A special electronic meeting of the Grand Haven Zoning Board of Appeals was called to order by Chair Jerry Klukos at 7:01 p.m. via Zoom. Chair Klukos stated that the meeting was being held electronically due to the coronavirus pandemic. On roll call, the following members were:

Present: Eric Brenberger, Mischelle Julien, Amy Kozanecki, Kevin McLaughlin, Field Reichardt (at 7:15pm), Melanie Riekels, Chair Jerry Klukos.

Absent: None

Each board member stated their location (City and State) for the record. All members in attendance were located in Grand Haven, MI with the exception of Mischelle Julien, who is in Texas.

Also present was Jennifer Howland, Community Development Manager, Pat McGinnis, City Manager and Ashley Latsch, Assistant to the City Manager.

Call to Audience – First Opportunity
No comments

Approval of Minutes
Motion by Kozanecki, seconded by Julien to approve the November 18, 2020 minutes passed unanimously by roll call vote (Brenberger, McLaughlin, Kozanecki, Klukos). Other members were absent or had technical difficulties and couldn't vote.

CASE 20-16: A request by Home Pro of West Michigan, 520 Elm Street, Spring Lake, MI 49456 on behalf of property owner Gilbert M. VanWeelden for the property located at 1138 South Harbor Drive, Grand Haven, MI 49417 (parcel #70-03-29-154-042) for one (1) variance to the Grand Haven Zoning Ordinance related to providing access to a proposed detached garage off of Harbor Drive/Lake Avenue:
1. A variance from Section 40-606.A.2, Driveways serving a one-family dwelling. The requested variance is to allow for two disconnected curb cuts. One existing curb cut is located off of Edward Avenue. The proposed second curb cut would be off of Harbor Drive/Lake Avenue to provide access to a proposed detached garage.

Chair Klukos introduced the case.

Chair Klukos opened the public hearing for the case.

Public Comments:
Howland stated that she received 14 letters which were shared with the ZBA members in advance of the meeting: 4 letters generally in support of the request, 9 letters generally objecting to the request, and 1 letter with mixed comments.

Support: Steve Kieker, Sandra Lee VanWeelden, Cecil Bradshaw, Warren Wildeman
Oppose: Genette Wandel Gillard, Jeannie Simmonds, Nancy Wildeman, Ray Wiersema, Mama Jeffery, Deborah Stavis, Julie Busta and Lynne Busta-Wells, Margot Van Dis and Jeffery Miller, Sheila Pantlind
Mixed: Scott Nelson and Beth Nelson-Street

Phone Calls
Deborah Stavis, 1140 S Harbor Dr, strenuously objects to the variance because of the effect on the ecology (trees, root system, and erosion of dunes). Significant rental activity and a second structure will add to this. There would be 2 garages and parking for 6 cars, which would create overcrowding of people and the land. The view is an economic asset, and the value of her property will decrease if the variance is granted. She is concerned about safety – traffic, pedestrians, bicyclists, and car accidents likely would go up. She can’t see how it’s in the interest of anyone beyond one property owner.

Chris Van Schoick of Scholten Fant, represents Jeffrey and Nancy Hughes of 1150 S Harbor Drive. They object to the variance being granted. Purpose of the ordinance is to protect the character of the districts. It would subvert the intent of the zoning ordinance by removing a portion of the dunes. Neither EGLE’s nor the County’s approvals have any bearing on the variance. Improvements must minimally impact the area. The request will remove dunes, and cause safety issues, which is contrary to the intent of the ordinance. The applicant admitted that the variance is so they can store their classic vehicles on the property. This is not an exceptional circumstance. They have options including executing a parking agreement with a neighbor or find a storage space off site.

Reichardt joined the meeting. He asked for clarification on the variance request. Klukos said it’s about the proposed curb cut and not the proposed garage.

Cecil Bradshaw, 31 Sherman Ave, lived in neighborhood for 23+ years at 1150 S Harbor Dr. The variance is for the curb cut and not the garage. The driveway entrance was there since the 1950’s. He doesn’t understand why they are talking about garage itself. The road comes up onto the sidewalk. There is no curb cut. The concrete is 6 inches thick, which is for driveway entrance specifications. This is no different from what other people have been allowed to have. It doesn’t detract from the neighborhood. The garage will reinforce the hill. The ZBA should approve the variance.

Deborah Stavis, 1140 S Harbor Drive has a retort. It is common sense that the only need for a curb cut is to build a structure. The structure itself is the reason why they need a curb cut. The board’s decision will prevent the next step from happening. She is trying to protect the community.

Facebook
Julia Busta, 8 Edward Ave, agrees with attorney comments. It would be a stark outlier on the dune. She directed the board to her letter in objection. The curb cut will allow the
building and is against your zoning ordinances. This is a self-created hardship. Ms. Busta also called in to reiterate what she initially wrote. The request is in direct violation of the dune residential area goals and intent. It’s also against the master plan (p. 99-100). She is wholeheartedly against the request.

Jeff Buter, Home Pro. He thanks those who commented and respects their comments. They are asking for a variance to the allow curb cut to be installed. The curb cut and driveway is already there. Why is the ZBA hearing the case? To address the comments about the dune residential area, the project has already received the permit from EGLE. Erosion and grasses have already been addressed by EGLE and already approved and mitigated. A vegetative mitigation drawing by the architect addresses dune and erosion criteria. There really is no variance being sought. They would ask that the board pass the variance or drop the case.

Klukos asked Howland to comment on procedure. Howland explained her position that the applicant did not request an interpretation of the zoning administrator’s determination that it needed a variance, and Howland does not feel that she had sufficient evidence to consider it allowable without a variance.

Klukos asked the board members if they had any questions. Reichardt and Brenberger had no comments or questions at this time.

Riekels said that it is not a designated driveway. The term “curb cut” is just a statement. The ordinance states that you cannot have two curb cuts.

McLaughlin walked by the property often. Past owners have stated it has been there for 50 years. It may not have been maintained by City standards. He considers it a clear curb cut

Klukos asked when do you decide if it has been abandoned? He doesn’t recall seeing cars parked there over the years but he wasn’t looking for it.

Julien said the request is against the zoning ordinance. We don’t allow for it, and there is no practical difficulty.

Brenberger asked about whether it could have a grandfathered status. Howland said that if you were to say that it was an existing curb cut/driveway, the proposal would be an expansion of a nonconforming driveway, which isn’t allowed.

Riekels discussed properties to the south, including the area across from the Bil Mar, where vehicles are towed if they park along the street. The roadway goes right up to the sidewalk. How can we consciously say it’s a legal curb cut?

Klukos asked Howland if it is considered an illegal parking area. Howland said that there are no records of a permitted parking area, but that doesn’t mean it is illegal. She doesn’t have enough evidence to feel comfortable calling it a parking area.
Reichardt said that the comments from the neighbors relate to the proposed building. He understands allowing a curb cut leads to a driveway, which leads to a building. The only issue tonight is the curb cut. It’s Solomon’s Choice.

Kozanecki walked the area twice. She can’t see where it is an existing curb cut. It’s walled off, vegetation has been there for a number of years. If it’s not an existing curb cut, it’s against the zoning to give them a second curb cut. If it is a curb cut, they are proposing to expand the nonconforming curb cut. They may have pulled a vehicle up onto the dune at one time, but it hasn’t been used as a curb cut.

Klukos had the same impression as Kozanecki.

Reichardt walked the site and observed pavement tapered down to the street. He agrees it has not been used for parking. Whoever did the recent work (Kiekover) made it 6 inches.

Cecil Bradshaw called again and said the area is very interesting, and it wouldn’t all fit with today’s zoning desires. There are garages on Harbor, there are parking spaces above. He is not sure where the second curb cut comes in. When rain storms happen, rain floods Edward Avenue. The City added a mound/curb to keep water flowing down the street. Now the area is just parking spaces. He referenced other areas including Bil Mar and Prospect. The VanWeeldens have a right to use that property. The parking space has been available for many years. He has seen cars parked down there. He sees a deteriorating hill; EGLE said it will enhance the hill. It is no different than what other homeowners have. He believes it is one curb cut, not two.

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

Jeff Buter spoke about the maintenance of the driveway and curb cut. The VanWeeldens have kept it in use for 50 years+. They always clean up the area in April, but due to the Governor’s COVID executive order, they did not travel to the property to clean it out this year. The grating that Howland referenced in her staff report is part of the existing driveway. Other people have shown and told it is an existing driveway. EGLE has already approved it. The project would actually enhance the erosion of the area. The ordinance protects the reasonable enjoyment of the property and they ask for the same enjoyment of the VanWeelden’s property.

The board considered the seven basic conditions.

A. Brenberger’s interpretation is to have one access to a driveway or a garage. The whole word curb cut doesn’t necessarily mean it is a cement curb with a cutout. It means access to a road with a driveway and a garage. Julien agrees. Kozanecki agrees, stating the intent is to give access from a road to the property. He currently has this already on Edward. McLaughlin and Reichardt has no comments. Klukos said the intent of the ordinance is to allow for one curb cut. Whether you want to call this a curb cut, they have a curb cut or access to Edward Ave. Adding a second entrance to this property is a violation of the ordinance and would leave us wide open to hundreds of structures in the city that have access to two streets (corner lots, etc). Riekels agrees with Klukos. She disagrees about grandfathered
comments. The Riekels were not grandfathered in when they tried for a second access to their property. Julien agrees. Motion by Riekels, seconded by Julien, to approve Basic Condition A **failed** on the following roll call vote: Ayes: McLaughlin, Reichardt. Nays: Brenberger, Julien, Kozanecki, Riekels, Klukos.

B. Riekels doesn’t think the district or zoning has anything to do with the request. Reichardt thinks this is a second access to the property, so he doesn’t feel it is permitted. It doesn’t have anything to do with use, so he is fine with this condition. McLaughlin, Kozanecki, and Julien had no issues with the condition. Klukos said the second curb cut is not permitted by right, so he believes it fails Condition B. Motion by Julien, seconded by Riekels to approve Basic Condition B **passed** on the following roll call vote: Ayes: Brenberger, Julien, Kozanecki, McLaughlin, Reichardt, Riekels. Nays: Klukos.

C. Julien said it sets a precedence that is not applicable to the area. She doesn’t think it will harm the environment, though. Kozanecki and McLaughlin believe the condition is met. Reichardt said the request itself doesn’t cause a substantial effect on properties in the vicinity. Riekels believes it does affect the properties. If everyone started requesting this variance and cars started pouring out on the street, there would be an adverse effect. Brenberger said that the owner of 1140 S Harbor Dr said it would affect her view and property value, and other correspondence indicated the same. It would have an adverse effect on safety for vehicles and pedestrians. Line of sight is minimal at best. Klukos agrees with Brenberger, plus he factors in people driving down Lake or Harbor, who may have a tendency to be looking at the view of the lake while driving. He believes it does cause a substantial adverse effect on properties in the immediate vicinity. Motion by Riekels, seconded by Kozanecki, to approve Basic Condition C **failed** on the following roll call vote: Ayes: McLaughlin, Reichardt. Nays: Brenberger, Julien, Kozanecki, Riekels, Klukos.

D. Brenberger doesn’t think it is recurrent so it meets this condition. Julien, McLaughlin, Kozanecki, Reichardt and Riekels agree. Klukos believes it could be recurrent. Any property could ask for access to Lake Avenue/Harbor Drive. Motion by Kozanecki, seconded by Riekels, to approve Basic Condition D **passed** on the following roll call vote: Ayes: Brenberger, Julien, Kozanecki, McLaughlin, Reichardt, Riekels. Nays: Klukos.

E. Kozanecki said that it is 100% self-created. McLaughlin says it has been there for 50 years so it is not self-created; Reichardt agrees. Riekels said it is definitely self-created. Brenbeiger said there are no exceptional or extraordinary circumstances applying to the property. Julien said it is self-created. Klukos said it is self-created because they want to add another structure to the property. Motion by Kozanecki, seconded by Riekels, to approve Basic Condition E **failed** on the following roll call vote: Ayes: McLaughlin, Reichardt. Nays: Brenberger, Julien, Kozanecki, Riekels, Klukos.

F. Brenberger believes it meets this because there is no alternative location for what they are requesting. Julien, Kozanecki, and McLaughlin agree. Reichardt said that the ordinance talks about two curb cuts so he disagrees. Riekels doesn’t understand how you can have an alternative location when you’re only allowed one curb cut. Klukos said there is no alternative location that wouldn’t require a variance. Motion by Riekels, seconded by Brenberger, to approve Basic Condition
F passed on the following roll call vote: Ayes: Brenberger, Julien, Kozanecki, McLaughlin, Reichardt, Riekels. Nays: Klukos.

G. McLaughlin thinks it is the minimum variance. Kozanecki agrees. Julien disagrees. Brenberger agrees with the staff report, stating that there is no way to reduce the extent of the variance. Riekels doesn’t question that it is the minimum variance, but it is a big variance when you ask for a second curb cut. Reichardt and Klukos agree with Riekels. Motion by Kozanecki, seconded by Riekels, to approve Basic Condition G passed on the following roll call vote: Ayes: Brenberger, Julien, Kozanecki, McLaughlin. Nays: Reichardt, Riekels, Klukos.

Howland reviewed the results of the voting. Basic Condition B, D, F and G passed. Basic Condition A, C, and E failed.

Motion by Riekels, seconded by Julien, to DENY the requested variance because A, C and E failed, passed on the following roll call vote: Ayes: Brenberger, Kozanecki, Reichardt, Julien, Riekels, Klukos. Nays: McLaughlin. The motion carried. The variance was denied.

Call to the Audience – Second Opportunity
Facebook comments that came in after the public hearing closed were read by Ashley Latch:

- Chelsea Stavis, 1140 S Harbor Dr feels they will not have reasonable enjoyment of their property as the neighbor who is most greatly impacted.
- Lynee Wells, 8 Edward Avenue, stated existing or not, it is nonconforming and cannot be expanded per Section 40-119.03. You cannot grant a variance for a nonconforming use. All of the sidewalk is tapered because there is no sidewalk with greenbelt or parking, that is the street design. It is a rolled curb up and down Harbor.
- Julia Busta, 8 Edward Ave said the request is contrary to the public interest based on public safety and is against the zoning ordinance and contrary to the preservation of the Dune Residential District.

Jeff Buter, Home Pro, thanked the board for considering the public hearing. They appreciate and respect the board’s opinion and interpretations of the zoning ordinance, but they are disappointed.

Howland informed the Board that the City Council will consider the zoning ordinance update at their meeting on December 21, 2020. Riekels asked when the one curb cut requirement was established. Howland was not sure, but the City is operating under the 2007 Zoning Ordinance currently.

Adjournment:
Motion by Reichardt, seconded by Julien, to adjourn was unanimously approved by roll call vote. The meeting adjourned at 8:19 p.m.

Jennifer Howland, Community Development Manager