

Zoning Board of Appeals

Regular Meeting Minutes

Monday, July 20, 2015
7:00 p.m., City Hall Basement



City of South Haven

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

2. Roll Call

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

Motion by Bugge, second by Wheeler to excuse Lewis.

All in favor. Motion carried.

3. Approval of Agenda

Motion by Bugge, to approve the agenda, swapping the order of Items 6a. and 6b. in the absence of the applicant for item #6a.

Paull said the reversing of the order can be done administratively.

Motion by Bugge, second by Stegeman to approve the agenda as amended.

All in favor. Motion carried.

4. Approval of Minutes – June 20, 2015

Bugge pointed out that on page 4, the second paragraph from the bottom, the words “out of compliance” should be struck.

Motion by Bugge, second by Boyd to approve the June 20, 2015 regular meeting minutes as amended.

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 request from Alicia and Kevin McMahan of 226 Prospect Street to add a roof to a nonconforming front porch. The porch is 10 feet 4 inches from the front lot line where 25 feet is required. The parcel number for this property is 80-53-767-005-10. This is a variance from zoning ordinance section 1913.*

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

All in favor. Motion carried.

Alicia McMahan, 226 Prospect Street. Stated this request was submitted because their house is set very close to the road; was built in 1956; also sits on the ravine where Prospect intersects with Conger and Church Streets to give a point of reference. Noted that the house is very plain, flat across the front, yellow brick and the existing porch and steps are crumbling. Contractor suggested creating more of an entrance by having a roof (eyebrow) over the door to give better aesthetics to the house as well as protection for the person entering the front door.

Paull questioned whether the applicants are talking about roofing the entire porch to which McMahan responded that they were not requesting a large roof, just a three (3) foot dormer type of structure.

Bugge asked what will support the roof. McMahan explained that the contractor is going to put stone down and pillars that will go up to the roof structure to support the roof.

Anderson noted that this is nonconforming structure. Replacing the steps is considered maintenance as long as the porch and steps do not change in size from the existing porch and steps. The requested roof variance makes the house slightly more nonconforming but the applicants are not moving anything closer to the lot line.

Motion by Boyd, second by Stegeman to close the public hearing.

Wheeler asked if the applicant needed to state her name and address for the record, which was confirmed and the applicant affirmed that she was Alicia McMahan from 226 Prospect Street.

Bugge noted that the applicant's house is close to the property line; all others on the street are further back. The one next to 226 Prospect is about the same distance away; there is a vacant lot between those two houses. Averaging would result in about a ten (10) foot setback.

Anderson noted that is correct and no averaged setback can be less than ten (10) feet.

McMahan stated that someone has purchased the vacant lot and is planning to build on it after which Paull, the Chair, noted that the applicant needs to gain permission from him to speak now that the public hearing is closed.

Motion by Boyd to approve the roof structure to go over steps at 226 Prospect. Second by Stegeman.

Bugge would like to offer an amendment to the motion stating that it cannot be enclosed. Paull asked what Bugge means by enclosed. After discussion Paull asked if the motion can be worded to define the roof structure as open-sided.

Motion by Bugge to approve an open sided roof structure at 226 Prospect. Second by Wheeler.

Boyd opposed the motion to approve an open sided roof structure.

After discussion, Paull called for a vote on the amended motion.

Ayes: Wheeler, Bugge
Nays: Boyd, Miller, Paull

Motion failed.

Paull called for a vote on the original motion by Boyd, to approve the roof structure to go over steps at 226 Prospect, with a second by Stegeman.

Ayes: Boyd, Miller, Paull, Stegeman, Wheeler
Nays: Bugge

Motion carried.

b. Coastal Landscaping, Inc. of South Haven requests a variance to construct accessory structures and landscaping on a parcel without a principal structure as is required in zoning ordinance section 1708-6. The subject properties are located at 53, 55 and 57 North Shore Drive and at 97 and 99 Esplanade. Parcel numbers are:

*80-53-803-001-10
80-53-803-001-20
80-53-803-001-30
80-53-803-001-40*

Motion by Stegeman, second by Boyd to open the public hearing.

Motion carried.

Paull noted that the applicant is not present.

Anderson explained that this project is something the applicant has been working on for quite some time. First the applicant wondered how big of a house he would have to build to have a pool there. Then the applicant talked to the City Engineer about vacating Walkway A so he could take it over and combine all of the properties; that did not work out. The ordinance, Anderson noted, states that a property cannot have accessory structures without a primary or main structure. Anderson also noted that the applicant is looking at putting a gazebo with a kitchen, a pool and some other items including extensive landscaping.

One thing that bothers Anderson, the only thing, is that if the property would ever be sold (separate from the property on which the applicant's house sits) she would want the property cleared of all accessory structures or sold together with the lot upon which the house sits. Anderson noted that the Zoning Board has only made one exception to the accessory structure rule so far and that was the statue at St. Basil's so it is visible from the lake.

In response to a question, Anderson said the four (4) lots the applicant owns are big enough to put a house on. The Zoning Board of Appeals has to determine whether this is something that meets the standards and the ordinance.

Boyd asked if the applicant owned all four (4) lots to which Anderson responded that the applicant owns four lots on one side of Walkway A and also owns the single lot with his house on the other side of Walkway A. Every parcel has a separate tax ID. Anderson spoke to the assessor regarding combining the four (4) lots and the lot with the house on it, but a public walkway does not allow them to be combined into one parcel number.

Miller asked the definition of principal structure. Anderson said single family homes are the most common principal structure in this zone. That single family home would be the primary structure; anything else is a secondary structure or accessory structure, such as a shed or a pool.

Bugge stated that the walkway is an impediment to combining the lots.

Boyd asked how the tax assessor will be able to divvy up the improvements on each lot. Anderson said the four (4) lots will be combined, noting that if a single owner has more than one adjacent parcel and is going to improve any one of those parcels, they should combine them but the zoning ordinance considers them as one parcel if there is one owner. It was clarified that the house is on one parcel and only the other four will be combined.

Boyd asked if the applicant was expected to be here to which Anderson responded, "Yes, not the owner, because the owner is out of town, but she expected them to be represented by Coastal Landscaping, who submitted the applicant; they obviously forgot."

Miller said he feels this is a good use of the property. What we have here is a collective and arbitrary ordinance which is perfect for the Zoning Board of Appeals to review. It would be difficult to imagine a better use of the property in the light of the neighborhood and the property; it is a win-win as far Miller sees it.

Wheeler noted that on one hand he sees this as self-created and on the other hand the walkway is burdensome in developing the property.

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

All in favor. Motion carried.

Motion by Miller to move his comments to a motion.

Paull noted that there is uniqueness to this request, due to a strip of public land that is dividing this primary structure property from the rest of the applicant's properties. This is the only standard that actually applies to this request.

Bugge feels this is a unique situation; the uses are allowed but the walkway is an impediment to such development. Anderson's concerns are well taken regarding keeping the properties together or eliminating the accessory structures if the combined four (4) lots are sold.

Motion by Bugge to approve the variance provided that a revocable deed restriction approved by the city attorney be applied so parcels cannot be sold separately and that the accessory uses be removed from the non-primary parcel if sold separately from the property on which the applicant's house stands.

Stegeman asked about abandoning the walkway. Anderson explained that the applicants talked to the city engineer about vacating that so they can purchase it; the city engineer said there are utility right-of-ways underneath the walkways so the walkway cannot be vacated. Bugge noted that the walkways also provide firefighting access for some of those houses.

Stegeman seconded the motion as made by Miller.

Paull stated, "This is well reasoned but I am not sure, legally, that we are on very strong ground." Boyd thinks this is a shot across the bow. Bugge said this is not a street just a narrow strip. Paull noted, "We are trying to enforce a deed restriction and on shaky ground legally without the owner being here. You can pass the motion but we need to get an attorney's opinion."

Anderson said the motion could be approved conditionally. The applicant's attorney would have to write it up and our attorney would have to approve it.

Paull asked if it is all right to put that condition on it. Miller noted it is encumbering a deed. Stegeman stated that he does not quite buy into encumbering the deed. Wheeler asked, "It sounds good but is it necessary?" Paull asked, "Are we placing deed restrictions on five (5) parcels of land that legally we cannot do?" Paull reiterated that he wants an attorney to approve it.

Boyd asked Paull, "You are saying we can approve this conditionally on what the city attorney says? What Bugge said is cloudy." Bugge stated, "No, I am trying to connect the two sets of parcels, keeping them together."

Paull asked if everyone is essentially clear that we are approving this with deed restrictions that have to be approved by the city attorney.

A Roll call vote was taken:

Ayes: Bugge, Miller, Stegeman, Wheeler, Boyd, Paull
Nays: None

Motion carried.

Paull is somewhat uncomfortable that we are placing deed restrictions without the owner here.

Boyd wants it on record that attendance is highly encouraged by some representative of the applicant: "If I and my fellow citizens can be here the applicant had better be here." Bugge noted it is to their advantage.

Bugge pointed out that the applicant can choose not to use the variance and still use the lots for other things.

Anderson said you could amend your bylaws to say that the applicant or the applicant's representative must be here in order for the ZBA to act on a request; you can do that.

After discussion regarding when and how that amendment can be made the following motion was offered by Boyd:

Motion to amend the bylaws that the applicant or a representative of the applicant must be present for the Zoning Board of Appeals to take action on any request. Second by Stegeman.

Jean Conlisk, 60 Lakeshore Drive. "May I ask why you have said the applicant or his friend should be here? Shouldn't the property owner be required to attend"

Anderson said it was stated that a representative of the applicant or the applicant should be here. That representative can be an attorney, a contractor or another representative chosen by the applicant because the owner may be out of state.

Paull called for a vote on amending the bylaws.

All in favor. Motion carried.

7. Commissioner Comments

None at this time.

8. Adjourn

Motion by Boyd, second by Stegeman to adjourn at 7:48 p.m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom
Recording Secretary