

Village of Suttons Bay
Zoning Board of Appeals

April 19, 2023

ATTACHMENT A

ZONING ADMINISTRATOR LETTER DATED FEBRUARY 10, 2023

To: Village of Suttons Bay Zoning Board of Appeals

From: Steve Patmore, Zoning Administrator

Date: February 10, 2023

Re: Variance Request for 379 S. Shore Drive – February 15, 2023 ZBA Meeting.

Per the memo from the Village of Suttons Bay Attorney, the purpose of this February 15, 2023 Village of Suttons Bay ZBA meeting is to determine if there are “material changed conditions” between the two applications submitted for variances.

The purpose of this memo is to:

1. Address the applicant’s attorney’s suggestion that a variance is not really necessary.
2. Compare the October 19th Variance Site Plan with the December 7th Site Plan.
3. Provide a format for ZBA action at their February 15th meeting.

Item 1- Is a variance really needed per Section 19.5.B.2?

The letter received from the applicant’s attorney states that “On the other hand, the applicant’s desire to fully comply with Section 19.5 B2, which would indicate that the expansion is permissible, and no variance request is needed.”

So does the applicant’s request comply with Section 19-5.B.2. ?

Section 19-5.B.2 addresses expansion of a non-conforming structure, and states:

A non-conforming 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.*

Shoreline Setback: The required Lake Michigan Setback is 50 feet.

Two-thirds of that distance is 33.5 feet, measured from the line, which is the historic high water mark per Section 7.3.B.

So an existing non-conforming building could be expanded up to a lake setback of 33.5 feet without a variance, provided the other conditions are met.

The requested Lake Michigan Setback in the Site Plan is measured at 18.5 feet, which is closer to the high water line than the 33.5 feet allowed. Therefore, the application does not meet Section 19-5.B.2.

Front Setback: The required Front Setback is 25 feet in the SFWR District.
Two-thirds of that distance is 16.75 feet, measured from the road right-of-way line.
So an existing non-conforming building could be expanded up to a setback of 16.75 feet without a variance, provided the other conditions are met.
The requested Front Setback on the Site Plan is listed at 6.0 feet, which is closer to the line than the 16.75 feet allowed. Therefore, the application does not meet Section 19-5.B.2.

Item 2- Comparison of the two ZBA Applications submitted by Michael Sanocki

Below is a table summarizing the differences found between the two Site Plans.

The two applications both reference incorrect interpretations of where setbacks are measured from. So, the zoning ordinance was researched and the table below reflects the following:

- A. All setbacks are measured to eave lines, not the building walls. (the original application indicated setbacks from building walls)
- B. The Front Setback is measured from the road right-of-way line. (Table 4-2) The Applicant's attorney maintains in his letter that the Front Setback should be measured from the centerline of the road. Figure 4-2 clearly illustrates that it should be measured from the right-of-way line.
- C. The Lake Michigan Setback is measured from the Lake Michigan Historic High Water Elevation, (582.3 feet IGLD 1985) per Section 7.3.B. In this case, according to the Site Plan, the Historic High Water Elevation falls on the face of the seawall. The October application incorrectly references a setback distance from a historic legal description, and the December application incorrectly references a setback from the existing shoreline.

Comparison of the two Site Plans submitted with the Applications

	October 19th Application	December 7th Application
Proposed building addition size:	26' x 25' + front entry	25' x 25' + front entry
Proposed building overhangs:	4.5' front overhang, 2' east side	1' overhang around perimeter
Front Setback:	2' to eave at SE corner 5.5' to eave at entry	Approx. 6.5' to eave at SE corner 6' to eave at entry.
Proposed Lake Michigan Setback	18' to eave @ NW corner	Approx. 18.5' to eave at NW corner
Proposed Side Setback (East)	12' to eave line	15' to eave line (meets setback)

Summary of differences between the two Site Plans:

- Building size reduced from 26' x 26' to 26' x 25'.
- Building shifted to eliminate the side variance request.
- The front eave line was reduced.

Item 3- Requested Action

According to the Village Attorney's memo, the Village of Suttons Bay ZBA must determine whether there are changed material conditions in the December 7, 2022 application compared to the previous application.

Remember, on February 15th you are not acting on the variance request itself, just whether there are changed material conditions.

- If the ZBA finds that there are changed material conditions, then a Public Hearing would be scheduled for the variance request.
- If the ZBA finds that there are not changed material conditions, then according to the memo, the applicant could re-apply again after October 19, 2023.

To assist you, she noted the following in the memo to use as findings:

- In the ZBA's previous decision on the variance request, was the need for the side yard setback variance an influencing factor, really important, or of great consequence in their determination? (yes/no)
- In the ZBA's previous decision on the variance request, was the amount of the variance requested from the Lake Michigan or front yard setback variance an influencing factor, really important, or of great consequence in their determination? (yes/no)
- In the ZBA's previous decision on the variance request, was the amount of the front overhang an influencing factor, really important, or of great consequence in their determination. (yes/no)
- Other findings:

Motion that the Village of Suttons Bay Zoning Board of Appeals finds that the December 7, 2022 application (does/does not) represent changed material conditions from the application denied by the ZBA on October 19, 2022, based upon the findings listed above.

Village of Suttons Bay
Zoning Board of Appeals

April 19, 2023

ATTACHMENT B

SECTION 17-4 & 17-5 OF ZONING ORDINANCE

17-4: Powers and Decisions of ZBA

17-5: Administrative Appeals

Section 17-4 Powers and Decisions

- A. *Powers.* The Zoning Board of Appeals shall have the following powers:
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.
 2. Variances. To approve dimensional variances in circumstances involving a practical difficulty and the other conditions required for the approval of a dimensional variance, as stated in Section 17-6.
 3. Interpretations. To interpret the provisions of the ordinance.
 4. Other Matters. To hear and decide on all matters referred to it, based on this Zoning Ordinance, including review of nonconforming uses (Section 17-8).
- B. *Decisions.*
1. Majority Vote of Members. The concurring vote of a majority of the Board membership shall be necessary to reverse any order, requirement, decision or determination by the Administrator or other administrative body, or to decide in favor of the applicant on any matter upon which it is authorized by this ordinance to render a decision.
 2. Certification of Decision. The decision of the Board shall become final upon certification of the decision in writing, signed by the Chairperson, or the approval of the minutes for the meeting at which the decision was reached, whichever occurs first.
 3. Effect on Permitting. A zoning compliance permit or building permit for a project that is reliant on the decision of the Board shall not be issued until the decision is final.

Section 17-5 Administrative Appeals

- A. *Filing Deadline and Distribution.* An appeal from any decision or action shall be filed no later than 30 calendar days after the decision or action being appealed. Where an appeal has been filed, the Administrator shall transmit to the Board all papers constituting the record upon which the action being appealed was made.
- B. *Stay of Proceedings.* An appeal shall place on hold all proceedings to implement the action being appealed, unless the Administrator certifies to the Zoning Board of Appeals, after notice of the appeal has been filed, that given the facts, a stay of executing the action would, in the opinion of the Administrator, cause imminent peril to life or property. In such cases the proceedings shall not be placed on hold, except by a restraining order, which may be granted by a court of record.
- 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.
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Village of Suttons Bay
Zoning Board of Appeals

April 19, 2023

ATTACHMENT C

SECTIONS 19-5.B.2 (page 19-3) of the VSBZO

Village of Suttons Bay
Zoning Board of Appeals

3. Will not change the character of the area in which it is located;
 4. Will not adversely affect the natural environment, especially any creek, stream pond, lake, wetland area, floodplain or groundwater;
 5. Will not be enlarged, increased or extended;
 6. Will be less nonconforming by reason of traffic, noise, hours of operation, and general compatibility with the surroundings; and
 7. Shall comply with any conditions imposed by the Board that are necessary to ensure that the proposed change in use will not prove detrimental to the adjacent properties, the neighborhood, or the community.
- E. *Reclassification.* The foregoing provisions of this section shall also apply to buildings, land or uses that become nonconforming due to any reclassification of zoning districts or any subsequent change in the regulations of this ordinance.

Section 19-5 Nonconforming Structures

A lawful structure existing on the effective date of adoption or amendments of this ordinance which could not be built under the current requirements of this ordinance by reason of restriction in area, lot coverage, height, setbacks, its location on the lot, bulk, or other requirements concerning the structure can continue subject to the following regulations:

- A. *Maintenance and Repair.* Nothing in this ordinance shall prevent maintenance and repair of nonconforming buildings, structures, or parts thereof existing at the effective date of this ordinance or any applicable amendments, rendered necessary by wear and tear, deterioration or depreciation; nor prevent compliance with the applicable building codes relative to the maintenance of buildings or structures. Replacement of a building or structure damaged by fire, act of God, removal or replacement by the property owner, or other causes may occur in the size, shape and footprint of the structure being replaced.
- 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;
 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.

Section 19-6 Nonconforming Lots

- A. *Building on Nonconforming Lots.* In any district, a permitted use may be established on a legally nonconforming lot or lots of record in existence as of the effective date of this ordinance, or the effective date of any subsequent amendment that makes the lot nonconforming. However, required minimum setbacks and building height limitations shall be met.

April 19, 2023

ATTACHMENT D

FIGURES FROM ZONING ORDINANCE

Figure 4-2: Spatial Requirements in the SFWR and WC Districts – Single-Family

Figure 4-3: Spatial Requirements in the NVRA and HR Districts – Two Family

Figure 4-1: Spatial Requirements in the CR, NVR, and HR Districts – Single Fam.

Village of Suttons Bay
Zoning Board of Appeals

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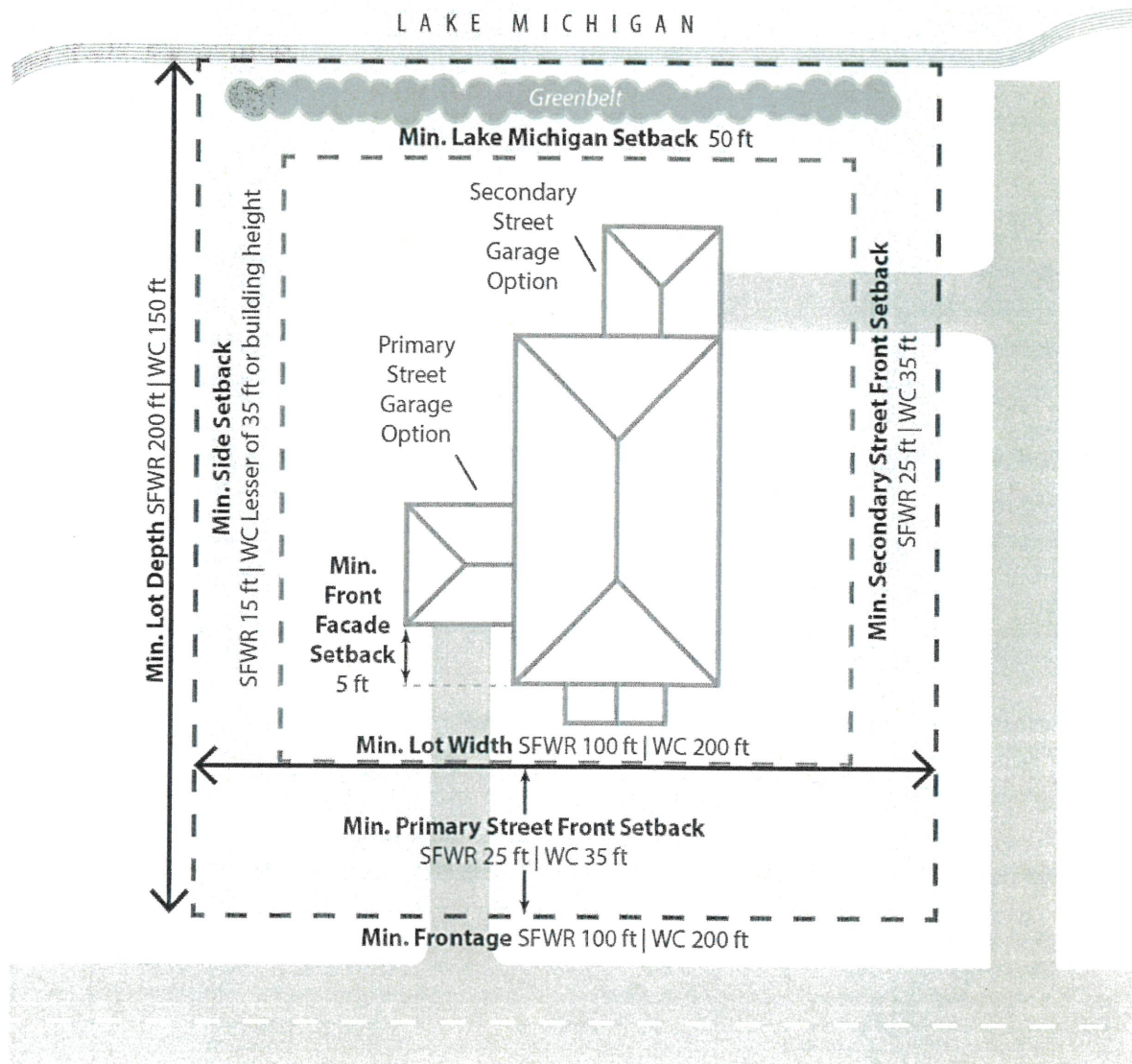


Figure 4-2 SFWR and WC Spatial Requirements- Single-Family Dwellings

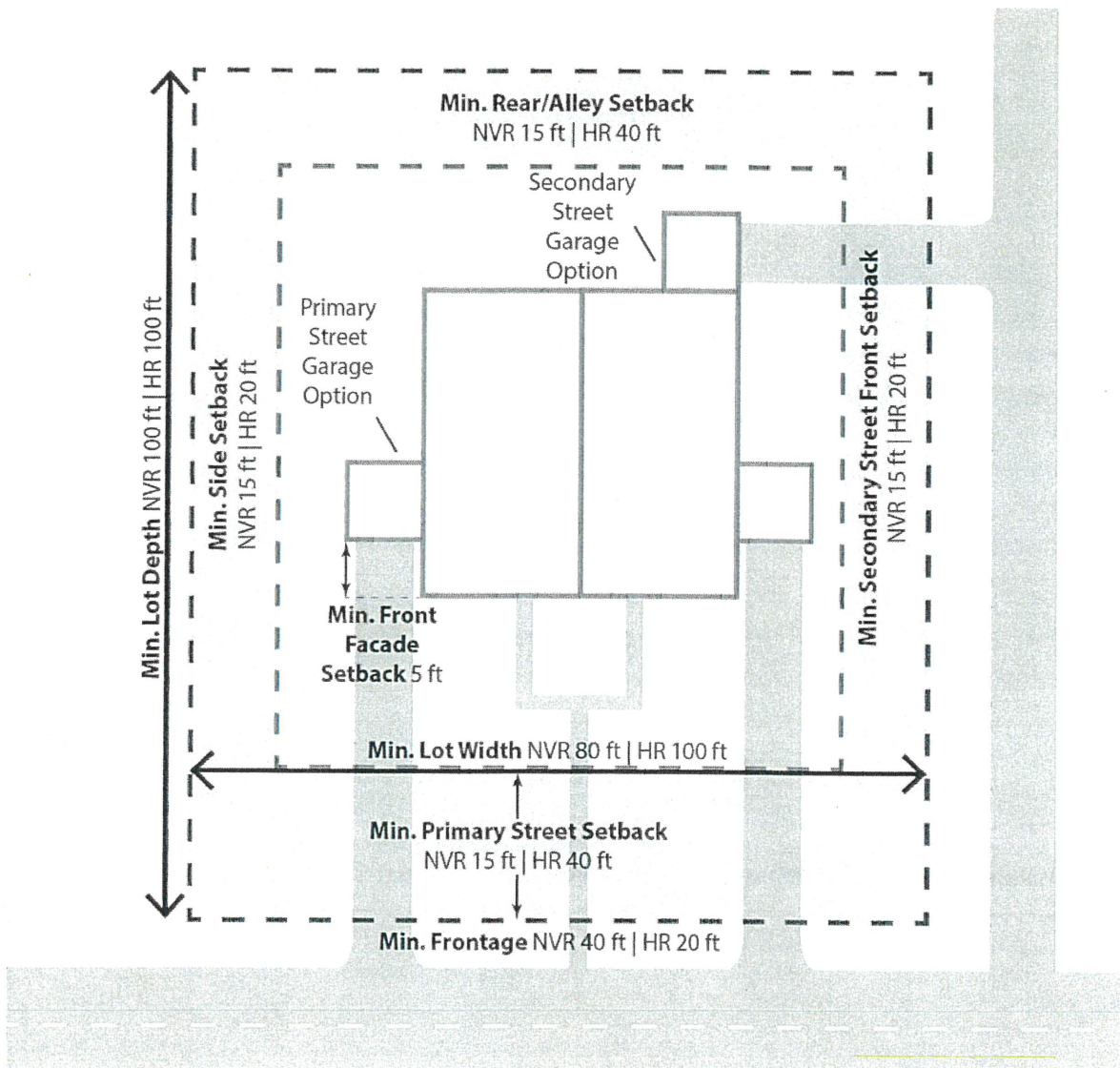


Figure 4-3 NVRA and HR Spatial Requirements- Two-Family Dwellings

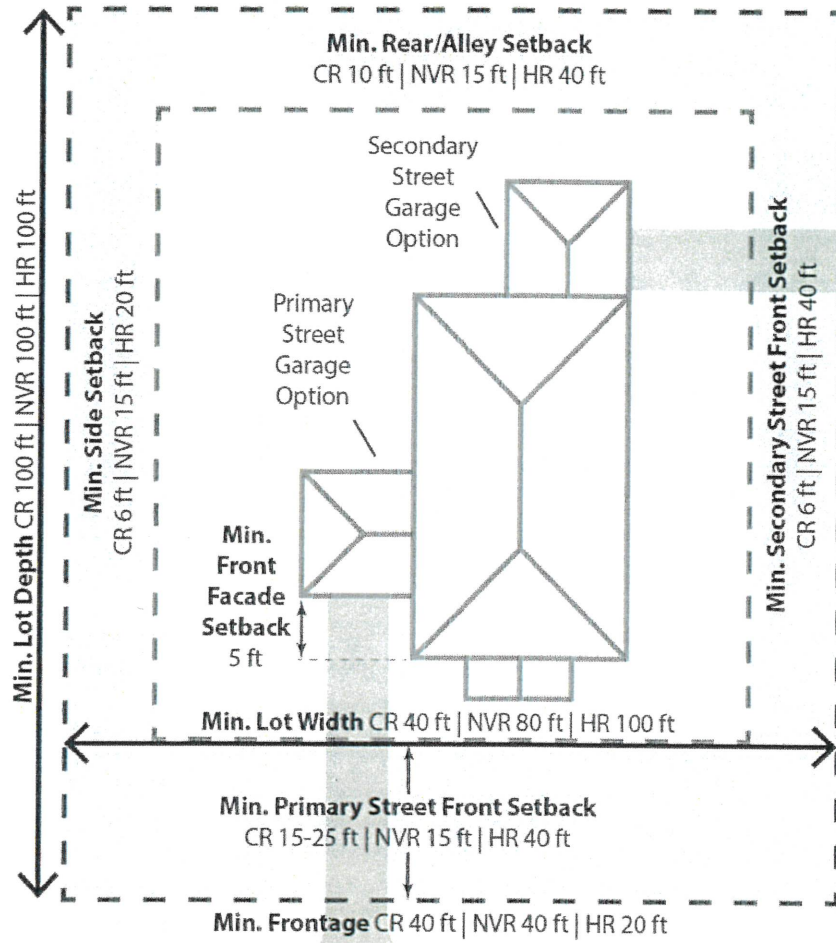


Figure 4-1 CR, NVR, and HR Spatial Requirements- Single-Family Dwellings

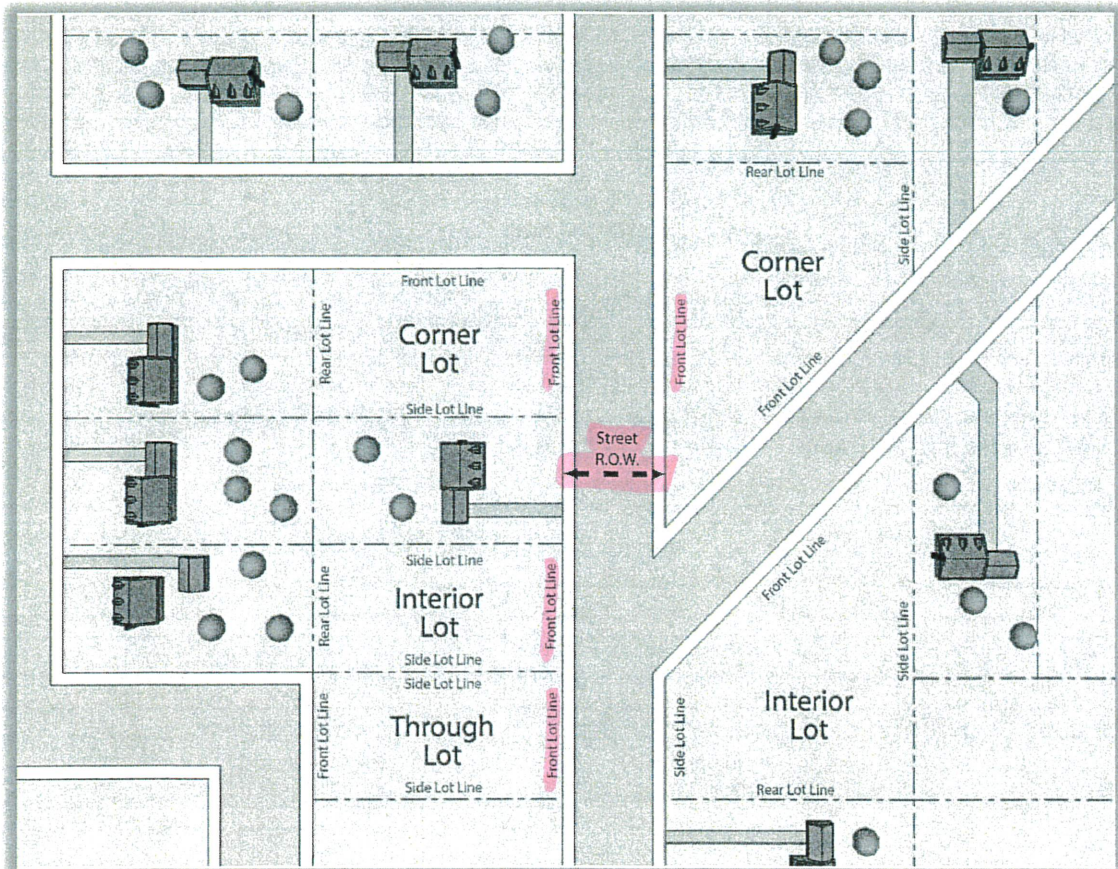
April 19, 2023

ATTACHMENT E

Page 20-7 of the Zoning Ordinance – Definitions of Lot Lines and Figure

Village of Suttons Bay
Zoning Board of Appeals

- G. **LOT, THROUGH** means an interior lot bordered by two, more or less parallel streets. For the purposes of this definition, if one side of the lot is bordered by an alley opposite of a street the lot is not considered a through lot.
- H. **LOT FRONTAGE** means the length of the front lot line measured at the street right-of-way.
- I. **LOT WIDTH** means the horizontal distance between side lot lines measured at the two points where the required front setback intersects the side lot lines.



LOT LINES mean the lines bounding a lot, as defined below:

- A. **LOT LINE, FRONT** means, 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.
- B. **LOT LINE, REAR** means the lot line opposite and most distant from the front lot line. On a corner lot, the rear lot line is opposite the shorter of the two front lot lines. In the case of a triangular lot, the rear lot line shall be an imaginary line parallel to the front lot line, not less than ten feet long, lying furthest from the front lot line and wholly within the lot. A through lot has no rear lot line.
- C. **LOT LINE, SIDE** means the lot lines connecting the front and rear lot lines of an interior or corner lot or connecting the front lot lines of a through lot.

April 19, 2023

ATTACHMENT F

Excerpt of 2011 Village of Suttons Bay Zoning Ordinance
containing a definition for the Lake Michigan Setback



Suttons Bay Village Zoning Ordinance

**December 2006
(As amended through September 2011)**



Article 42: Single Family Waterfront Areas (SFWFA)

4201 Building Types and Uses Allowed by Right:

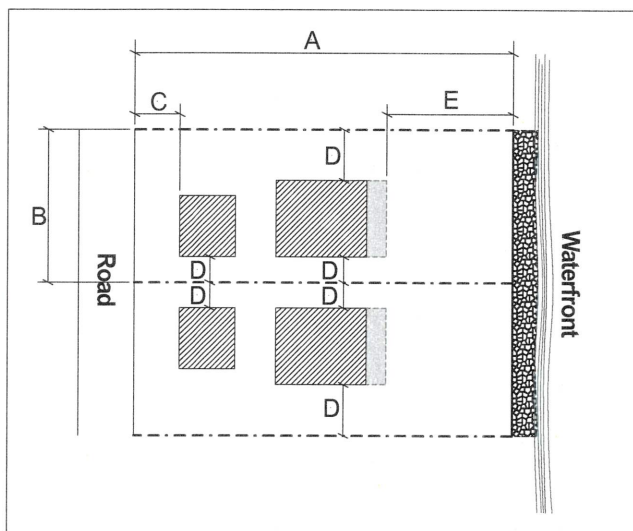
- A. Single-**Family Dwellings**.
- B. Other related accessory types of **Buildings**
- C. are also allowed, provided that they can be sited without need for modification of the following Dimensional, Bulk and Additional standards.
- D. A single attached or detached Accessory **Dwelling** a maximum of 600 sq. ft. in area may be located on the **Parcel** provided it can comply with the following standards without modification and provided the owner of the **Parcel** resides on the property.

4202 Dimensional and Bulk Standards

Single Family Dwellings shall meet all of the following dimensional and bulk standards:

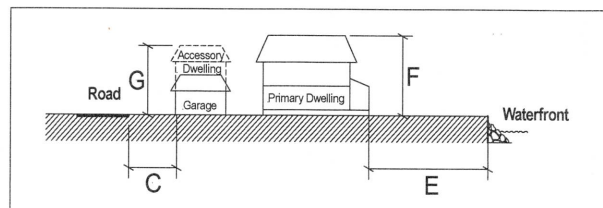
(See illustrations below)

- A. **Parcel Depth (A)** - 200' min. for newly created **Parcels**.
- B. **Parcel Width (B)** - 100' min. for newly created **Parcels**.
(**Parcel Depth & Width for Pre-Existing Parcels** -200' minimum or width or depth of parcel at the date of Ordinance Adoption, whichever is less.)
- C. **Street Setback (C)** - 25' min. from existing public **Street** edge and not within the road



Single Family Waterfront Area

(Note: Unless otherwise stated, all area boundaries shall follow **Property Lines** or street/alley centerlines.)

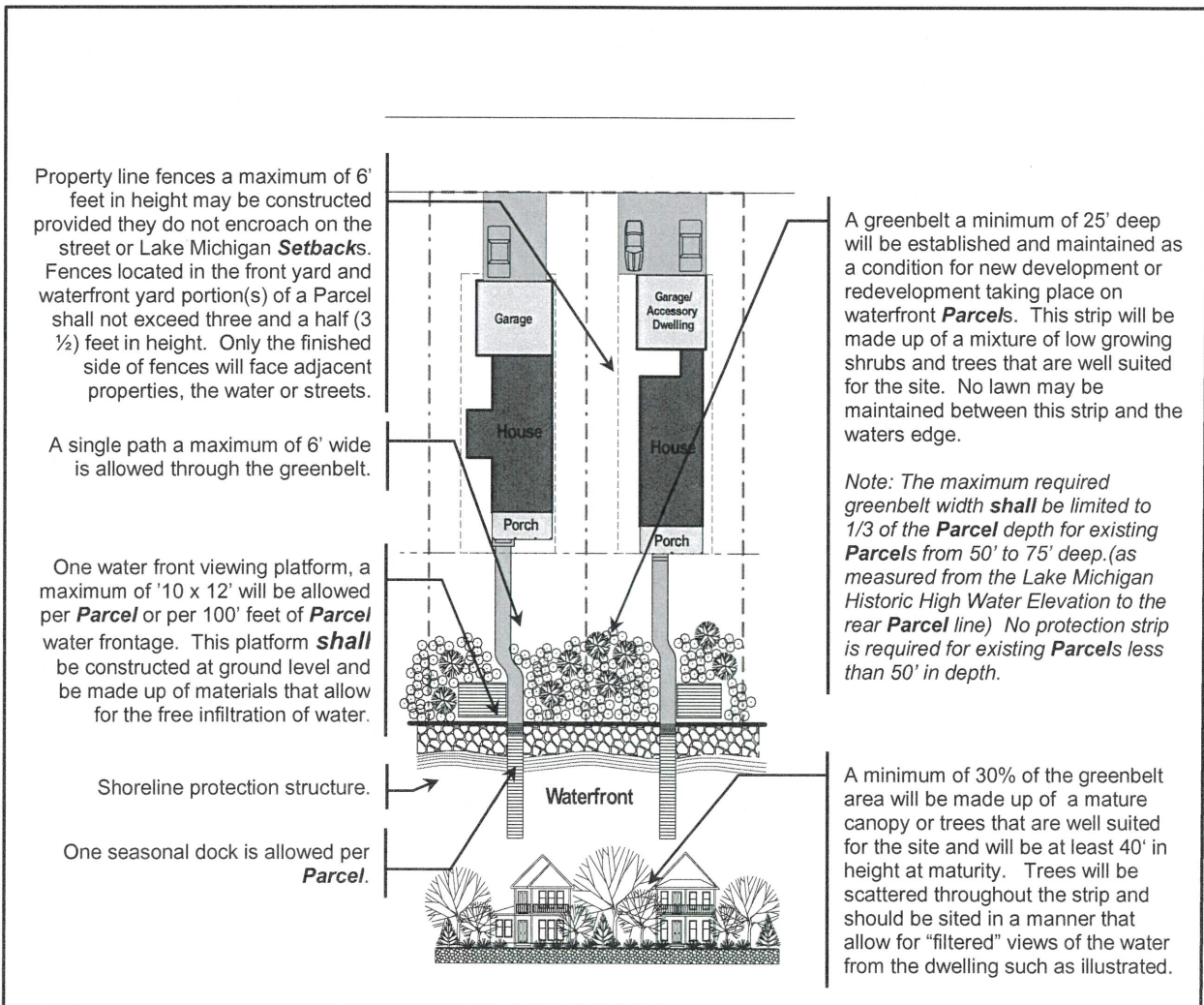


Dimensional and Bulk Standards

- right of way.
- D. **Side Parcel Line Setbacks (D)** - 15' min.
 - E. **Lake Michigan Setback (E)** - All new **Buildings** and other **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). Except where specifically allowed, no structure or other bulk regulated use (section 1003C) shall be located below the Lake Michigan historic high water elevation (582.3 feet IGLD 1985).
 - F. **Primary Dwelling Height (F)** - 30 feet from the street elevation and 40 foot total height (F1) as measured from the lowest point of grade.
 - G. **Accessory Building Height (G)** - 25' or the height of the primary **Dwelling** whichever is less.
 - H. **Maximum Building Coverage** - 30% of the **Parcel Area** or 2,500 sq. ft (whichever is greater).
 - I. **Maximum Impervious Surface Coverage** - 30% of the **Parcel Area** or 2,500 sq. ft (whichever is greater). Note: **Impervious Surfaces** include all areas which prevent the free infiltration of water.
 - J. **Off-Street Parking** - 2 spaces minimum per Primary **Dwelling** plus one additional space if an Accessory **Dwelling** is constructed.

(Annotation: Section 4202 F amended by Village Ordinance No. 8 of 2007, effective December 27 2007)

4203 Additional Development Standards



*Developments within the Single Family Waterfront Areas (SFWA) shall meet all of the above development and siting standards

4204 Special Considerations

Home Occupations are allowed by right as a land use within a **Dwelling** or **Accessory Building** when all of the following conditions, if applicable, are met:

- A. All business activities shall take place inside the **Dwelling** or **Accessory Building** and shall be accessory to the principal **Dwelling** use;
- B. Only residents of the **Dwelling** may be employed in the business;
- C. Any retail use shall be incidental to the **Home Occupation**;
- D. Permanent signage shall be limited to one non-illuminated **Sign**, a maximum of two (2) square feet in size, attached to the **Dwelling** or **Accessory Building**.

Bed and Breakfasts are allowed by right as a land use within a **Dwelling**, even if the **Dwelling**, building in which the **Dwelling** is located, or lot is nonconforming, when all of the following conditions are met:

- A. The maximum bedrooms for **Bed and Breakfast** use shall be three;
- B. The owner(s) of the **Bed and Breakfast** shall reside in the **Dwelling** during periods of operation;
- C. Permanent signage shall be limited to one non-illuminated **Sign**, a maximum of two (2) square feet in size, attached to the **Dwelling**;
- D. Exterior lighting must comply with Section 1062 Outside Lights of this Ordinance;
- E. Separate cooking facilities, such as stoves, hot plates, toaster ovens, microwaves, dishwashers, and sinks with running water not used in conjunction with a bathroom, are not allowed within a sleeping room in a **Bed and Breakfast**;
- F. No part of the **Bed and Breakfast** operation may be conducted in an **Accessory Building**.

(Annotation: Section amended by Village Ordinance No. 4 of 2011, effective August 4, 2011)

(Annotation: Article amended by Village Ordinance No. 2 of 2010, effective June 2010)