

**ZONING BOARD OF APPEALS
CITY OF GRAND HAVEN
MEETING MINUTES**

October 25, 2023

A regular meeting of the Grand Haven Zoning Board of Appeals was called to order by Chair Hills at 6:00 p.m. in the Grand Haven Council Chambers. On roll call, the following members were:

Present: Vice-Chair Kerry Bridges, Chair Mark Hills, Ryan Galligan, Brendan Pool
Absent: Tyler Jackson, Tyler Berg

Also present: Brian Urquhart, City Planner, Ron Bultje, City Attorney, Ashley Latsch, City Manager, Tim Price, Assistant City Manager, and members of the public.

Approval of Minutes

Motion by Bridges, seconded by Galligan, to approve the September 27, 2023 minutes as written. Passed unanimously with a voice vote.

Approval of Agenda

Urquhart said he would like to reschedule the regular November meeting date. Motion by Galligan, seconded by Bridges, to approve the agenda with the addition of November meeting date as item 6. Passed unanimously with a voice vote.

Call to the Audience – None

November meeting date: Urquhart said he would like to have as many members in attendance for the November meeting and have the City Attorney present. After discussion, it was agreed to reschedule the meeting to Monday November 27th at 7pm

Review of ZBA By-Laws: Urquhart stated per Redevelopment Ready Communities (RRC) Best Practices and good governance, the City should review the By-Laws to all boards and Commissions who have impact on development decisions. He noted should the revisions be acceptable; the ZBA By-Laws would be placed on the December meeting agenda for approval.

City Attorney Ron Bultje reviewed his changes to the ZBA By-Laws. Members and staff asked several questions regarding absences, voting, conflict of interest, alternate members, etc. The ZBA agreed the changes were satisfactory.

ZBA Training: Bultje reviewed training materials for ZBA basics. The training included discussion on the authority and limitations of the ZBA, legal acts, duties of the ZBA, due process, Open Meetings Act, public hearings, documenting decisions, making motions, standards for variances, interpretation of the zoning ordinance, nonconforming structures and uses, and procedural matters for the ZBA.

Case 23-08: A request for a retroactive variance related to a patio addition at 20060 Breton St. (parcel #70-03-19-479-015): a variance from Sec. 40-306.05.A to allow a covered patio to remain a distance of 19 feet 3 inches from the front lot line. A covered patio cannot encroach into the required front yard, which is 30 feet in the North Shore District.

Urquhart said the property owner received approval for a building permit in January 2021 for a deck addition at 20060 Breton St. The permit clearly included a condition that the area beneath the deck that was within the front yard setback could not be improved with concrete or become a patio. Urquhart said the Building Official noted the violation and reported it. In May 2022, the former City Manager inspected the violation. Urquhart included his email which outlined 3 options for the property owner: remove the deck, remove the patio, or apply for a variance.

Urquhart said after several months of communication with the builder, the builder submitted a variance application. The application was withdrawn in August, and a revised application was submitted by the property owner's attorney, Floyd Gates of Bodman Law, LLC.

Urquhart noted to the ZBA the City has remained consistent in the interpretation of Sec. 40-306.05.A through 3 separate officials, and noted the ordinance is clear.

Floyd Gates, attorney and agent on behalf of the property owner, provided photos of the property, messages with the builder, and photographic evidence of building permit approval. He refuted the staff memo and the comments pertaining to the basic conditions. He claimed the concrete was always in the current location. He stated the property owner was willing to remove the concrete but was not accepted by the City. Mr. Gates questioned why the City would not accept such compromise. Mr. Gates admitted the patio was covered, but was also open and unenclosed. Therefore, the patio should be permitted in his interpretation of the ordinance. Mr. Gates read from public correspondence on the case and offered a rebuttal of the concerns.

Urquhart corrected Mr. Gates on his claim the City did not accept the offer to remove the patio. Urquhart said the City received an email on September 15, 2023 offering to remove the concrete, but place another material in the location beneath the deck. He clarified that without knowing what material Mr. Gates was referencing, the proposed material installation would still meet the definition of a patio per Sec. 40-201.16. Urquhart said his email to Mr. Gates clearly stated the improvement would be considered a patio, and would require a review of a variance application by the ZBA, and could not be an administrative decision. Urquhart said if the applicant was to remove the patio and knee wall within the

required front yard setback and have the area return to a natural state, there would be no need for a variance.

Mark Edge of 18423 Main St., next door neighbor to the property owner, asked why the right thing wasn't done in the first place. He said approving the variance would set a dangerous precedence. He said Mr. Gates' interpretation of Sec. 40-306.05. is faulty because there is a pictorial image that clearly states an uncovered porch can encroach into the required front, but not a covered porch. He felt the appendices provided by the applicant were suspect. He said this was not an honest mistake, and the City communicated correctly throughout the process and said the City was not at fault.

Laura Edge of 18423 Main St., referred to her written comment. She is against the variance request. She noted that mistake do happen, but they should be corrected. She also said the City did their best to remedy the situation.

Hanne Mitchell, 20051 North Shore Dr., asked what is the point of a zoning ordinance or building code if it's not followed or enforced.

Jon Johnson, 18421 Main St., asked if the ZBA received the letter he submitted. Said his neighbor at 18415 Main St. also submitted a letter. He wanted to make sure the ZBA received their letter.

Motion by Bridges, seconded by Galligan, to close the public hearing was carried unanimously by voice vote. Public hearing closed at 8:00pm.

Hills asked Urquhart about any written correspondence. Urquhart said the City received one email in support, and five emails against the variance request.

The board considered the seven basic conditions.

- A. Pool said the variance is a violation of Sec. 40-306.05. He asked about the screened in porch. Galligan said this standard is not met. Bridges agreed with staff's interpretation of Sec. 40-306.05 but wanted to make it clear each member has an independent vote. Hills said the enforcement of the ordinance is a clear violation of the building permit due to the failure to comply with Sec 40-306.05. Motion by Bridges, seconded by Galligan, to approve Basic Condition A. Ayes: None. Nays: Hills, Pool, Bridges, Galligan. Condition A failed on a 0-4 vote.
- B. Galligan said that a covered enclosed patio is not permitted in the required front yard. Pool agreed with Galligan. Bridges also agreed. Hills said the use of a patio is permitted in this district. Motion by Galligan, seconded by Bridges, to approve Basic Condition B. Ayes: Bridges, Hills. Nays: Pool, Galligan. Condition B passed on a 2-2 vote.
- C. Bridges said the actual patio would not cause substantial adverse impact on neighboring property. Galligan said the patio is not in line with the established neighborhood setback. Hills said approving the variance would not have a substantial effect on neighboring properties. Motion by Bridges, seconded by

Galligan, to approve Basic Condition C. Ayes: Hills, Bridges. Nays: Galligan, Pool. Condition C **passed** on a 2-2 vote.

- D. Pool said the issue is general. Bridges said the property is general or recurrent, Galligan noted there are several corner lots in the North Shore District that meet this requirement. Hills agreed with the comments made by the other members. Motion by Bridges, seconded by Galligan, to approve Basic Condition D. Ayes: None. Nays: Bridges, Hills, Galligan, Pool. Condition D **failed** on 0-4 vote.
- E. All members agreed the variance request was self-created. Hills said that the contractor has admitted to the mistake, and the property owners are responsible. Motion by Bridges, seconded by Pool, to approve Basic Condition E. Ayes: None. Nays: Bridges, Hills, Galligan, Pool. Condition E **failed** on 0-4 vote.
- F. Pool said there is no reasonable alternative for the patio. Galligan said the 10' 3" concrete could be removed as required and noted by staff. Bridges agreed. Hills concurred with the fellow members. Motion by Bridges, seconded by Galligan, to approve Basic Condition F. Ayes: None. Nays: Bridges, Hills, Galligan, Pool. Condition F **failed** on 0-4 vote.
- G. Bridges said the request is in contrast with the ordinance. Galligan said the request is not the minimum required variance necessary. Pool and Hills agreed. Motion by Pool, seconded by Bridges, to approve Basic Condition G. Ayes: None. Nays: Bridges, Hills, Galligan, Pool. Condition G **failed** on 0-4 vote.

Motion by Bridges, seconded by Galligan, to **DENY** ZBA Case 23-08, a retroactive variance related to a patio addition at 20060 Breton St. (parcel #70-03-19-479-015): a variance from Sec. 40-306.05.A to allow a covered patio to remain a distance of 19 feet 3 inches from the front lot line based on the fact conditions A, D, E, F, and G were not met. Yeas: Hills, Bridges, Galligan, Pool. Nays: None. The variance was **DENIED** on a 4-0 vote.

Chair Hills called for a 5-minute recess.

Case 23-10: A request for a variance related to a new building at 805 S. Beacon Blvd. (parcel #70-03-28-155-019): a variance from Sec. 40-414.03.C to allow a ground floor building transparency of 29% in the Commercial District, instead of the minimum 40% transparency approved by the Planning Commission.

Urquhart said the applicant received special land use and site plan approval for a drive-through facility at the September 19 Planning Commission meeting. Discussion included the requirement a minimum of 60% ground floor transparency for primary walls in the Commercial district. Urquhart said the Planning Commission was within their authority to reduce the minimum transparency to 40%. At the meeting, Urquhart was asked if the PC could reduce the transparency to below 40%. He said a reduction would require a variance from the ZBA.

Urquhart stated the applicant did recalculate the ground floor transparency, and stated they would be able to meet 40% on the east wall, but only 29% on the north and south walls. He

said the fact the building is only 600 sq. ft. and does not contain any public interior space, the requirement for transparency of a smaller building wall could cause a practical difficulty.

Hills inquired if there was any building there prior.

Bob Monetza, 945 Washington Ave., said when he was on the Planning Commission when site plan was approved for a coffee shop at this location about 15 to 20 years ago. Monetza mentioned that all utilities have been installed, but no building was ever constructed.

Justin Spackman, Jeffrey Parker Architects, noted the complications of satisfying the 40% transparency ground floor for a 600 sq. ft. building. He said the building is a low profile building and the practical difficulty would be placed on the owner.

Motion by Bridges, seconded by Galligan, to close the public hearing was carried unanimously by a voice vote. Public hearing closed at 8:32pm.

The board considered the seven basic conditions.

- A. All members agreed allowing a 29% ground floor transparency for a 600 sq. ft. building in the Commercial District is not contrary to the public interest and intent of the ordinance. Bridges was conflicted somewhat if the intent of ordinance is compromised. Motion by Bridges, seconded by Galligan, to approve Basic Condition A. Condition A **passed** unanimously on a roll call vote.
- B. All members agreed drive-through business is permitted in the Commercial District, as approved by the Planning Commission. Motion by Pool, seconded by Bridges, to approve Basic Condition B. Condition B **passed** unanimously on roll call vote.
- C. All members agreed the approval of 29% ground floor transparency would not cause substantial adverse effect on neighboring properties. Motion by Galligan, seconded by Pool, to approve Basic Condition C. Condition C **passed** unanimously on roll call vote.
- D. All members agreed this request is not so general or recurrent in nature, that is satisfy this condition. Motion by Galligan, seconded by Bridges, to approve Basic Condition D. Condition D **passed** unanimously on roll call vote.
- E. All members agreed the variance request is not self-created and the special conditions of the property being so small for the coffee shop building and containing 3 frontages facing rights-of-way. Motion by Galligan, seconded by Pool, to approve Basic Condition E. Condition E **passed** unanimously on roll call vote.
- F. All members agreed there is no reasonable alternative location for the location of the building. The building envelope on the parcel is restricted to the green space, which is small compared to the entire parcel. Motion by Galligan, seconded by Pool, to approve Basic Condition F. Condition F **passed** unanimously on roll call vote.
- G. All members agreed the decrease of permitted ground floor transparency from 40% to 29% is the minimum necessary. The applicant has made every attempt to increase the transparency as much as possible for a building of that size and the

proposed use. Motion by Pool, seconded by Galligan, to approve Basic Condition G. Condition G passed unanimously on roll call vote

Motion by Galligan, seconded by Bridges, to **APPROVE** ZBA Case 23-10, a variance related to a new building at 805 S. Beacon Blvd. (parcel #70-03-28-155-019): a variance from Sec. 40-414.03.C to allow a ground floor building transparency of 29% in the Commercial District, instead of the minimum 40% transparency approved by the Planning Commission based on the fact all conditions were met. Yeas: Hills, Bridges, Galligan, Pool. Nays: None. The variance was **APPROVED** on a 4-0 vote.

Call to the Audience – Second Opportunity

None

Adjournment:

Motion by Bridges, seconded by Pool, to adjourn. Unanimously approved by voice vote. Meeting adjourned at 8:41 p.m.



Brian Urquhart, City Planner

