Anderson responded. “You have direction from city council and you should consider that but I don’t expect you to recommend adoption of an amendment you don’t feel you can live with”.

Anderson said there are more issues here than just the one thing. Hoped it would be a little fix but think that is not the case.

Paull asked the applicant when he sold the corner property. Brussee said a year ago. Paul noted, “We’ve got to be able to move forward. The proposal is creating a monster.”

Anderson stated that there was no lot split with this property. The parcel across the street which was sold was always a separate piece of property. The issue here is determining if the property as it now exists is self-created.

The Planning Commission set up a sub-committee to further study the amendment and possibly draft replacement language. Frost, Heinig, Paull and Webb volunteered for the committee.

## **8. Commissioner Comments**

Anderson: Wants to get the vendor and vicious dog ordinances wrapped up this summer. After the adoption of the Master Plan, a subcommittee got through about half the recommended zoning ordinance amendments before becoming side tracked by other projects. Anderson would like to pick that up and start working on that again in the fall.

Stimson: Would like to be on that committee.

## **9. Adjourn**

Motion by Smith, second by Miles to adjourn at 8:35.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom  
Recording Secretary