

ZONING BOARD OF APPEALS  
CITY OF GRAND HAVEN  
MEETING MINUTES

APPROVED  
8-19-2020

July 7, 2020

A special electronic meeting of the Grand Haven Zoning Board of Appeals was called to order by Chair Melanie Riekels at 7:00 p.m. via Zoom. On roll call, the following members were:

Present: Bill Hohmeyer, Mischelle Julien, Jerry Klukos, Amy Kozanecki, Kevin McLaughlin, Field Reichardt, Chair Melanie Riekels.

Absent: None

Also present was Jennifer Howland, Community Development Manager, Pat McGinnis, City Manager, and Ron Bultje, City Attorney

Motion by Julien, seconded by Kozanecki, to move Case 20-07 to the first case on the agenda passed unanimously on roll call vote.

**Call to Audience – First Opportunity**

No comments

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**Case 20-07: A request by Dorothy Grissom for property located at 1202 South Ferry Street, Grand Haven, MI 49417 (parcel #70-03-28-403-001) for one (1) variance to the Grand Haven Zoning Ordinance related to the proposed reconstruction of a nonconforming deck:**

- 1. A variance from Section 40-306.05.B.2, Projections into required side and rear yards. The requested variance is to allow for the reconstruction of a deck in the southeast corner of the property that exceeds the maximum allowable seven (7) inches above grade. The proposed deck would be up to three (3) feet above grade.**

Dorothy Grissom of 1202 South Ferry Street explained her request.

Reichardt confirmed it's the same deck as now with no changes.

Hohmeyer had no issue with the request because it is a replacement of an existing deck.

Riekels asked about proposed construction materials. Ms. Grissom said it is constructed of 2x6 wood, and the new wood will be 5/4 x 6 inch.

Chair Riekels opened the public hearing at 7:10pm.

**Public Comment:**

Pat McGinnis, 1335 Oakes Avenue, has walked past the home daily for 17 years. He stated the property is a nice home, well kept, and no outward recognition of a setback issue; he supports request.

Klukos asked if it was built according to zoning code at the time; Howland stated that unless proven otherwise, a nonconforming structure is assumed to be legally nonconforming.

Riekels recalled that the house was listed a long time ago and the deck was there.

**Correspondence:**

Howland read an email from Tom James, neighbor at 1106 Ottawa Ave, who is in favor of granting the request.

Motion by McLaughlin, seconded by Julien, to close the public hearing was carried unanimously by roll call vote.

The Board considered the variance request as it relates to the Basic Conditions.

- A. Klukos: The ordinance would normally expect that reconstruction would bring something into compliance. At the time this was originally constructed it was acceptable. To deny this request wouldn't benefit anyone so it does meet this condition. All members were in agreement because it is a replacement. Motion by Klukos, seconded by McLaughlin, to approve Basic Condition A **passed** unanimously on roll call vote.
- B. All members agreed this condition was met. Motion by Reichardt, seconded by Julien, to approve Basic Condition B **passed** unanimously on roll call vote.
- C. Klukos said it is a replacement as-is and would not have an adverse effect on anyone so it meets this condition. All members agreed. Motion by Reichardt, seconded by Hohmeyer, to approve Basic Condition C **passed** unanimously on roll call vote.
- D. Julien felt the condition was met. Klukos said the deck was built many years ago in compliance so it's not general or recurrent. All members agreed. Motion by Klukos, seconded by Hohmeyer to approve Basic Condition D **passed** unanimously on roll call vote.
- E. Klukos said it is not self-created because it is an in-kind replacement. All members agreed. Motion by Klukos, seconded by Kozanecki, to approve Basic Condition E **passed** unanimously on roll call vote.
- F. Hohmeyer said there is no reasonable alternative because it's existing and needs to be replaced. Klukos said anywhere you built the deck would require a variance. Kozanckecki said it's a deck around an in-ground pool and you can't reasonably move the pool. Motion by Julien, seconded by Klukos, to approve Basic Condition F **passed** unanimously on roll call vote.
- G. Klukos said it's following the same footprint, so the condition is met. All members agreed. Motion by Klukos, seconded by Julien, to approve Basic Condition G **passed** unanimously on roll call vote.

Motion by Reichardt, seconded by Julien, to APPROVE the requested variance because it passed all 7 Basic Conditions, **passed** unanimously on roll call vote.

**Case 20-06: A request by Bernie & Laurie Kamps (19239 North Shore Drive, parcel #70-03-19-226-001), Helen E. Leedy Trust (19287 North Shore Drive, parcel #70-03-19-**

**226-032), Jack & Carol Smith Trust (19295 North Shore Drive, parcel #70-03-19-226-033), Thomas M. & Guadalupe M. Izzo (19343 North Shore Drive, parcel #70-03-19-226-035), Geraldine R. Hoag Trust (19363 North Shore Drive, parcel #70-03-19-226-030), Jason T. & Jennifer K. Pett (19373 North Shore Drive, parcel #70-03-19-226-031), and Chamaine D. Bennish Trust (19383 North Shore Drive, parcel #70-03-19-226-009), Spring Lake, MI, 49456 for one (1) variance to the Grand Haven Zoning Ordinance related to the proposed installation of geo-tubes in the Beach Overlay District:**

- 1. A variance from Section 40-423.03, shoreline protection measures. The requested variance is to allow for the installation of geo-tubes along the waterfront within the Beach Overlay District, where such arming of the shoreline is prohibited.**

Howland read the case and provided a brief introduction.

Scott Timmer, attorney for applicants, Gielow Groom Terpstra & McEvoy in Norton Shores, introduced himself and thanked the Board for holding a special meeting to consider the request. Mr. Timmer reviewed the Beach Overlay District (BOD), which was adopted in 2018. The ordinance states that the purpose is to protect the beach during low water times and to prohibit seawalls during periods of high water, and to protect adjacent properties from erosion and to preserve the public trust shorelands (area where beach meets the water where people can walk on). The BOD is defined by a meets and bounds description. The Lake Michigan water is so high that Mr. Kamps can put the geotubes in a manner that is outside the BOD. Some other applicants could, too. The ordinance invites anyone with a hardship to seek a variance. Two years later, we have record high water levels which are surpassing 1986-1988 record high water levels. Decks are immediately threatened by high water. Late summer and fall storms could bring houses into danger. A report by Superior Groundwater Inc. (Jordan Dykstra) is part of the application. The report states that large sections of bluff have been removed already and water is encroaching into structures. The proposal is to install very large sandbags at the base of the bluff called geotubes. Sand will be trucked in and blown pneumatically. They will add a scour apron lakeside of the tubes and under the sand to further prevent erosion. The request submitted to EGLE was a pyramid of 3 geotubes. Now it's changed to two geotubes that are six (6) feet high, 6-7 feet wide with a 4 foot scour apron in front. This is the minimal way to prevent shoreline erosion. The ordinance cites it's intended to prevent seawalls and similar means. Seawalls and rock revetments reflect wave energy back to the lake and can erode neighboring properties. Geotubes minimize that effect, although properties within 200 feet may be affected. Mr. Kamps is at the border of Ferrysburg. Three properties to the north in Ferrysburg plan to install geotubes regardless of this variance request because Ferrysburg doesn't prohibit this. There are 6 parcels that are between the applicants' parcels or on either end and all have consented to the request. Savage and Goode in the middle plan to apply for a variance in the future. All owners potentially affected have consented to the request, and their property interests cover more than 200 feet.

According to Mr. Timmer, installation would take several hours per property. Since the geotubes will only be 6 feet out from the toe of the slope, they shouldn't affect public

access to walk along the beach. Mr. Timmer emphasized this is a temporary measure. When lake levels recede, the geotubes would be emptied of sand and removed. This is different from seawalls and rock revetments which remain in place permanently. The lake is at a record high, which is an extraordinary circumstance. Mr. Timmer also stated that the Installation has been approved by EGLE. The U.S. Army Corps of Engineers has approved it as well, conditioned upon City of Grand Haven approval of this variance.

Bernie Kamps, applicant, thanked the ZBA for the special meeting. Some owners have lost 40-60 feet of land. To the north near North Shore Park, there is about a mile worth of homes that have installed rocks and metal walls because their structures are threatened. Those will be there forever. They are expecting constant erosion with such high water levels. One or two big storms would lead to loss of as much as 12 feet of land. Even though Mr. Kamps' property is out of the BOD, and some other applicants' properties are very close, they prefer to not delay the inevitable erosion. The applicants like the temporary nature of the structures. All neighbors want to have a sand beach and avoid installing rocks. When the water recedes enough, they'll be able to dump the sand and remove the bags and have the sand beach again.

Jerry and Chamaine Bennish, 19383 North Shore Drive, have a deck structure that is within 10 feet of the ledge. One or two more storms may destroy the deck. That deck has seen birthday parties and engagements and they don't want to lose the deck.

Chair Riekels asked the Board members for comments.

Klukos asked Mr. Timmer if there is there anything proposed that is in conflict with EGLE regulations. Jordan Dykstra, Superior Groundcover Inc., 10588 Linden Dr NW, Grand Rapids MI 49534 stated that EGLE approved the project. Klukos asked what other communities are doing. Howland stated that such regulations are not in Ferrysburg or Grand Haven Township. Ron Bultje, City Attorney, stated that Spring Lake Township does not have such regulations, either.

Reichardt asked if the modification from a pyramid shape to 2 sandbags was approved by EGLE. Mr. Dykstra said that the reduction in number of geotubes minimizes the project so EGLE's approval covers that change. Reichardt also asked where the sand comes from. Mr. Dykstra said sources include Nugent Sand (Muskegon) or Brewer City Dock. It is clean, screened sand that can go through the blower trucks. They use this for dune backfills in other areas; it is beach sand with no dark soil whatsoever.

Kozanecki asked who decides when the geotubes are no longer necessary, when the water has receded enough, and at what water level. Mr. Kamps said that the homeowners want them removed when it is safe, but the exact time is unclear. Mr. Timmer stated that the ZBA has the ability to impose conditions, including a condition that a certain lake level would trigger removal. Mr. Bennish stated that the EGLE permit requires them to be removed. Mr. Dykstra said that once the water level reaches 579 or 580 (approx.) for a certain amount of time, EGLE requires the removal of the sand tubes. Other requirements include removal if you install a permanent structure. In this case, once water falls below average, they must be removed per EGLE.

Howland asked if Nederveld engineers plan to verify the location of the BOD on any other parcels besides the existing one on Mr. Kamps' property. Mr. Kamps stated that Leedy and Bennish have a plan from Nederveld. Mr. Bennish said that the BOD line for their property is 20-25 feet landward of the current ledge. Kozanecki said that she saw stakes with green flags along the beach, which identifies the location of the BOD.

Riekels asked if 6 feet is height enough for the geotubes. Dykstra said they think it's enough. Big storm waves might splash over it but not erode it. The important thing is to stop erosion at the bottom. Riekels expressed concern about November storms. Kamps is confident two bags will stop most storms; the rest would be considered minor erosion. The primary goal is to protect the foundation/bottom from erosion.

Riekels asked if the public has to walk in the water to go around the geotubes. Kampssaid that with one sandbag, there should be enough room to walk around the tubes. Bultje stated that the public's right is to walk between the water's edge and the Ordinary High Water Mark (OHWM). Given these high lake levels, there may not be any land between the water and the OHWM. Mr. Bennish lives on North Shore Drive full time. On a flat day, there is area to walk. When it is wavy or stormy, there is no longer an area to walk; water comes right to the bottom of bluff. It's ever-changing.

Hohmeyer asked for clarification on the construction of the system. Mr. Dykstra explained that geofabric made of the same material as the geotubes will be placed underneath to prevent scouring. If they don't do that, the bags would sink and shift and the system does not perform well. The fabric will be extended about 4 feet lakeward of the bags but it will be covered up by sand to do its job. It will not be visible most of the time.

Howland asked about the color of the geotubes and whether vegetation could grow on it. Mr. Dykstra said it is tan in color, and technically you don't want vegetation to grow through them, but you can place sand above it, walk on it, climb on it, etc. Mr. Dykstra said that he just finished installing 1,400 feet in West Olive (3 bags high); the owners are happy to speak with anyone. He emphasized the biggest priority is to protect the toe of the slope.

Klukos asked if this is the preferred way to stop shoreline erosion. Mr. Dykstra said if you're not going to use a rock revetment or seawall, yes. He showed a picture of a new installation and said the same product has been used at Topsail Beach North Carolina for 10 years and they have performed very well. He said that there are several installations in Holland, including a recent one near Tunnel Park. In Manistee, they used smaller bags and they have held up well to some really big storms. In Montague, a 1,000 foot long installation has withstood a couple of storms and they are all doing well; customers are happy. When it comes time to remove the geotubes, the lining gets disposed of in a landfill. It's a polypropylene fabric used on coastal regions all over the world. Depending on its condition it can also be recycled.

Reichardt checked with the Army Corps of Engineers. From June 4 to July 4, Lake Michigan rose 4 inches. The projection for August 4 is to go down 1 inch.

Mr. Dykstra described the entire proposed installation to be over 1000 feet of frontage. He estimates 10 days to complete the project. While they are working, the beach would be very accessible. No heavy equipment will be used; just people leveling sand and filling tubes. Sand staging spots off the road will be used. Sand will be brought in on trucks and conveyed directly into the blower truck. Sand won't touch the street. The goal is to start at the north end (in Ferrysburg) and work south. The two homeowners who have yet to apply may not be approved in time for all properties to be installed at once.

Chair Riekels opened the public hearing for the case.

**Public Comment:**

None.

**Correspondence:**

Howland stated that other than the Letters of Consent, the City received no correspondence but did receive many phone calls in response to the posted signs.

Motion by McLaughlin, seconded by Julien, to close the public portion of the case was carried unanimously by roll call vote.

The Board considered the variance request as it relates to the Basic Conditions.

- A. Julien couldn't see that it is contrary to public interest and lines up with intent of ordinance. Klukos said it's not contrary to public interest. Regulations allow for variances to cover certain things like this. Kozanecki agrees it's not contrary. If anything, it would be contrary if the ZBA didn't approve the request. Having walked the area, there isn't much beach to work with. Other members agreed. Bultje said what is unique is the high water level, and that's why we're willing to say it's still consistent with the public interest. Those who may be affected have given consent.

Motion by Klukos, seconded by Reichardt, to approve Basic Condition A because the uniqueness of the high water level makes the request consistent with the public interest, and because those who may be affected have given consent, **passed** unanimously on roll call vote.

- B. Bultje said it's just the location and not the proposed use that is in question, so there is no issue with this condition. All members believe it meets this condition. Motion by Hohmeyer, seconded by McLaughlin, to approve Basic Condition B **passed** unanimously on roll call vote.

- C. Bultje said the ordinance is only two years old and right away we are faced with unique circumstances. He doesn't want this variance to gut the ordinance for the future. The applicant acknowledged that there will be some adverse effect, but not substantial adverse effect due to consent letters received. Adverse effects are balanced out by benefits of the beach-saving devices. Motion by Klukos, seconded by Julien, to approve Basic Condition C because all property owners who could be affected by this have all consented and in order to help applicants save some of their shoreline during these high water times **passed** unanimously on roll call vote.

- D. Klukos does believe because of the high water level, this could become general or recurrent, although it won't lead him to vote against the request. The situation creates desperate times and desperate measures. That's why he supports item B. Bultje said that there are record high water levels. If they stay that high, we may want to revise the ordinance provision. We're not there yet. At this point, its record high water levels. If not record high, we have a good basis to deny a future variance request. These are unique circumstances right now due to record high water levels. All members agreed. Motion by Klukos, seconded by Julien to approve Basic Condition D because we are experiencing record high water levels, **passed** unanimously on roll call vote.
- E. Klukos stated that Mother Nature did it; it's not self-created. Other members agreed. Motion by Hohmeyer, seconded by Julien, to approve Basic Condition E **passed** unanimously on roll call vote.
- F. Klukos said you can't put these tubes anywhere else and accomplish the intent of them. All members agreed. Motion by Reichardt, seconded by Julien, to approve Basic Condition F because there is no reasonable alternative location where the geotubes would be effective, **passed** unanimously on roll call vote.
- G. Klukos said this is the minimum variance necessary and is based on the design professional's proposal and experience. All members agreed. Bultje said that not only is the proposed design being reduced from 3 tubes to 2 tubes but more significantly they are proposing no permanent structures or artificial structures. Further, they are required to remove them when the water comes down. They have chosen a method that is the least intrusive. This is important to compare to a steel wall request we could receive in the future. Motion by Julien, seconded by McLaughlin, to approve Basic Condition G because this is the most reasonable use compared to a hard structure such as sheet piling or concrete **passed** unanimously on roll call vote.

Motion by Klukos to approve the variance request because it met all 7 Basic Conditions and for the reasons listed in the discussion of said conditions. McLaughlin asked if the conditions Howland offered in her staff report should be included in the motion. McLaughlin read the recommended conditions. Bultje recommends that the applicants comply with the plans as submitted to the ZBA, comply with conditions of USACE and EGLE, and comply with representations made during the meeting tonight as recorded in the minutes. Klukos agreed to the addition of the conditions stated by Bultje. Julien seconded the motion. The motion **passed** unanimously on roll call vote.

Bernie Kamps thanked the ZBA and asked what the process is moving forward. Howland stated that a Land Use Permit would need to be issued for each property. McLaughlin asked if the two parcels who weren't included in this request needed go through the same process. Bultje said they do because the City didn't include them in the application or notice. The ZBA's consideration can be pretty short. They could state that they have precedence because the ZBA granted the neighbors' request. They could get challenged if they don't obtain a variance. McLaughlin asked if the ZBA could reference this meeting's discussion. Bultje said it can be done in 10 minutes. They could use the same attorney or don't use an attorney. They could refer to minutes of this meeting. We have to hold a public hearing, adopt a motion to grant variance for all of the reasons of the

July 7<sup>th</sup> meeting, including conditions from last time. Riekels asked if other North Shore property owners should be invited to apply. Howland said from staff's perspective, she'd be uncomfortable to encourage property owners to seek variances from the Zoning Ordinance.

Mr. Bennish thanked the ZBA.

Bultje stated that Reichardt asked a question about Condition D. At this point, we found that this is not a general condition. It's unique because of the record water level, which justifies a decision outside the wording of the ordinance. For example, if the water level never goes down, and we continue to have high water, it becomes a general condition. At that point, we could think about rewording the ordinance. At that point, the City could consider an amendment that ZBA could allow certain beach protect measures rather than a prohibition, or the City could require a Special Land Use Permit, or even allow staff to approve such a request.

Mr. Dykstra thanked the ZBA and staff.

Reichardt said that he appreciates this kind of approach; the system appears to be better than rocks and walls and he hopes it works.

**Call to the Audience – Second Opportunity**

Howland shared a comment received from Mike Dora after the hearing to confirm that all geotube materials would be removed, and that his comment had been answered after the close of the public hearing.

**Adjournment:**

Motion by McLaughlin, seconded by Kozanecki, to adjourn was unanimously approved by roll call vote. The meeting adjourned at 8:55 p.m.



Jennifer Howland  
Community Development Department