



**VILLAGE OF SUTTONS BAY
ZONING BOARD OF APPEALS**

Wednesday, April 19, 2023 5:30 PM

Suttons Bay Village Hall

420 N. Front Street

Suttons Bay, MI 49682

AGENDA

1. Call to Order
2. Roll Call and Notation of Quorum
3. Approval of the Agenda
4. Approval of Meeting Minutes-February 15, 2023
 - A. Appeal of Zoning Administrator Interpretation -for 379 S Shore, Applicant Michael Sanocki
5. Public Comment/Written Communications (concerning items not on the agenda)
6. Adjournment

If you are planning on attending this meeting and are disabled requiring any special assistance, please notify the Village Clerk by calling 231.271.3051 or by email suttonsbay@suttonsbayvillage.org as soon as possible.



VILLAGE OF SUTTONS BAY
ZONING BOARD OF APPEALS
MEETING MINUES OF FEBRUARY 15, 2023

The meeting was called to order by Chairperson Popke.

Present: Karl Bahle, Karen Hassevoort, Bill Perkins, and Frank Smith
Absent: Donna Popke
Staff present: Shar Fay and Steve Patmore, Zoning Administrator and Karrie Zeits, Attorney
Guests: Andrew Blodgett, Attorney

Approval of Agenda,

Bahle moved, Perkins seconded, CARRIED, to approve the agenda as presented.
Ayes: 4, No: 0.

Approval of minutes

Perkins moved, Bahle seconded, CARRIED, to approve the November 16, 2022, Zoning Board of Appeals meeting minutes. Ayes: 4, No: 0.

Election of Officers

Donna Popke was nominated as Chairperson by Perkins. Perkins moved, Bahle seconded, CARRIED, to elect Popke as Chairperson. Ayes: 4, No: 0.
Frank Smith was nominated as Vice Chairperson by Bahle. Bahle moved, Perkins seconded, CARRIED, to elect Smith as Vice Chairperson. Ayes: 4, No: 0.
Bill Perkins was nominated by Smith as Secretary. Smith moved, Bahle, seconded, CARRIED, to elect Perkins as Secretary. Ayes: 4, No: 0.

Variance Request for 379 S. Shore – To Consider a Rehearing Application

Following Attorney Zeits reference to her memo found in the packet, Zoning Administrators reference to his memo in the packet, and the applicants Attorney Blodgett's presentation, it was the consensus of Commissioners that:

- The ZBA's previous decision on the variance request, the need for the side yard setback variance was not an influencing factor, really important, or of great consequence in the determination.
- The ZBA's previous decision on the variance request, the amount of the variance request from the Lake Michigan or front yard setback variance was an influencing factor, really important, or of great consequence in their determination.

- In the ZBA's previous decision on the variance request the amount of the front overhang was not an influencing factor, really important, or of great consequence in their determination. Commissioner Hassevoort stated she was not present at the October meeting in 2022 and cannot speak to the previous decision, but that she considered the changes presented and did not see material changed conditions.

Bahle moved, Perkins seconded, CARRIED, that the Village of Suttons Bay Board of Appeals finds that the December 7, 2022, application does not represent material changed conditions from the application denied by the ZBA on October 19, 2022, based upon the findings listed above.

Discussion: Attorney Zeits clarified with Commissioners that the amount of the variance was significant but that it is significant in the sense that the amount of the variance requested previously was disturbing which is why the application was denied (referring to the Lake Michigan setback) but that the new application does not really change your mind or make you think it is of a material change therefore the new application should be considered. Commissioners confirmed that Zeits clarification was correct and noted the new application was cosmetic only.

Ayes: 4, No: 0.

The meeting adjourned at 5:59 p.m.

Meeting minutes submitted by Shar Fay, Clerk.



Office of Planning and Zoning
 420 N Front Street
 P O Box 395
 Suttons Bay, MI 49682
 231-271-3051 or 231-392-5828
zoning@suttonsbayvillage.org

ZONING BOARD OF APPEALS APPLICATION

FEES: VARIANCE: \$500 Paid: _____ Check # _____
 NON-CONFORMING USE: \$500 Paid: _____ Check # _____

Date Rec. ____/____/____ Hearing Date ____/____/____
Above is for office use only

IMPORTANT PLEASE READ THE FOLLOWING:

1. Appeal applications must be submitted in the name of the owner of the property. The owner may be represented by another person, such as, but not limited to; a builder, potential buyer, attorney, or architect.
2. Applications must be signed by the owner. If represented by an authorized agent, he/she must sign also.
3. To process your application, a survey drawn by a professional surveyor (SEE REQUIREMENTS FOR MAKING APPLICATION), must be submitted to the Office of Planning and Zoning thirty (30) days prior to the scheduled Appeals Board meeting at which you wish to appear. The Appeals Board meets on the third Wednesday of each month.
4. The owner is bound by the commitments, concessions and agreements made by their representative/authorized agent.

Owner(s) Name: Michael Sanocki Phone Number: (231) 590-3644

Address: 8111 Burt Rd. Birch Run, MI 48415

Email: Michael.Sanocki@gmail.com

Authorized Agent's Name: Andrew Blodgett, Parker Harvey

Address: 901 S Garfield, Suite 200 Phone Number: (231) 929-4878
Traverse City, MI 49686

Email: gblodgett@parkerharvey.com

Property Identification Number (PIN): 45-043- 828-036-00

Property Location (address if available): 379 South Shore Drive

Suttons Bay, MI 49682

RECEIVED
 3-10-23

PAID

Type of Request Administrative Appeal, 17-4.A.1

Variance Special Land Use Denial Temporary Use Conditional Use

Site Plan Review Denial Non-conforming Use Special Exception

Interpretation Other - specify _____

Section of Ordinance Applicable (office use only) _____

If this request is for an appeal from determination by the Zoning Administrator, date of denial: 2/10/2023

Have any previous applications regarding this property been submitted to the Board of Appeals?

Yes No If yes, what was the description of the prior request? Requests described in packets for 10/19/2022 and 2/15/2023 ZBA meetings

Is the subject property Unplatted Platted - If Platted, give name of Plat. _____

Describe the request being made with reasons that include the peculiar or unusual conditions which are present. Depict the hardship(s) which will result if the variance is not approved. (Please attach separate sheets if necessary):

See attached letter.

Signature of Owner _____ Date ____/____/____

Signature of Authorized Agent [Signature] Date 3/9/2023

~for office use only~

A copy of the site plan and other pertinent information was sent to the following agencies for review and comment:

Leelanau County Road Commission Leelanau County Soil/Erosion Department

Leelanau County Fire Department Township Engineer

Others _____

ACTION TAKEN: Approved Approved w/ conditions Denied

Note: APPROVALS BY THE BOARD OF APPEALS ARE VOID UNLESS THE CONSTRUCTION AUTHORIZED BY SUCH A VARIANCE HAS RECEIVED A LAND USE PERMIT WITHIN ONE YEAR.



March 9, 2023

Village of Suttons Bay
Office of Planning and Zoning
Zoning Board of Appeals
420 N. Front St.
PO Box 395
Suttons Bay, MI 49682

Via FedEx Overnight

RE: 379 S. Shore Drive, Suttons Bay (PIN 45-043-828-036-00)
Our File No. 3102.00

Dear Sir or Madam:

This letter is an appeal to the Village of Suttons Bay Zoning Board of Appeals by Michael Sanocki pursuant to Section 17-4.A.1 of the Village's Zoning Ordinances¹. Mr. Sanocki is appealing the determinations made by the Zoning Administrator ("ZA"), Steve Patmore, in a memorandum dated February 10, 2023. Specifically appealed is the ZA's decision made under item one in the memorandum, titled "Item 1-Is a variance really needed per Section 19.5.B.2?" The ZA's decision was that the applicant needed a variance to build an expansion to an existing non-conforming use.

Record and Standard. Pursuant to Section 17-5.A, when an appeal is filed the Administrator must transmit to the ZBA "all papers constituting the record upon which the action being appealed was made." For purposes of this appeal "papers constituting the record" would

¹ "Administrative Appeals. To hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by the Administrator or the Planning Commission in the enforcement of this ordinance."

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include all documents and letters regarding Mr. Sanocki's two applications for appeals regarding his property at 379 South Shore Drive, Suttons Bay, MI 49682 (PIN 45-043-828-036-00). This would also include minutes or recordings of the October 19, 2022, and February 15, 2023, ZBA meetings.

The standard for the ZBA's decision is set forth in Section 17-5.C:

Decision. In exercising this power, the Board may reverse or affirm, wholly or partly, or may modify an order, requirement, decision or a determination being appealed and may make an order, requirement, decision or determination as it should be made. The Board may reverse an order of an administrative official or the Planning Commission only if it finds that the action or decision appealed meets one (1) or more of the following requirements:

1. Was arbitrary or capricious
2. Was based on an erroneous finding of a material fact.
3. Constituted an abuse of discretion.
4. Was based on erroneous interpretation of the zoning ordinance or state law.

The application and decision. In his application for a variance for his property (the second application) Mr. Sanocki stated that a variance may not be needed because the planned addition to his home, a current lawful nonconforming use, met the requirements of an expansion of a non-conforming structure under Section 19-5.B, which states:

B. Expansion of Nonconforming Buildings.

1. **Enlargement and Alteration.** A nonconforming building or structure may not be enlarged or altered in a way that increases its nonconformity, except as noted in 19-5 B-2 below;

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2. Setbacks. A nonconforming building or structure may be expanded within the existing setback area, provided it meets the following:

a. The expansion is located no closer to the applicable lot line than two-thirds (2/3) of the setback area, as measured from the lot line, and no closer to the lot line than the current building line.

b. Structures, after any enlargement or alteration, shall meet the lot coverage standards for the zoning area.

(emphasis added). The ZA's analysis focused only on the distance from the setbacks. It is presumed that the ZA thus concurs with the applicant that the proposed expansion is not closer to the lot line than the current building line and that the proposed expanded structure will meet the lot coverage standards. Likewise there is no disagreement regarding where the current structure and the proposed expansion are located.

The ZA's Decision Must be Overturned Because it Failed to Properly Apply the Requirements of

19-5.B.2.a

The error made by the ZA is failing to make the distance measurements according to the text of the ordinance. Section 19-5.B.2.a requires the 2/3 calculation to be made from "the lot line." Instead, the ZA wrongly measured from other lines: the high water line for the rear yard (Lake Michigan) setback and the road right of way for the front yard setback. These measurements, though correct for measuring other setbacks, are in violation of the "lot line" measurements required by 19-5.B.2.a.

Rear Yard 19-5.B.2.a Measurement. In his memorandum the ZA found that the required Lake Michigan setback is 50 feet, therefore the 2/3 calculation of 19-5.B.2.a would be 33.5 feet.

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The applicant generally agrees with this². The ZA found that the proposed expansion would be located 18.5 feet from the historic high-water mark. This was erroneous in two ways. First the ZA should have stated that the Lake Michigan setback regarding this zoning district (Single Family Waterfront Residential) is not defined, other than “Lake Michigan” (see table 4-3³). The ZA borrowed, without explanation or justification, a setback definition from the Public Lands Areas zoning district. Thus an erroneous definition of “Lake Michigan” was used.

Regardless of the impact of this first error, it is the second error that caused the most damage by directly violating 19-5.B.2.a. Again, the ordinance requires measurement from the lot line, not a setback line or other line. The lot line in the present case extends farther out than the historic high water mark and even past the shoreline as observed on June 23, 2022. As indicated in the plans submitted by Mr. Sanocki’s architect, which are attached to this letter, the original deed line extends out into the bay. It is this line which must be used to measure the 2/3 calculation, according to the text of 19-5.B.2.a. The plan notes that the eave of the planned expansion is 25’1” from the observed June 23, 2022 water line, which again is much closer to the house than the lot line of the original deed. There is no argument that the planned expansion is more than 33.5’ from the lot line in the original deed, and therefore the 2/3 requirement of 19-5.B.2.a is met by this planned expansion. The ZA was measuring from the wrong point and thus the decision regarding the rear yard (Lake Michigan) measurement must be overturned.

² Two-thirds of 50 feet is actually 33 and 1/3 feet (meaning 33 feet four inches), not 33.5.

³ The ZA, elsewhere, refers to table 4-2; that is incorrect. See also Figure 4-1.

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Front Yard 19-5.B.2.a Measurement. The ZA made a similar mistake when measuring the distance between the planned expansion and the lot line for the front yard. Again, the ZA measured from the setback line, here the road right of way, instead of the lot line. There is no real disagreement with the applicable standard: the setback area is 25 feet, so the 2/3 requirement of 19-5.B.2.a is 16.75⁴ feet. However, the ZA is blatantly wrong in his statement that the 16.75 feet is “measured from the road right of way line.” That sentence in the memorandum directly contradicts the zoning ordinance, which requires a measurement from the lot line, not the road right of way line. Here, as with many properties, the lot line extends to the center of the roadway. The site plan submitted shows a distance from the eave to the pavement of 30’8”⁴; thus the distance from the planned expansion to the center of the road would be greater and easily longer than the required 16.75 feet. The ZA was measuring from the wrong point and thus the decision regarding the front yard measurement must be overturned.

Analysis of Standards. The ZA’s decision violates standards 1, 2, and four of section 17-5.C. First, the decision was arbitrary and capricious. The ZA borrows from inapplicable sections of the ordinance (Public Lands Area) to make his rules, without so much as noting where he drew his analysis from. The issue of lot line, as opposed to setback, was not even discussed. It is arbitrary and capricious to choose a different line to measure from when the text of the ordinance explicitly mandates the use of another, known, line. No basis was given for the ZA’s decision to ignore the text of the section he was tasked with interpreting.

⁴ Though again there is a slight error. Two-thirds of 25 is 16 and 2/3 feet, not 16.75 feet.

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Second, the decision was based on an erroneous finding of a material fact, here the determination that the planned expansion was within $2/3$ distance from the lot lines. The math was wrong because the starting point was wrong. When the correct starting point is used (the lot lines) the planned expansion easily meets the $2/3$ requirement of section 19-5.B.2.a. This section works essentially as a math problem, and therefore the use of the wrong starting point is by itself an erroneous material fact because it predetermined an erroneous outcome.

Third, the decision was based on erroneous interpretation of the zoning ordinance. This is obvious in the text of the memorandum, which clearly states that the ZA was measuring from the “historic high water mark” for the rear yard and the “road right-of-way line” for the front yard. This contravenes section 19-5.B.2.a’s requirement that measurements be made from the lot lines. The ordinance was erroneously interpreted (or ignored) and thus the decision should be overturned.

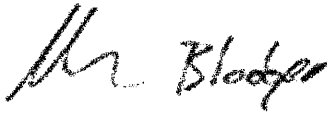
Conclusion. There is no disagreement that the “other” elements of section 19-5.B.2.a are met by this planned expansion, specifically that the planned expansion is not closer to the lot line than the current building line and that the total footprint after the expansion meets the lot coverage requirement. The only reason that the ZA concluded that the application must seek a variance is because the planned expansion allegedly was located “closer to the applicable lot line than two-thirds ($2/3$) of the setback area, as measured from the lot line.” As shown above, the calculations are wrong and in fact the planned expansion meets the $2/3$ distance requirement. Overturning this wrong decision means that the requirements of section 19-5.B.2.a are met and therefore no variance for the planned expansion of this non-conforming structure is needed under the zoning

PARKER HARVEY PLC

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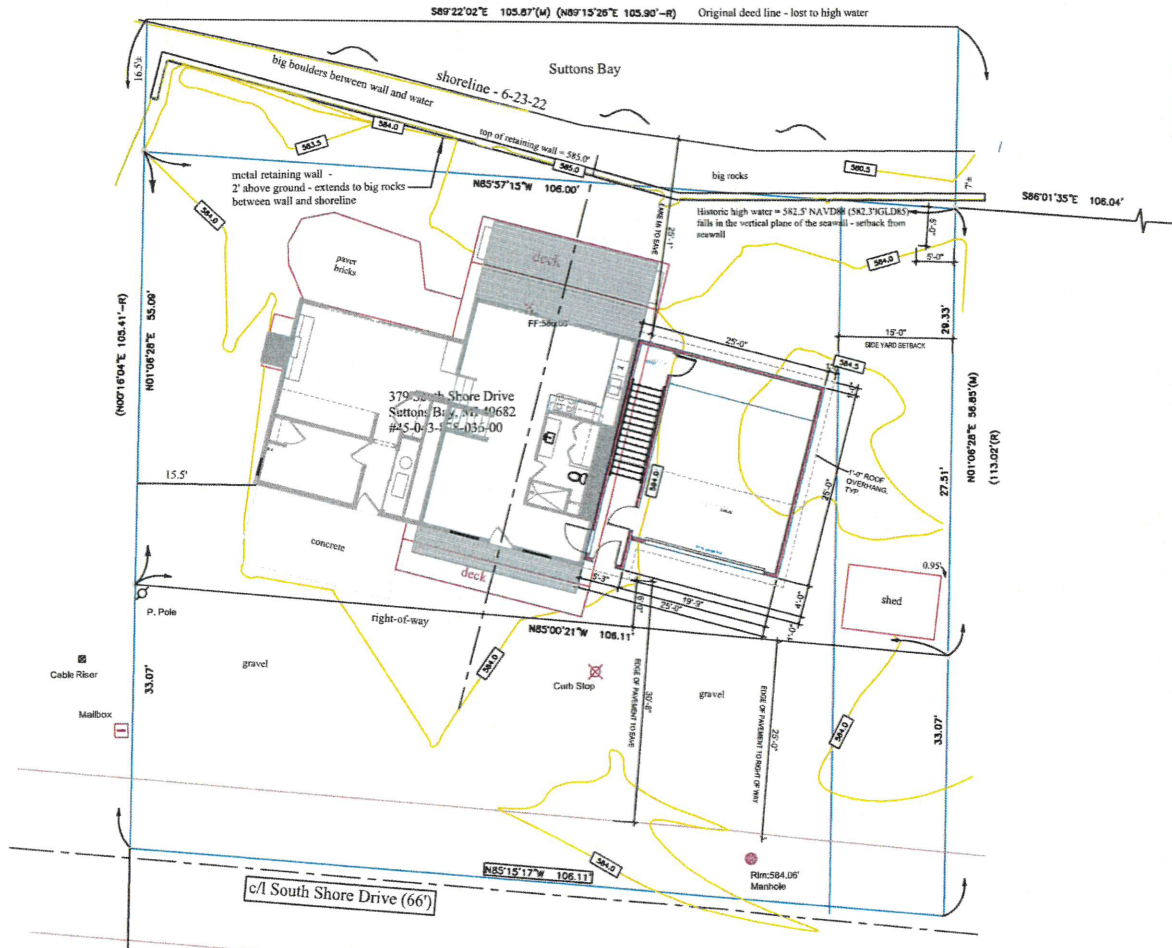
ordinance. This ZBA should overturn the ZA's decision and direct that a permit for the planned expansion be issued.

Sincerely,

A handwritten signature in black ink, appearing to read "Mr. Blodgett". The signature is written in a cursive, slightly slanted style.

Andrew J. Blodgett

AJB:ekb
Enclosures



beag+haus
2040 PECANHAM STREET
ASHBURN, VA 20147
484.864.7603 | beaghaus.com

SANOCKI PROJECT
204 S SANOCKI DRIVE, SUTTONS BAY, MI 49682
REVIEW SET - 11/08/22

SP1

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PARKER HARVEY PLC
901 S GARFIELD AVE, STE. 200

SHIP DATE: 09MAR23
ACTWGT: 0.50 LB
CAD: 713363180/NET4580

TRAVERSE CITY MI 49686
UNITED STATES US

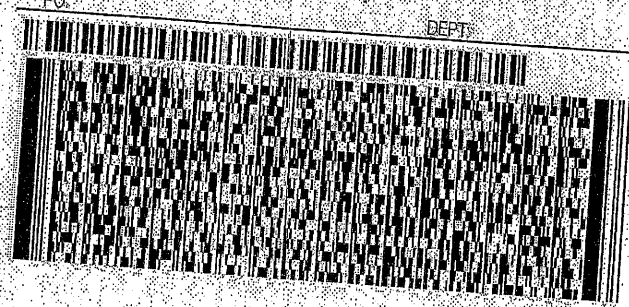
BILL SENDER

TO: PLANNING & ZONING/ZBA
VILLAGE OF SUTTONS BAY
420 N. FRONT STREET

SUTTONS BAY MI 49682
(231) 271-3051 REF: 8/02.00

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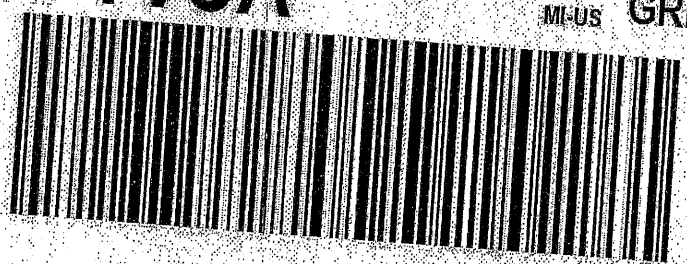
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FRI - 10 MAR 12:00P
PRIORITY OVERNIGHT

68 TVCA

49682
MI-US GRR



Extremely Urgent

RT 249
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2 12:00
B 1529
03.10

