

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

ZONING REPORT / SUGGESTED FINDINGS OF FACT

ZONING APPEAL FILED BY MICHAEL SANOCKI

PREPARED BY STEVE PATMORE, ZONING ADMINISTRATOR

For Public Hearing on April 19, 2023

I. REQUEST:

The Village of Suttons Bay received a formal application for an Appeal from Attorney Andrew Blodgett on behalf of Michael Sanocki, who owns property at 379 S. Shore Drive, Suttons Bay.

This Application is an Administrative Appeal of a written Determination/Interpretation made by the Village Zoning Administrator (ZA) dated February 10, 2023 in a memo to the Village of Suttons Bay Zoning Board of Appeals (ZBA) (see Attachment A) for their February 15, 2023 Variance Hearing on the Sanocki request for a new hearing on their original variance request from October 19, 2022.

Specifically, the Appellant is claiming that the ZA erred in the interpretation of Section 19-5.B.2, Expansion of a Non-Conforming Structure, as it relates to the point at which to measure whether the proposed expansion is “no closer to the applicable lot line than two-thirds (2/3) of the setback area”. The ZA determined that the point at which to measure was the right of way line for the front lot line and at the Historic High Water Mark for the Shoreline lot line, and as a result a variance would be needed

This ZA determination was made after Mr. Blodgett suggested in a letter to the ZA dated December 7, 2022 that the Application for Variance that was already submitted to the ZBA, and ruled on in October 2022 may qualify for expansion without a variance under Section 19-5.B.2.

II. PROCESS

Under Section 17-4 of the Village of Suttons Bay Zoning Ordinance (VSBZO), the ZBA has the authority “to hear and decide appeals where it is alleged there is an error of law in any order, requirement, decision, or determination made by the Administrator or the Planning Commission in the enforcement of this ordinance.” (see Attachment B)

Section 17-5 gives the ZBA guidance on Administrative Appeals. (see Attachment B) It provides that in considering an appeal, 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

Sections 17-4 and 17-7 give the ZBA authority and guidance to interpret the provisions of the ordinance, which will be necessary in deciding this appeal.

III. SUBMITTAL

- Application received March 10, 2023.
- Letter from Attorney Andrew Blodgett.
- Property sketch.

IV. BACKGROUND / HISTORY

1. In 2022, Michael Sanocki submitted an application for dimensional variances to allow construction of an addition to a single-family dwelling.
2. On October 19, 2022, the ZBA conducted a Hearing on the request, and denied the application for the variance request.
3. In December 2022, the Appellant filed a request to the ZBA for a new hearing on a variance request that would allow construction of a slightly modified addition.
4. On February 15, 2023, the ZBA conducted a hearing and determined that the application was a re-application and did not demonstrate changed material conditions under Section 17-10 of the VSBZO that would justify a rehearing of the new application.
5. On March 10, 2023, this application for an administrative appeal was submitted.

V. GENERAL FINDINGS OF FACT (in addition to the facts outlined above)

1. The subject property is located at 379 S. Shore Drive, Suttons Bay. Property No. 45-043-828-036-00.
2. The subject property is owned by Michael Sanocki, 8111 Burt Road, Birch Run, MI 48415.
3. The subject property is currently zoned Single Family Waterfront Residential (SFWR).

4. The subject property currently contains a single-family dwelling and a shed.
5. The required Minimum Primary Street Front Setback in the SFWR District is 25 ft.
6. The required Minimum Lake Michigan Setback in the SFWR District is 50 ft.
7. Figure 4-2 of the Zoning Ordinance illustrates the spatial requirements of the SFWR District. (The Appellant, in their application letter claims that “table 4-3” applies to this District)
8. The existing dwelling on the subject property is a legal non-conforming structure, in that the existing structure does not meet both the required minimum Front and minimum Lake Michigan Setbacks. (this fact does not seem to be disputed, since the Appellant has referenced the non-conforming building section of the ZO as the basis for their appeal.
9. The Use of the subject property (single-family residential) is a Conforming Use in the SFWR District. This is mentioned because the Appellant references on page one of their appeal letter that this is an expansion of a non-conforming use.
10. Measuring from the right of way line for the front yard, the proposed expansion is closer to the front yard lot line than two-thirds (2/3) of the primary street front setback area.
11. Measuring from the Historic High Water Mark for the rear yard/shoreline, the proposed expansion is closer to the Historic High Water mark than two-thirds (2/3) of the Lake Michigan setback area.

IV. SPECIFIC CLAIMS OF THE APPEAL:

The specific claims of the Appeal are contained in the letter from Attorney Andrew Blodgett dated March 9, 2023, and were attached to the Application for Appeal.

1. The Appellant claims that the ZA, in his letter dated February 10, 2023, (See Attachment A) erred in making a determination that the proposed expansion of the non-conforming single-family dwelling submitted by Michael Sanocki, and already denied by the ZBA, did not meet the requirements of Section 19-5.B.2, and therefore required a variance from the ZBA to construct the expansion.
2. The Appellant specifically claims that the ZA used the incorrect reference line when interpreting the “lot lines” referred to in Section 19-5.B.2.a of the zoning ordinance, specifically the Front Lot Line and the lot line fronting Lake Michigan.
3. Also, in doing so, the Appellant claims that the ZA is referencing the incorrect Figure or Table for the zoning district of the Subject Property.
4. The Appellant is claiming that the proposed expansion meets the requirements of Section 19-5.B.2.a of the VSBZO, and therefore, a variance was/is not necessary.
5. The Appellant is claiming that the decision and determination made by the ZA is arbitrary and capricious, based upon an erroneous finding of a material fact, and was based on an erroneous interpretation of the zoning ordinance.

6. The Appellant is requesting that the ZBA direct that a permit for the planned expansion be issued.

V. RESPONSE AND ANALYSIS OF APPEAL:

The following discussion is a response to the Appeal, and is presented to the ZBA for consideration:

1. *Which Figure or Table in the VSBZO applies to the setbacks and spatial requirements of the Single-Family Waterfront Zoning District?*

- The Zoning Administrator, in the February 10, 2023 memo, refers to this as both Table 4-2 and Figure 4-2 (Figure 4-2 is correct) of the VSBZO to illustrate the setbacks in the SFWR District.
- The Appellant, on page 4 of their March 9, 2023 letter refers to Table 4-3, and suggests in a footnote that the Zoning Administrator incorrectly refers to Table 4-2 in his ZA report.
- Attachment D contains Figure 4-2 of the VSBZO, which clearly includes the spatial requirements for single-family dwellings in the SFWR District.
- Figure 4-3, referenced by the Appellant, (also included in Attachment D) clearly refers to spatial requirements of the NVRA and HR Districts, and not the subject property.
- Recommended ZBA Action:

The Village of Suttons Bay Zoning Board of Appeals finds that Figure 4-2 on page 4-6 of the VSBZO is the correct figure to determine the spatial requirements of the Single-Family Waterfront Residential Zoning District in the Village of Suttons Bay.

2. *Which reference lines shall be used as the “lot lines” in determining compliance with Section 19-5.B.2.a of the VSBZO?*

Section 19-5.B.2 provides for a non-conforming structure or building to be enlarged or altered in a way that increases its non-conformity, without a variance, provided that the expansion meets the requirements of 19-5.B.2.a. (see Attachment C)

These limits for expansion contained in Section 19-5.B.2 can be summarized as:

- The expansion can only be located within the existing setback area. (19-5.B.2)
- 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**. (19-5.B.2.a)
- The expansion can be no closer to the lot line than the current building line. (19-5.B.2.a)
- Structures, after any enlargement or alteration, shall meet the lot coverage standards in the zoning ordinance. (19-5.B.2.b)

The ZA maintains that the “setback area” in Section 19-5.B.2 is illustrated by the shaded area in Figure 4-2 SFWR and WC Spatial Requirements – Single Family Dwellings.

A. Which reference line should be used as the reference “lot line” to determine compliance with Section 19-5.B.2.a on the front (road) side of the property?

- The Appellant maintains that the lot line to be used for measurement is the centerline of South Shore Drive because “the lot line extends to the center of the roadway¹, and must be used to measure the 2/3 setback distance.
- The ZA, in the February 10, 2023 letter, determined that the measurement was to take place from the road right-of-way line.
- 19-5 B.2.a expressly provides that the proposed expansion’s distance from the “applicable lot line” is to be measured from the “lot line.”
- There is substantial evidence in the zoning ordinance that the road right-of-way line is the “lot line” for determining setbacks and measuring 19-5.B.2.a.
- “Lot lines” is a defined term in the VSBZO.
- Lot lines are defined on page 20-7 as “the lines bounding a lot, as defined below:”
- The definition of **Lot Line, Front**, (page 20-7), is, in the case of an interior lot, the line separating the lot from the street right-of-way or road easement. Through lots shall have two front lot lines and corner lots shall have a primary and secondary front lot lines. (Attachment E)
- The illustration above the definition of “lot lines” and the definitions of the various lot lines definitions on page 20-7 of the VSBZO (Attachment E) clearly indicates that the front lot line is located at the Street ROW arrow, and is not the centerline of the street or at any other location dependent upon a property’s legal description in a deed or other instrument of conveyance.
- Figure 4-2 (Attachment D) clearly illustrates that front setbacks in the SFWR District are not measured from the centerline of the road or at any other location dependent upon a property’s legal description in a deed or other instrument of conveyance.
- Also, Figure 4-2 (Attachment D) clearly illustrates that the setback area, as referenced in 19-5.B.2, of the SFWR District does not extend into the road right-of-way.
- It is clear the authors of the VSBZO intended that the referenced lot lines used to measure setbacks and the referenced lot lines used to measure 19-5.B.2.a would be the same reference lines.
- While the property description of the Subject Property may extend to the centerline of South Shore Drive, this does not supersede the definitions and illustrations contained within the zoning ordinance, when it comes to interpreting and applying the zoning ordinance. If a statute or ordinance defines a term, that definition controls. *Capitol Properties Grp., LLC v. 1247 Ctr. St., LLC*, 283 Mich App 422, 770 NW2d 105 (2009)
- **Recommended ZBA Action:**

Based upon the VSBZO definition of Lot Lines: Lot Line- Front, the figure on page 20-7, and Figure 4-2, the Village of Suttons Bay Zoning Board of Appeals finds that the referenced lot line for measuring 2/3 of the setback area shall be the South Shore Drive right-of-way line.

¹ Although Appellant asserts the lot line extends to the center of the road, it is unclear from the documents submitted with this appeal or the two prior applications on what basis this statement is made.

B. Which reference line should be used as the reference “lot line” to measure the 2/3 setback distance referenced in 19-5.B.2.a on the Lake Michigan Waterfront side of the property?

- The Appellant maintains that the referenced lot line to be used in 19-5.B.2a is an original deed line that extends out into the bay, and is shown on the architects drawing submitted with the Application. This line is noted as being lost to high water, and appears to be below the State of Michigan Ordinary High Water Mark.
- Setbacks are measured from the “lot lines” to the building (VSBZO p 20-10) and Section 2-14.
- Section 19-5 B. 2 references the “lot line” in measuring whether a proposed expansion may be allowed.
- The ZA, in the February 10, 2023 letter, acknowledged that there was no definition of Lake Michigan Setback in the ordinance, however, after reviewing the ordinance, determined that the correct reference line for measuring the Lake Michigan Setback should be the Historic High Water Level.
- Consistent with his interpretation regarding measuring the “lot line” in the front of the property, the ZA determined that both the Lake Michigan Shoreline setback area and the area referenced in 19-5.B.2.a should be measured from the same respective referenced line.
- The definition of Lot Line, Rear in the VSBZO does not contain any reference to the shoreline. It states that the Rear Lot Line is the lot line opposite and most distant from the front lot line.
- The current VSBZO does not currently contain a definition of Lake Michigan lot line or Setback Line, although the ordinance requires a Lake Michigan Setback in the SFWR District, the Waterfront Condominium (WC) District, the Central Business District, as well as the Bayview PUD areas.
- Section 2-6 H of the VSBZO establishes a Waterfront Greenbelt with a minimum depth as follows: “A greenbelt a minimum of 25 feet deep will be established and maintained as a condition for new development or redevelopment taking place on waterfront parcels. This strip will be made up of a mixture of low growing shrubs and trees that are well suited for the site. **This strip will be located upland from the Lake Michigan Historic High Water Elevation (582.3’ IGLD 1985)** and no lawn may be maintained between this strip and the water’s edge.” (Emphasis supplied).
- Figure 4-2 clearly illustrates that the Lake Michigan Shoreline Setback should be measured from a line landward of the actual water’s edge and the Lake Michigan Shoreline Setback should be set at a point beyond the 25’ waterfront greenbelt, which is measured from the Lake Michigan Historic High Water mark. Other illustrations in the ordinance show the same.
- Article 7 – Special Areas, has Section 7-3.B, Shoreline Yard and Setback Requirements that references a minimum setback of 50 feet from the established Lake Michigan historic high-water elevation (582.3 feet, IGLD 1985). While Article 7 Special Areas primarily addresses public lands, this definition should be an indicator of the intent of the authors of the VSBZO as the lot line to be used in measuring the Lake Michigan Shoreline setback.
- A previous version of the zoning ordinance from 2011 included a definition of the Lake Michigan Setback (Attachment F) This definition was” All new buildings and structures (except as otherwise noted) will be set back a minimum of 50 feet inland and upland of the Lake Michigan historic high water elevation (582.3 feet IGLD 1985).” Staff believes that the authors of the VSBO inadvertently left out this definition in the latest version of the zoning

ordinance.

- The Appellant has offered no evidence of a bottomlands lease or title for that land shown lake-ward and below the Ordinary High Water Mark (OHWM) of Lake Michigan, as defined by the State of Michigan. Typically, the lands below the OHWM on the Great Lakes are held by the State of Michigan in trust for the People of Michigan, unless there is a lease or title. Staff knows of no exception for lands lost to high water.
- The ZA concludes based on the Ordinance’s use of “lot line” in both the setback definition and Section 19-5.B.2.a that the authors of the VSBZO intended that the “lot lines” used to measure setbacks and the reference to lot line used to measure in Section 19-5.B.2.a would be the same.
- The ZA concludes based on evidence of the intent of the ordinance with respect to the Lake Michigan setback, the line to be used is the Historic High Water mark.

• **RECOMMENDED ZBA ACTION:**

In conclusion, based upon the collection of facts given above (not just a single fact), the ZBA is asked to take the following action:

The Village of Suttons Bay ZBA finds, based upon the above findings of facts, that:

- 1. The Lake Michigan Setback for the SFWR District, as referenced in the Zoning Ordinance should be measured from the Lake Michigan Historic High Water Mark elevation. (582.3 feet, IGLD 1985), and*
- 2. The reference lot line used to measure the distances in 19-5.B.2.a shall be the Lake Michigan Historic High Water Mark elevation. (582.3 feet, IGLD 1985).*

3. Should the ZBA order that a permit be issued for the proposed expansion?

The ZBA does not have authority to issue permits. And even if the ZBA agrees with the Appellant on the reference “lot lines”, it is unclear whether the request for expansion of a non-conforming building meets 19-5.B.2.

- A. Is the proposed expansion within the setback areas? – Yes.
- B. Is the proposed expansion within the allowable 2/3 distance as measured from the “lot lines”?
This depends on the findings of the ZBA meeting.
- C. Is the proposed expansion no closer to the lot line than the current building line? This cannot be determined at this time. Two different site plans were submitted, and neither one was drawn to a reasonable scale – to be determined.
- D. Do the structures, after any enlargement or alteration meet the lot coverage standards for the zoning area? No evidence of lot coverage was submitted. The Applicant’s representative, at a previous meeting stated that the expansion would meet lot coverage, however, no calculations were provided - To be determined.

Issues C and D noted above must be resolved before a permit can be issued, as well as other

procedural issues such as a Land Use Permit Application, Application Fee, Driveway Permit, Water and Sewer Permit, Soil Erosion permit, etc.

4. Was the Zoning Administrator “arbitrary and capricious in his determination?”

The generally accepted meaning of “arbitrary” is determined by whim or caprice, or arrived at through an exercise of will or caprice, without consideration or adjustment with reference to principles, circumstances, or significance, decisive but unreasoned, and the generally accepted meaning of “capricious” is apt to change suddenly, freakish, whimsical, or humorsome. *In re TEM*, No. 359529, 2022 WL 2760849 (Mich. Ct. App. July 14, 2022), appeal denied sub nom. In re Tem, 981 N.W.2d 353 (Mich. 2022). Staff would hope that the ZBA determines not. The ZA’s determination with respect to where to measure was well considered and based on the VSBZO. A significant amount of time and thought went into the February 10, 2023 letter and interpretation. Significant reasoning was presented in the letter. It should be noted that the Village Attorney was consulted in the preparation of that letter.

6. Was the Zoning Administrator’s determination based upon an erroneous finding of a material fact?

The appeal is based on the ZA’s interpretation of the VSBZO as applied to facts which are not in dispute.

7. Was the Zoning Administrator’s determination based upon erroneous interpretation of the zoning ordinance or state law?

As set forth more fully above, Section 19-5.B.2. requires the distance to be measured from the “lot line.” The determination for the measuring point for the front yard was based on the definition of front yard lot line contained in the Zoning Ordinance. Lot line is a defined term in the Zoning Ordinance, which includes the front lot line. The front lot line is defined as “the line separating the lot from the street right-of-way or road easement.” This is the line that was used to calculate whether the proposed expansion is no closer to the front lot line than two-thirds (2/3) of the setback area.

The determination for the measuring point for the shoreline or waterfront lot line was based on, looking at the VSBZO as a whole, it is clear the shoreline lot line is the Historic High Water Mark. While the ordinance does not contain a definition of shoreline or waterfront lot line, it does (1) require setbacks to be measured from a “lot line,” and (2) utilize the Historic High Water Mark as the lot line from which to measure required setbacks from the lake, such as the waterfront greenbelt and in the Public Lands District. Therefore, it is clear from the Zoning Ordinance that the Lake Michigan Setback is to be measured from the Historic High Water Mark. Therefore, the lot line for the shoreline or waterfront is the Historic High Water Mark.

I hope that this Staff Report will assist the ZBA in making a decision on this Appeal / Interpretation.

Respectfully Submitted, with assistance from the Village Attorney.



Steven W. Patmore
Village of Suttons Bay Zoning Administrator