

**Proposed Minutes**  
**Special Meeting Saugatuck Zoning Board of Appeals**  
**Saugatuck, Michigan, June 22, 2021**

The Saugatuck Zoning Board of Appeals met in special session at 7:00 p.m. via Zoom video/conference technology due to COVID-19 restrictions currently in place.

**1. Call to Order**

Chairperson Kubasiak called the meeting to order at 7:03 p.m from the June 17, 2021 meeting that was adjourned with the public hearing open due to wide spread internet outage.

**2. Attendance:**

Present: Bouck, Bont, Hundreiser, Kubasiak, Zerfas, Ludlow, and Muir.

Absent:

Others Present: Zoning Administrator Osman

**3. Public Comments Continued:**

Gary Medler – Resident

“First, it's disturbing the zoning administrator and city attorneys are still participating in applicants matters before the city. Their collusive actions with applicant throughout the entire permitting process and continuing today through their attempts to find some way to cover up the illegal fence and illegal affected uses have led to the present situation. The zoning administrator and city attorney should recuse themselves. City Council should have addressed this issue when the fence controversy arose in late 2020. Instead, city council kicked this bucket of manure down the hall and dumped this load of crap on the zoning board.

Fence and all installations at the property are illegal and must be abated. The zoning board should require city council to engage independent competent counsel and a qualified zoning professional to advise the zoning board in this case. Last Thursday, we were privileged to have a reading of the definition of Marina from the city code, followed by a recitation of all necessary uses permitted for a Marina. as entertaining as it was it's not relevant to applicant's variance requests, or any uses at the property. Applicant does not possess a marina permit from the city. The permit issued in July 2017 was a minor waterfront construction permit pursuant to code section 154.206. This type of permit prohibits retail and commercial uses and only authorizes construction of bulkheads and docks for the private use of the property owner and not for rent, lease or availability to the general public as a commercial facility or Yacht Club.

This permit is not a marina permit and cannot be used by applicant to engage in any retail for commercial uses, only private use by the property owner. Even applicant's 2015 EGLE permit stated that the permit was for private, non-commercial use. A minor permit permits one dock per residential lot. Applicants' property at the time the city permit was issued consisted of two non-adjacent lots separated by a 20-foot city own lot, each consisting of approximately 1250 square feet. It was only issued for the lot adjacent to the chain ferry. This lot did not meet the lot requirements for a residential lot, and therefore not even one dock was permitted.

The city permit authorized six boat slips or three docks, but applicant has installed six including installations on the city-owned lot, which wasn't transferred to applicant until two years later. Applicant continues to falsely assert the property is a marina which cannot be fully utilized as a commercial enterprise unless the requested variances are granted.

In any of that, none of the variances can be granted because the zoning board lacks authority due to the absolute prohibition on structures located within 25 feet of the waterfront as provided in code section 154.022 (F4).

As discussed in my June 17 comment letter, the Planning Commission lacked jurisdiction to approve a minor permit, only the zoning administrator is authorized and only if the request met all code requirements. It did not and could not have been approved. The use is affected at 443 Park Street violate the code. Applicant's reliance on the void city permit and void provisions contained in the land swap agreement is misplaced and legally unenforceable.

The zoning board should make referrals to city council to commence abatement of not only the eight-foot fence, but all installations affected at and on the property. Thank you."

**Matt Zimmerman - Representative of the applicant**

"...In light of the unusual circumstance of the continuation and the internet problems, I would like to supplement what I had said last week, I won't repeat all 15 minutes of the presentation, but I would like to respond given the public comments that have been made."

**Kubasiak**

Reminded Mr. Zimmerman that this portion of the public comments was for people who have not spoken previously, and asked Mr. Zimmerman to hold his comments until the public comment section at the end of the meeting.

**Carol Bruckman Resident**

"I have lived here a long time and (audio interference)

People who move here love the charm of this place. It's a small, beautiful town.

The city and various groups, such as the Historical Society, have spent a lot of time fixing things up from the past, maintaining the chain ferry.

You know, this is not a place where people want to come and see ugly commercial stuff on the water. It is my belief, and I certainly believe the belief of a lot of people, that Saugatuck would be nothing if it weren't for its water and its waterfront. Once we start making variances for developers to come in and put currently unallowed ugly facilities on the lake front, we are damaging our ability to attract people in the future. This is not what most property owners want from this place. That's it."

**Tim Condon Resident**

"I would, well, I was hoping Tom was going to speak but if he's off the list, I'll repeat his question from the other night for the benefit of everybody. Because I think Tom kind of hit it on the head with just a simple question about if variances weren't, and correct me if I'm wrong Tom, if variances weren't granted in the past, (then) how is there anything there now? How are we even having this discussion? And, you know, those sorts and nobody can answer that, and it sounded like people on the board seem to have the same question. So, I wanted to repeat that to the benefit of everybody who's on the line tonight.

I thought it was a very simple, you know, common sense question. If we can't answer things like that, then, you know, it seems, it seems like we may not be in the appropriate setting that to make decisions. But I've sat on boards like this before in other places, zoning and planning, and, you know, I was selected for that, not because I was an attorney, but because I had experience in the town and I had been accused of having some common sense. And when it got to situations like this, you know, I would raise my hand and say, 'Look, I don't have enough information. This isn't, I don't feel like I have enough here. That this should not be in front of us. That, there, I need more

help.' And it sounds like that's something that Mr. Medler was referring to, just more information required to make a decision like that. If you can't answer those simple, common sense questions clearly and explain it to somebody else, especially after the fact, then you've got to think twice about making a decision like this. That's it for me. Thank you. Appreciate everybody's hard work on this. Thank you."

**Megan Hopkins & Susan Hopkins - Resident**

"We're directly across the street from the docks and everything. And I mean, really, we just everything Carol said resonated so much with us, like mom's a retired science teacher, I'm a teacher. We're not very good with like the legalities of everything. But everything that Carol Bruckman said, like, struck a chord. You know, we're just very concerned about, you know, we love this town, like we feel like we live there.

You know, we come up every single year, my mom for like 65 years. And we don't want to see it lose, like, its charm. And I know that, like, that is why people go to Saugatuck, to get away from the crazy traffic and the crazy congestion. And I just feel like these docks are going to turn into like a floating parking lot that's going to take away from what draws people to the town in the very first place. You know, and another huge concern, like obviously, we think the docks are ugly and shouldn't be there, but we're not the only people there, like people drive by that area every day to go to the Oval Beach, to go to Mount Baldy.

So, it's not just the people who have homes there that are affected, it's the people, the tourists that we're trying to attract that drive down Park Street to get to the Oval Beach that, you know, it's going to create traffic, congestion. It's ugly, it's not going to attract people to our town the way that we want it to. We're, also, for a safety standpoint, I know that we've got a nine-month-old little baby that's going to be walking soon and the traffic is already a concern in that area because if you've been there, it like turns, there's a curve. And I'm just even worried about like the safety aspect of having like more parking there and I just know Carol was so much more well-spoken than us, but we just really feel that it's going to diminish the qualities that make Saugatuck special. Yeah. That's all we want to say."

**Jeff Sluggett- Municipal Attorney for Saugatuck**

"Mr. Chairman, thank you. Just a quick comment. In lieu of, I don't know what the ZBA was intending to do relative to the letters it's received, and the various correspondence. Cindy has listed those I think in the document that shown on the right side of the screen. I think everybody's seeing that, and I believe that encompasses... is that everything, Cindy, that's come in?"

**Cindy Osman – Zoning Administrator**

"There is one missing and I apologize, it's Jean Prokopeak. I thought I already had Prokopeak, but she wrote a separate letter and it is attached in the packet and it will be a part of the record."

**Sluggett**

"It's certainly up to the ZBA in terms of how it wants to handle that. I would encourage you to consider simply acknowledging its receipt, that you've reviewed it and then someone, it would not be inappropriate to have a motion to receive and file those letters as part of the record. And then, you will, then there wouldn't be the need go through them individually."

**Matt Zimmerman**

"Client, the applicant, received a copy of a letter from a Gary Plowe to the City Manager supporting the project. And I'm curious as to why that isn't listed as a written communication. It wasn't addressed to you or the zoning administrator. But I guess I would have assumed that the

City Manager would have forwarded that communication dated June 17. So it's, you know, nearly a week old.”

**Ryan Heise - City Manager**

“So I did receive that email, as Mr. Zimmerman says on the 17th. So, I'm just going back to look at it now. And, you know, it's kind of a random, it's a general email. I'm just kind of scanning through it now. I would say that they certainly have comments about Mr. Heule's development. But I'm not so sure that it's specific to this variance request. So, I mean, I'll just, I'll just note that I have the email. But again, it's kind of very general in nature. And, again, it doesn't seem very specific to the variance request. (In response to Jeff Sluggett's question of whether it is a long email) You know, it's, it's not that long. And it's kind of cute. So, if you want me to read it into the record? Just to be you know, you know, just to cross all the T's and dot all the i's? I'm happy to do that.”

**Gary Plowe**

Requested the email not be read into the record.

Chairman Kubasiak closed the public hearing.

**8. ZBA Comments:**

Bont

“Bob, I have a general comment to start with. Before you look at all three of these, I think we have to look at this is, if I'm correct, C4 resort district. And that that particular, and it's 443 Park Street, that particular parcel is a non-conforming waterfront lot. I think we need to look at what we're trying to approve on what lot. So that particular parcel is a non-conforming waterfront lot and that lot, for over 150 years, has been used somewhat even by our Native Americans to put canoes in, and then by the Presbyterian camp to use and launch canoes and boats and everything else. So, I think we have to consider what the lot is first, before you can put all three of those variances on that parcel.”

Bouck

“Number one is that everyone on this committee and everyone who works for the city has taken an oath to uphold and defend the Constitution of the United States. ~~stake (audio cuts out)~~. In section three of the Constitution specifies that dealing with the president, or in this case, the people in power, which would be the ZBA, it says they shall see that the laws are obeyed. So that's our task tonight, is what are the applicable laws, which ones are appropriate, which ones are not? And then how should those laws be applied in this case, and when applying the law, it's not a matter of negotiation, the law is clear. And as far as an a, a settlement that would be appealing to everybody, what could be more appealing than to have a settlement based on the equal application of the law with the right to appeal to the circuit court. So that's the beginning.

And then to understand which laws, I would refer specifically to 154.06 interpretation of this chapter, paragraph B: “whenever the requirements of this chapter are at a variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the more restrictive or higher standard shall control.” So that that leads us to which standards to apply if there are duplicate standards that could be applied or other standards that could be applied. And then the next thing that we need to consider is that zoning affects every structure in use, which is 154.020, except as hereinafter specified, no building structure or premises shall hereafter be used or occupied and no building or part thereof, or other structure shall be erected, moved to place reconstructed, except in conformance with the regulations here in specified for the zoning district in which it is located.

Now in the applicant's statement, he cited other structures extending into the water based on a Google Earth search. And I also did a Google Earth search, but I also did a walk around town. And yes, there are structures, particularly north of this, that extend into the water, just exactly as the applicant said, and the applicant implied that that would be justification for new construction that shouldn't be there within the waterfront setback. The difference is that the structure north and the other structures I could identify, were built in 1950. According to the Allegan County tax records, that information is readily available and easy to find. And those were clearly grandfathered in. They existed before the rules were set in place and they're totally not applicable in this case. So, the other structures justifying a new structure set within the front setback is not applicable at all.

The only thing I would say with respect to standard one is according to the historical records this parcel has been in use for several decades. Strict compliance with the ordinance will not prevent the planned use of the property for boat docking without a bathhouse. The cumulative impact of multiple setback deviations would create a parcel that is different in kind and nature from other parcels in the area. Granting relief to multiple setback requirements deviates too much from the spirit of the zoning ordinance. This request is for a larger structure, which is... he's now... they're asking for a slight increase over what had been denied previously, they're asking for 181 square feet. The previous request, which was denied in 2016, was for 144 square feet.

The previous request was denied by this ZBA in case 16001, and was appealed to the circuit court case number 16-56795-AA in which judge Cronin upheld the ZBA ruling. There have been no significant changes in circumstances that would affect the ZBA's prior analysis of the applicants previous substantially similar setback request. In particular, with respect to standard one, nothing has changed about the nature of recreational boating that wouldn't render a need for a bathroom essential for using the property for that purpose.

Nearby on both sides of the river in this area there are city-maintained bathroom facilities for boaters and tourists to use, lessening or eliminating the burden associated with complying with the setback variances. And I would also cite that directly across the river, the city maintains ten boat slips, which is 66% more than this applicant, and at those boat slips, there are none of these requests. There is no screening. There are no public bathrooms, especially for this facility. There are public bathrooms in the area. There are no private bathrooms. And there is no screening to prevent the public and this area gets more traffic than does the applicant's property. Because it's immediately adjacent to Wicks Park. It abuts the boardwalk, which is the greatest tourist attraction in town, and on the other side of the boardwalk is a public parking lot. And especially on Wednesdays when we have our concerts, this boardwalk and those ten boat slips get more traffic in one night than the applicant's property would get in a month or six weeks. So I certainly don't see the need for this bath house, and I think it should be denied as it was in the past. I think that the applicant is trying to overrule the circuit court ruling by bouncing it back to us and we don't have the authority to overrule the circuit court on substantially the same motion. Thank you."

Ludlow

"Thanks Jim Bouk for so eloquently stating what he stated. I think that was... mimics my feelings as well. You know, from my standpoint, I'm unclear as why we are going through this again when four years ago, five years ago, we went through this once. And in general, things have not substantially changed other than the fact that the size of the bathroom utility structure has increased from, as Jim said, from 144 to 181 square feet. So from my standpoint I think this is an exercise in futility. Sometimes I don't understand the strict legal issues involved, but I would mimic what Jim Bouck just said and I'll leave it at that."

No additional comments from Jim Hundrieser

Muir

“Well I have no additional comments. I would concur with what Jim Bouck said, as well as Dr. Ludlow. As I looked at the two proposals, I saw no visible significant changes in this standard as well as the other standards and it was denied in May of 2016 and I think it should be denied again tonight. So, no, I have no comments.”

Zerfas

“In my experience on the ZBA, you know, if we’ve had variances denied when someone reapplied for a variance, it was usually a lesser ask. It was usually something where they thought differently about the problem and asked for a lesser variance. This one seems like a much bigger ask than in 2016. What stood out about that meeting for me, just from memory, in 2016 because I was on that board, was the safety issue of putting a structure 10 feet from the road, which seemed reckless at the time and seems reckless now to put something 10 feet from that roadway which already doesn’t have great visibility. If you go there now with the fence that’s put up, and also there’s a huge tree there, putting something else so close to the road that could be even taller, doesn’t seem very safe.”

Kubasiak

“My view of the application here is very similar to the general board feelings that we have to look at our standards and go through our standards, but in general when you look at the numbers and the information that we’ve been supplied. And supporting justice of a change, something that would justify some kind of a change in our earlier decision, it doesn’t seem substantial to me. And, of course, the standards are part of our process that we go through that reminds us those things, but we’ve been through this before and when you see something that is almost within a minor percentage, in fact an increase in size, doesn’t really change how it look at the standards, as we probably reviewed before.

But, that said, we do also want to, as we go through our deliberation, go through our standards and look at things and we eventually get down to some kind of review of the standards on each one of these, make sure that all of our information is well documented and it’s fairly complex for this. So, therefore, because of the uniqueness of this total set of applications, Board, I want to do a similar thing on the next two issues before we go back to any standards or, make any, move along here. Because there is, you know, I'd like you guys, if you guys would rather not go through those and hear more and talk more about those if you want to go through this one and go through the standards and get a feel for it. But I'm going to, I'm going to, go around... to get an... ask anybody's opinion is that if you want to stop here, go through the standards and have any comments. I suggest that we go through the rest of them because of the relationship of the things that are coming along, some of the things like Dick’s first question as to, you know, there's, there's concern as to applying certain laws to the request when we want to make sure that we know that we're in the right to... the right use. And that's very important to some of these things. Dick Bont, did you have any comments on that is how you want to proceed with this?”

Bont

“Yeah, Bob in 154.022 talks about lots and waterfront. And I think that way back when we first denied this, I think we brought up the issue that all non-standing or other structures have to be and set back 25 feet from the waterfront. And if I take a look at the three variances required for the bath house, the fence height and the fence and the wall or structure that is there, they all don't fall... they're all within that 25 feet, they don't fulfill that. So, I think that back then even when we denied the bath, the bath house I think the 25 foot requirement setback from the waterfront was involved in it.”

Kubasiak

“Okay, Cindy, I have a question or want a little clarification here and with Dick's comment, if you would. If I recall one of my earlier questions and clarifications from you, as I picked up one of my hardcopy packets, was that the item number two, the fence height capacity, and I'm sorry, the yeah, well, what we're calling the wall, the structure there, is that is the Board is to take the look at that during this meeting as if it's not there. Is that correct?”

Osman

“That's correct.”

Kubasiak

“So our, our judgment is to look at it as if we have to know what, make sure we're all, we're all straight on how it's zoned or what the use, what applications, what applies to it. And that there's no structure there. And whether or not that would be allowable or not allowable. Okay. So Board members, just, that's just to make sure we all understand the, the, you know, the amount of information or lack of sometimes information that we have to go on these other issues that are in front of us. So, there are many factors and many facts that enter into questions that we're trying to clarify. I think the Board is trying to get clarification as we work through this to make sure we're more straight on what we're voting on or what we're looking at as far as the use and, and how we're supposed to be looking at it based on what's happened.”

Osman

“All of these structures from Perryman and to the north of Perryman and to south to Casa Loma are all located in the C4 zone districts, which is the resort district. Marinas are permitted in that zone district as approved by the Planning Commission. And in this case, it was approved by the Planning Commission, although there have been substantial changes to what Planning Commission approved under a special land use.”

Bouck

“The question is do I think that we should continue with standards one, two, three and four, for variance number one, the bathhouse, or should we cover standard number one for variance request one, two and three, is that correct?”

Kubasiak

“Yes.”

Bouck

“I can go any way on it, sir. Whatever, whatever seems to work out best.”

Kubasiak

“Right. Okay. I guess one of my concerns is making sure that the, you know, I think, yeah, I think that the details here that we need to look at are part of any either vote, you know, voted for or against the applicant's information has to in our reviews or motion is needed to make sure that it is well documented and pretty well, pretty well detailed, which is pretty, pretty complex for this type of an issue. May take some time here.”

Bont

“I'm assuming that all of the comments that are made here are going to be summarized in our findings of facts. And that summary would be prepared by the City Clerk or Cindy or someone in the city office. Is that correct?”

Kubasiak & Osman

“Correct.”

Ludlow

“Yeah, just getting back to what Dick Bont was talking about in looking at section 154.022 and it's line F which is the lots and then refers to number four, which is the waterfront lots. Just so I have clarification on this. I didn't really understand some of the some of the verbiage here. The 25 feet from the waterfront. Yeah, that makes, that's pretty cut and dry. But then it says that the lot line which abuts the street shall be deemed the front lot line. Yeah. So, the lot line which abuts the street shall be deemed the front lot line. Just so I have clarification, and I just want to do this correctly. When I look at variance number one, they have the front setback and the setback to the roadway. I don't know, Cindy, can you clarify that for me? Am I just not sharp enough to figure this out? Or am I, am I missing something here?”

Osman

“It might be too small to see on your screen. But the section numbers are listed for each variance request. The front setback is required at 15 feet. And then under another section, a different section which talks about waterfront construction, that's 092 (D), 2 (CD). That says from the roadway for waterfront construction. So there are two different sections that apply to that setback, the one is to the front yard to the property line, and the other one is to the roadway. Two separate sections.”

Muir

“I'll defer to the group about what they feel is most appropriate. But once again, I returned to my original comment about no visibly significant changes to the proposal. And I think we've reviewed the standards in detail the first time through. I'm wondering what's going to change the second time through other than we're going to restate what we stated at that time. But I'll defer to the group and what they feel is appropriate, because it may go beyond us at this point. So we want to touch all our bases.”

Zerfas

“Whatever you want to do, Bob. I think, you know, he wanted to go over the standards for all three at the same, you know, move forward. That's fine.”

Kubasiak

“Well, it'll get a little too confusing, I guess, if we do it. If we do not, you know, because of the details. I guess I was trying to avoid the bouncing back and forth, you know, kind of stuff. But I believe my opinion is we should review the standards right now for the bathroom, have any comments or discussions based on our earlier stuff and being in this position for a long time. I don't know what there might be, but I would like to go through those four standards with the Board and make sure that we've reviewed those and whether there are comments that want to be added or, or for or against the standard, or whether there's things that you want to consider that might be a part of a motion for or against. We can go through that prior to any motions at that point. That way we've reviewed the standards on the bathhouse and then we'll move on. So why don't I start backwards this time? Zack.”

Zerfas

“So, standard one for the bathrooms?”

Kubasiak

“That's correct.”

Zerfas

“Okay, 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. Well, my opinion is that strict compliance with the setbacks does not prevent the owner from using the property for permitted purpose. It's already being used for its permitted purpose, so it does not meet the standard and therefore, the variances should not be granted.”

Ludlow

“Yeah. Regarding that, it seems like the setbacks are granted. Because of the substantial nature of the setbacks in relation to that property. It seems like, from my standpoint, that's such a difficult precedent. That's what I would add to it, what Zack just said.”

Bont

“Bob, I'd like to make a comment also that the request to give a variance to the front lot, besides the waterfront lot could create a very severe safety problem. I am finding the facts, I went out there and stuck my car where the bath house was, and it wasn't even the same size of the bath house. And where that would be setting, if there was a child that wanted to come out and look beyond that bath house to see if anybody was coming from the corner. It takes three seconds for a car to go from the corner where you can see it to the edge of that bathhouse, if anybody turn left, look, turn right, look, turn left look, and walked out and they'd be hit by a car. So, I think, besides looking at all that, that's putting in a safety issue here, along with that, besides what Zack has said.”

Ludlow

“I would agree with that.”

Bouck

“My previous comments address standard one, and to that I would add that I'm not confident that we're reading 154.022 correctly; the general regulations, Section F, paragraph four, waterfront lots. That paragraph says, “Notwithstanding any other provisions of this chapter,” and in this, I'm going to end the quote there. This chapter is chapter 154, which is the land use chapter of the zoning regulations. So, “Notwithstanding any other provisions of the land use chapter. All structures on a waterfront lot shall have a setback of 25 feet from the waterfront.” And I think that first paragraph notwithstanding any other provisions of this chapter, makes that statement superior to anything else in all of section one, paragraph 154, which would say that we are not authorized to grant a variance. Before defines the roles of the Planning Commission, the ZBA, the right to appeal to Circuit Court. That would seem to make it superior that no structure, every structure, all structures on a waterfront shall have a setback of 25 feet from the waterfront. So that combined with my previous statements is my comments for standard one for variance number one, bathhouse.”

Bont

“And, Bob, just to add to that the interpretation of chapter earlier 154.006(B) talks about the more restrictive or higher standard, I think, which Jim is referring to.”

Kubasiak suggests moving along to standard two under Section 154.155(B) and asks Dick Bont to read section two.

Bont

“That a variance would not do substantial justice to the owner, as well to other property owners in the district or a lesser relaxation would not give substantial relief and be more consistent with justice to others.’ Well, there have been many other applicants in that area that we have denied

lesser requests. And I think this would fall into that same thing in this zoning district and giving the property owners request, there is no other lesser relaxation that could be granted on this property.”

Bouck

“Section two says substantial justice to others. Well, that includes our requirement to assure that public safety and welfare is secured. That's not stated explicitly in our standard number two, but it is required of us to assure that public safety and welfare is secured and as was previously stated by Dick, the proposed structures completely obstruct the view of oncoming vehicles on Park Street for the pedestrians at the chain ferry and conversely blocked the view of pedestrians from the vehicles on the street. It's a very narrow street pedestrians must walk on the street surface and there is no walkable shoulder on the road. In this area, the width the Park Street is severely constrained by sand dunes to the west and Kalamazoo River to the east. Vehicle and pedestrian traffic in this area is intense. The proposed structures additionally obstruct the view of Saugatuck downtown area for the visitors and residents near the chain ferry. This waterfront view has been a significant element of Saugatuck's charm and character as a tourist destination and is essential to maintenance of local property values.”

Kubasiak suggests Jim Muir read standard three under Section 154.155(B).

Muir

“That the plight of the owner is due to unique circumstances of the property and not to general neighborhood conditions.”

Kubasiak asks for any comments from Muir related to standard three.

Muir

“No, I don't see that the owner has any unique circumstances that's not unique to all the other neighborhood conditions. I just don't see it so I would say that it doesn't exist.”

Kubasiak asks Jim Bouck to read standard four under Section 154.155(B).

Bouck

“The size and shape of the parcel is not self created. The problem with the narrow piece of land is created by the location of Park Street and the location of the Kalamazoo River. However, the property can be used for many purposes, including docking boats. Adding a bathroom would, could enhance the value of the property, but that's not a factor to be relied upon by the Board. This problem is self created because the applicant incorrectly insists that a bathroom is necessary for recreational boat dockage while hundreds of boat docks have been continually and successfully operating within Saugatuck without private attached bathroom facilities.”

Bont

“Yeah, I think I go along with Jim, with what he is saying about that. Really, this is self-created because he wants this larger structure and everything. So, I see what Jim is saying.”

Kubasiak

“Okay. So, in general, at this point, I didn't hear too many positives here that would, that would render something that would seem that the board would make any kind of a motion in favor of meeting the standards, there was pretty much all that they did not meet any of the four standards and there were some, I guess, some documentation you guys put out after that. Some of us may have related back to our original issues. Sounds like it did, had a lot of the same comments and

with some new findings. So at this point, the Board, do you guys feel that you are in a position where we should, do you want to make any kind of a motion based on the facts of our findings? Or do you want to wait? Now ask that again and go through any of the others? And come back to this?"

Bouck

"I would prefer to go through all four standards and get our findings of fact for all four standards for all three variances before a vote."

Kubasiak

"So, we would move along on to the item, fence heights, opacity, front with gate. Anybody want to jump into this one with any comments, questions. Remember, if we do have questions of the applicant, we can ask them if we have any questions or concerns during our deliberation."

Bouck

"Okay, what we're talking about here, just so everybody knows what I'm thinking. We're talking about a four-foot wall with a gate that goes from the bath house, slightly south and then down to the waterfront. We're not talking about the larger screening wall, which is variance number three. Standard number one, that strict compliance with area setbacks, branch height, bulk or density would not unreasonably prevent the owner from using the property for permitted purpose or would not render conformity unnecessarily burdensome. For this four-foot wall with a gate, it's a solid wall, not meeting the standards, the applicant did not meet its burden of explaining how each of the four standards for a variance is met.

Nowhere in the application does the applicant explain how any of the standards for the variances for this fence are met. Despite the fact that the code clearly places the burden of proof on the applicant to show that each standard is met. Strict compliance with the ordinance will neither prevent any use nor the planned use of the property as ~~pleasurable~~ pleasure boat docking without a non-compliant privacy solid fence, as requested. A compliant fence would in fact be less burdensome than the proposed solid fence. The cumulative impact of multiple deviations would create a parcel that is different in kind and nature from other persons in the area. Granting relief to multiple zoning requirements deviates too much from the spirit of the zoning ordinance. Thank you."

Bont

"Right, would the variance do substantial justice to the owner, as well to other property owners in the district or would lesser relaxation would give substantial relief and be more consistent with justice to others. While they're along that whole entire side of the river, there aren't even fences that people are erecting that are solid are right with gates. And so, I feel that if in fact we gave them lesser relaxation would not do justice here either. So that's my statement."

Zerfas

"I 100% agree with what Dick said."

Muir

"I would concur also. Yeah, I would agree."

Ludlow

"Yeah, I think Dick was fairly succinct there in point out the important issues."

Kubasiak

“Let’s move along to number three. I’ll read that one: “That the plight of the owner is not due to unique circumstances of the property but is due to the general neighborhood conditions” Well, let’s see. That’s a pretty good size one here. The pedestrian chain ferry... there’s a lot of traffic in the lot and it’s not sufficient to impede or, you know, the applicant’s docking their pleasure boat, so that doesn’t seem to have too much bearing on it. You know, there are currently hundreds of successful operating public-private boat docks in the area and that have a high traffic pedestrian area and walkways. So that doesn’t seem to have, you know, too much of an issue on that. So, I’m not sure that the uniqueness we’ve brought this, we have commented a little bit on this property before and it applies to every one of these standards, whether it’s one, two, or three of the interesting uniqueness of the property, so it has a play on a couple of these standards. It’s my opinion on that, so I don’t know. Anyone else have any other comments on that, on standard number three for this? For the fence here?”

Silence. Kubasiak asks Jim Muir to do standard number four.

Muir:

““That the problem is not self-created or based on personal financial circumstances.’ I would echo what we said about the previous request for variance is that the problem is definitely self-created and I think to place another fence out there is just asking for more trouble in an already crowded area and I don’t think it’s our place to rewrite standard. I just feel like their request is asking or attempting to negotiate their way through a different interpretation of the standard. I go back to what you guys did a number of years ago when you denied the variances and you spent a lot of time analyzing this and I think, I mean, I suppose it’s good that we’re doing it, but I just think it’s very burdensome for all the parties involved.”

Bouck

“I completely agree with the applicant’s stated desire for privacy in a boat docking area is a self-created requirement.”

Kubasiak

“Not, again, based on that review of that one it seemed like there was... we would again have to go back and look at any motions and have good documentation, however we choose to make that. But all good comments, but mostly on the side that was not finding that it met all the standards or any of the standards at this point. So let’s do the third and final one which is the screening privacy fence wall, type of one that is for height and security. There’s a lot of input from our public on this side of this variance, but any discussion before, anybody have any questions or discussions about that before we enter into our standards with this. Again, we’re to look at this pretty much like it’s not there and I’ll say if it’s not there, it should meet the standards. I’ll say that right off the front.”

Bouck

“The question is which standard: fencing or screening, because they’re very different.”

Kubasiak

“Right and that’s part of what we need, that’s up to us to... well, it’s been determined, do I understand, it’s been determined, Cindy can confirm. I believe she said she determined it to be called screening. Is that correct, Cindy?”

Osman

“Yes, Mr. Chairman, that is correct. However, part of your, part of the things that you could consider is whether or not I made an incorrect determination and that is totally proper.”

Sluggett

“Yeah, I’m going to respectfully disagree with you, Cindy. That matter is not, no one has appealed that interpretation formally and so I do not believe that’s in front of the ZBA. The determination of the zoning administrator is that this is subject to screening provisions. The screening provisions, as I read Cindy’s memo, indicate that a six foot screen is permitted. The variance that is being requested is to increase that to eight feet for a portion of the overall screen, but the remainder would remain at six feet. I believe, is that correct, Cindy?”

Osman: “That’s correct.”

Bouck

“We disagree because of 154.006: ‘Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the more restrictive or higher standards shall control.’ And in this case, the screening standard was implied because of incompatible uses but by the applicant’s own statement when they filled out their request for minor construction, the applicant stated that the uses were consistent both with Casa Loma to the south and the property, the chain ferry, and the property to the north, so we do not have inconsistent uses. We totally consistent and, in fact, the same uses boat docking, period, and to say that screening is required because of inconsistent applications is not valid in this case. The fencing standard is the more restrictive.

The fencing standard applies specifically and directly to waterfront applications. The screening standard is a general one for separating commercial, industrial, other areas like that from residential. In this case, the waterfront fencing standard should be the one to apply. Additionally, the screening as requested violates several other regulations. Number one, it’s a structure, it’s on metal posts welded to the sea wall, so it’s absolutely a structure and it can, and it has to be set back 25 feet from the waterfront, so that the screening cannot apply. It has to be fencing and the applicant’s statement that screening is necessary for trash is not applicable in this case because we’re not reviewing it for screening trash containers, which could be located anywhere on the property if they’re required at all and I would note that the city boat slips across the street where there are 10 boat slips, not six, have no separate trash cans. People take their trash home and, in this case, the users of this so-called marina only live a half mile away, so they can take their trash home as well if they want or they can have small trash cans. Whatever they want, but trash is, screening for trash is not considered. Additionally, the electrical panels are a self-created hardship for the applicant. Those were installed after the wall and the installation of electrical panels is subject to the National Electric Code, the zoning standards, and the Consumers Power electric metering guidelines. The applicant controls how many panels, where they’re located, and the arrangement of them and the applicant chose to arrange them in a manner seven feet tall to justify his wall, which had already been built. Electrical panels and meters don’t have to be any higher than 3.6 feet, 3 feet 6 inches from the ground, according to the Consumers Power guidelines and I’ve confirmed that with their rep for this area, so I completely disagree that screening is the appropriate standard in this case. It should be waterfront fencing and we may need to get more rulings on that.”

Kubasiak

“I wouldn’t disagree on that. Based on what I’ve read a little and some of the standards you referenced that it does seem that that is not, you know, we also have a right to our job to make sure that, in case there was some kind of assignment or something by the zoning administrator, so that it doesn’t really meet that standard or it falls under a different jurisdiction, like this one where fencing could be the proper standard as opposed to screening.”

Bouck

“Additionally, Mr. Chairman, the special land use as approved by the Planning Commission, if that is valid, required the applicant to get a variance for their fence as a precondition to granting the application and no variance for that fence was ever requested. They’re not applying for a variance for a fence, which is what they requested in their application. They’re applying for screening, so they’ve changed from their application.”

Kubasiak: “The original was fence?”

Bouck: “Yes and they were required to get a variance.”

Bont

“Mr. Chairman, also, and I want to reiterate a little bit of what Jim said. In 154.005, the screening, fence, neither of those is what it is. It is a structure. Anything constructed or erected or use of which requires a permanent location on the ground or attachment to something having a permanent location on that ground, which was welded permanently to a structure below, so that is a structure. I don’t see it as a fence or screening.”

Bouck

“In addition, sir, the party has said that they’re suffering an extreme burden from this pedestrian traffic, but they have yet to define what that burden is. Is it people swimming in front of his docks, so they cannot dock the boats? Is it people walking peacefully across the chain ferry dock? Those same conditions exist all over town and it’s not clear what constitutes a burden in this case.”

Ludlow

“I’m curious. When I look I have a picture of the fence or the structure, whatever you want to call it, and the main portion which runs east and west, at the east end, there is a short segment that sort of runs to the north. When I went down there, it looked as though that had crossed the property line of the city’s property. Does anybody, did anybody see that or take note of that? Just out of curiosity.”

Bont

“John, I actually have a picture, photo showing that return on the front there that does extend over into the city’s property.”

Kubasiak concurs.

Muir

“No I’m completely satisfied that we’ve covered the topic ad nauseam, to tell you the truth, but we had to, we had to. It’s interesting to see, you know, I was here 50 years ago when I jumped in a canoe down there and got out onto the river because I was a camper at the presbyterian camp and if you’d have told me that I’d have been involved in this in my future, I’d have said you were crazy. It’s progress, right?”

Osman

“I do have a question and maybe it is really for Jeff but this was noticed out as a variance, not an interpretation, so I think procedurally we would have to notice it out as an interpretation, but, Jeff, could you answer some of those questions?”

Sluggett

“Well, yeah, I tried to before. You know, I understand the arguments in terms of why this isn’t screening. I fully understand those arguments why it’s a fence or not a fence and a structure, but the fact is the zoning administrator for the city has made a determination. That interpretation has

not been appealed to the ZBA and in my opinion, without an appeal to the ZBA, this Board does not have authority to act on that issue. A variance request has been submitted. That's what's technically before you and I would encourage you, again, to restrict your determination to that variance request."

Kubasiak

"And who would create that appeal, Jeff?"

Sluggett

"Well, I suppose, I think it, to some extent, it may be moot depending on how it plays out this evening, but it would have to be somebody with standing. We'd have to take a look at that. I mean, that's the honest answer. We'd have to take a look at it."

Kubasiak

"I think my understanding is that the Zoning Board of Appeals can review determinations made by the zoning administrator."

Sluggett

"Yeah and I apologize for interrupting. They have authority under the zoning ordinance and the Zoning Enabling Act to in fact review appeals of a zoning administrator's interpretation, but in this case there has not been an appeal and I don't believe the Zoning Board of Appeals unilaterally can take it upon to overturn zoning administrator interpretations."

Kubasiak

"And for my clarity, how is an appeal made on something like that?"

Sluggett

"Well typically there would be a written... it would be in writing, it would be to the zoning administrator by somebody withstanding, saying basically, 'I want to challenge the interpretation that's been made and that would then get process, that would get put on a future agenda and notice for a ZBA review. It's noticed just like any other ZBA matter."

Kubasiak

"Okay, so, Board members, based on what we're hearing, do you feel that there's any reason to go through the standards based of it on a screening or see if we want to have further discussion or something on our understanding of how this should be determined? Anybody have any input on that?"

Bouck

"I would hereby make the following motion: That this Board grant a continuance of this special meeting until our next scheduled meeting on July 14<sup>th</sup>, 2021. This continuance is necessary to allow a consolidation of findings, a review of comment letters and information recently received, and to consult with independent, competent legal counsel.

Point two: That as soon as practical, the representative prepare the special meeting minutes for this session and compile findings of facts for each of the three requests, as determined by the Board at this meeting and shall submit the correspondence to all ZBA members for review.

Point three: That prior to the next scheduled meeting, the members of this ZBA and others, as requested by the chair, meet in a special closed session with independent legal counsel to assess this request.

Point four: This ZBA respectfully requests the City of Saugatuck to engage independent legal counsel to advise the ZBA and to be in attendance at all meetings related to this matter and this is based on Section 154, 153 of the City Code, which states an attorney for the City shall act as legal counsel for the Board and shall be present at all meetings upon request by the Board as approved by the zoning administrator.”

Kubasiak

“Okay, Jim, you’re actually putting that in as a motion. I understood the way you stated that.”

Bouck

“Yes sir. I think it’s time to end our debate at this point we’ve got to many issues in front of us. This is a really convoluted issue that we haven’t dealt with before and I think we need independent legal counsel based on all the different opinions that we’re getting.”

Bont

“Bob, I would second Jim’s motion.”

Kubasiak

“Dick Bont would second that motion. Okay, let me ask the Board members if they have any comments or concerns about what we’re, what direction we’re going here. Let me go up to Mr. Ludlow. Can I ask you first?”

Ludlow

“I guess my question is to Jim Bouck. So what we’ve accomplished thus far in looking at the standards for the first two requested variances? Is that now inclusive in what you’re talking about or is that exclusive? Are you talking about the whole, all three variances, I assume? Correct?”

Bouck

“Talking about all three. What we have covered, plus item three because of the open issues on that one.”

Kubasiak

“Okay, that’s good questioning and clarification. I was thinking that way. Zach, you have any input on Jim’s motion and Dick’s second on this?”

Zerfas

“I just want to understand, you know. So, Jim, what you’re wanting to seek legal counsel for is to determine if we even have the right to grant a variance for three or if it should be considered a screen or a fence or a structure?”

Bouck

“Yes, plus the open questions from number one and number two. Specifically relating to waterfront lots notwithstanding any provisions of this chapter. All structures shall a setback of 25 feet plus the fact that these three variances, especially the bath house is basically the applicant appealing a circuit court ruling back to the ZBA, so there’s a lot of conflicting issues here and issues we’ve never dealt with and I think we need to sit down with an independent, non-conflicted attorney and go through all this. In a closed session where we can be very frank and open with all of our opinions.”

Muir

“You know, I’m comfortable with the first two variances, but the discussion on the third one about whether we have a screen or a fence. I think Jim Bouck makes a good argument for the fact that

we need clarification there and also the bigger issue of it appears to me that the Zoning Board has rarely had a request come back to them that has already been resolved, especially through a court decision, which has not substantially changed from the original one. I think it would be incumbent upon us to sit in closed session to see exactly where we stand and I think Jim has done a great job of preparation for tonight in reviewing the standards, reviewing our guidelines, but, you know, Jim won't be sitting at the table in court. The attorneys will and so I think I would concur with Jim that it would be valuable for us to have a session."

Ludlow

"Can I ask a quick question? And I don't know if, Bob, is this for you or for Cindy. What time constraints are we under right now from, I guess, a definitional or a legal standpoint? Do we have time constraints?"

Osman

"We do have time constraints and we have to make a decision within 45 days. I'm sure Jeff can speak to this better than I can."

Ludlow

"45 days from when?"

Kubasiak

"To the time we first started to hear the hearing on the 17<sup>th</sup>, which puts us up into summer, early August. I think it is something like that."

Osman

"And the noticing for another meeting will take quite some time. We don't have enough time.. maybe for the 15<sup>th</sup>, maybe we do, but I would have to get that to the newspaper."

Kubasiak

"The next meeting's on the 14<sup>th</sup>. Right, Cindy?"

Osman

"It's on the 15<sup>th</sup>."

Kubasiak

"I thought you moved it to the 14<sup>th</sup>? You said you couldn't meet on the 15<sup>th</sup>."

Osman

"Oh that's for, yes, you're correct. That's right."

Kubasiak

"14<sup>th</sup>, and we could have the meeting before that and put it on the agenda for the 14<sup>th</sup>."

Osman

"We can't, we don't have enough time for that, for the public notice that goes in the newspaper and mailed to everyone within 300 feet."

Kubasiak

"For a special meeting? I thought Special meetings are only like 18 hour notice or so."

Osman

“Oh no, not for zoning board. That we have to have public notice 15 days before the public hearing and that’s under the Zoning Enabling Act. I think Jeff can answer more questions about that. He has his hand raised.”

Sluggett

“If the intent is simply to have a special meeting, so you can meet with counsel in closed session, then you don’t need... then the 18 hours notice would be accurate.”

Kubasiak

“So we do have time for that. Yeah, I think I’m sure the Board members could work with a schedule on that after we could probably figure that out here tomorrow or whatever or set a date now that we to do that. We do have to work through it.”

Muir

“Cindy, do we have to have a special meeting? Can’t we adjourn the closed session on July the 14<sup>th</sup> and then go back into open session as we finish our deliberations?”

Sluggett

“Mr. Chairman, the answer to that is yes.”

Kubasiak

“Yeah we can have a special meeting based on the motions that’s in front of us, right?”

Sluggett

“Well my understanding was he was saying we’ve got the meeting coming up on July 14<sup>th</sup> or 15<sup>th</sup>, whatever it is, that’s already a scheduled meeting. So you wouldn’t have a special meeting, you would simply postpone this meeting consistent with the motion that was made to that date and at that date, you will add to the agenda a closed session to discuss presumably a written legal opinion from counsel.”

Bouck

“I would prefer to have the closed session directly with counsel, face-to-face.”

Kubasiak

“Prior to that meeting.”

Bouck

“Prior to that meeting, not immediately prior but some number of days in advance, if possible.”

Sluggett

“Okay, then that would require an 18-hour notice for that special meeting.”

Bouck

“Okay we could do an 18-hour notice, I think.”

Kubasiak

“Okay so our motion is doable it sounds like. Any other discussion on the motion that we have in front of us? Then I guess, Cindy, I would like to call for a vote on this that we go for a continuance as the motion read, if you would like. Jim, if we need to read that back to anybody, do we want to do it or do you have it in front of you? You could say it one more time, so everybody hears it again. Just as a clarity.”

Bouck

“Sure, let’s see how good my memory is. I hereby make the following motion: This Board grant a continuance of this special meeting until our next scheduled meeting on July 14<sup>th</sup>, 2021. This continuance is necessary to allow a consolidation of findings, a review of comment letters and information recently received, and to consult with independent, competent legal counsel.

Point two: That as soon as practical, the city representative prepare the special meeting minutes for this session and compile findings of facts for each of the three requests as determined by the Board at this meeting and shall submit the compilation to all ZBA members for review.

That prior to the next scheduled meeting, the members of this ZBA and others, as requested by the Chair, meet in a special closed session with independent legal counsel to assess this request and prepare a response to develop proposals for closing the ongoing issues in this case.

Number four: The ZBA respectfully requests the City of Saugatuck to engage independent legal counsel to advise the ZBA and to be in attendance at all meetings related to this matter. This is based on Section 154.133 of the City zoning codes.”

Kubasiak

“Okay so, again, motion on the floor by Jim Bouck, seconded by Dick Bont and discussion has been reviewed, so if there’s no more questions anybody. If not, I’m going to call for a vote on this.” Upon roll call, the motion carried unanimously.

9. **Adjournment:** A motion was made by Bont, 2<sup>nd</sup> by Bouck, to adjourn the meeting at 7:39 p.m. Upon roll call the motion carried unanimously.

Respectfully Submitted,

Padley Gallagher  
City Clerk