

THE REGULAR MEETING OF THE BERKLEY CITY ZONING BOARD OF APPEALS WAS CALLED TO ORDER AT 7:00 PM, TUESDAY, JANUARY 9, 2024 BY CHAIR MCALPINE.

The minutes from this meeting are in summary form capturing the actions taken on each agenda item. To view the meeting discussions in their entirety, this meeting is broadcasted on the city's government access channel, WBRK, every day at 9AM and 9PM. The video can also be seen on-demand on the city's YouTube channel: <https://www.youtube.com/user/cityofberkeley>

PRESENT: Sue McAlpine Kevin Wilner
Joseph Krug Andrew Creal
Joann Serr
Erick McDonald

ABSENT: Steve Allen

ALSO, PRESENT: Kim Anderson, Zoning Administrator
Kristen Kapelanski, Community Development Director

CONFIRMATION OF QUORUM MET

APPROVAL OF AGENDA

Motion to approve the agenda as presented by Krug, and supported by Wilner.

Voice vote to approve the agenda.

AYES: 6
NAYS: 0
ABSENT: Allen

MOTION CARRIED

APPROVAL OF MINUTES

Motion to approve the minutes of the November 13, 2023 regular meeting by Wilner and supported by Serr.

Voice vote to approve minutes

AYES: 6
NAYS: 0
ASBENT: Allen

MOTION CARRIED

OLD BUSINESS

NONE

NEW BUSINESS

1. APPLICATION PBA-01-24; 2114 Eleven Mile Rd – Use Variance

Fadi Kajy, representing Parcel # 04-25-17-358-017, 2114 Eleven Mile Rd., North side of Eleven Mile Rd., between Henley Ave and Berkley Ave. is requesting a Use Variance for a non-conforming use of a gas station in the M-1 Industrial District.

Zoning Administrator, Kim Anderson advised the Zoning Board of Appeals of the Use Variance request for 2114 Eleven Mile Rd.

Parcel # 04-25-17-358-017 North side of Eleven Mile Rd., between Henley Ave. and Berkley Ave. 2114 Eleven Mile Rd., use dates back to 1956 as a gas station. The previous business, Henley Gas & Service Center was in service as a gas station until approximately 2013/2014 (google map shows gas prices posted on signage in 2012 and since 2015 no gas prices have been posted). Department of Licensing and Regulatory Affairs (LARA) confirmed tanks were red tagged (violations) for regulating compliance as early as 2013. The property had previously been used as a gas station but lost the legal non-conforming status. Property continued as an automobile service, repair establishment until the property was sold. Warranty Deed was recorded with Oakland County March 08, 2022 to F & L Berkley, LLC.

Various Violations have been issued since 2022 including work being done with no permits, property maintenance, snow and grass. A Code violation was issued 10/03/2023 when Signage was changed with no permit. A Business License was applied for on November 13, 2023 and denied.

Property is currently vacant. No definitive date has been confirmed on when the automobile service, repair establishment seized operation.

Under Chapter 138 *Zoning*, Article V, Division 5.5, Sec. 138-363 and Sec. 138-364 M-1 does not permit a use of a gas station under Permitted or Special Use.

There are two possible Nonconforming Ordinances that could be applied:

Sec. 138-151. – Definitions: *Nonconforming use:* Nonconforming uses are uses that were lawful when established but are no longer permitted within the zoning district or are now permitted only under a special use permit.

Sec. 138-153. - Requirements for nonconforming uses.

A nonconforming use may be continued and maintained provided there is no increase or enlargement of the area occupied by or devoted to such use. A nonconforming use shall not be added to or enlarged unless said use is made to conform to all regulations of the zoning district.

OR

Once a nonconforming use has stopped and the building that houses the nonconforming use remains vacant for 180 days, any subsequent use of the property shall be conforming.

For a variance to be approved by the Zoning Board of Appeals, it shall meet the standards of Section 138-606 of the Zoning Ordinance, based on findings of fact. We request the Zoning Board of Appeals to determine if undue hardship exists on the property and the requested use variances should be granted. Motions for approval and denial are included below for the convenience of the board.

APPLICANT PRESENTATION

Fadi Fajk representing F & L Berkley, LLC

Explained property was purchased with the intent to be used as a gas station and was unaware that the gas station was not allowed. Appears as a gas station with pumps on site. DEQ had shut the tanks down – tanks were repaired and approved with inspections from DEQ to operate the tanks.

Board members discussion had questions for the applicant:

Wilner asked for clarification on why the tanks were shut down by DEQ. It was explained that the tanks have to be tested according to DEQ Rules and Regulations and the previous owners were financially unable to comply with DEQ's requirements. F & L Berkley, LLC had to cut open the concrete to comply with DEQ requirements, costing more than \$150,000.00.

Creal asked why work was completed prior to coming to the City, response was prior owners said it was a gas station.

Anderson explained that the violations that were sent with Henley Gas & Service Center as the occupant was prior to the City knowing that it was no longer Henley Gas & Service Center. The change of signage was noticed and violations for no permit were sent and a request for the new business to apply for a Business License which was denied.

The DEQ approval letter was reviewed by the Board.

Henley Gas & Service Center remained as a tenant and continued business as a service repair.

Serr asked if the intent was to continue as a repair service and a gas station. Property owner stated intent was to operate as a gas station and that a repair station would be as a tenant basis.

Property has been vacant for about 4 to 5 months. Henley Gas & Service Center has not been operating.

Members went over the four requirements:

- a. The building or land cannot be reasonably used for any of the uses permitted by right or by special use permit in the current zoning district.

Property can be used as a repair shop which is a permitted use.

Would tanks need to be removed for more use?

- b. The need for the variance is due to unique circumstances or physical conditions of the property.

Yes, there is unique circumstances. Tanks have been in existence for decades

- c. The proposed use will not alter the essential character of the neighborhood.

Will not change the character.

- d. The need for the variance is not the result of actions of the property owner or previous property owners.

Previous owners did not maintain tanks resulting in being tagged by DEQ

Previous owner may not have been aware of a zoning change and were grandfathered in.

Creal states that the nonconformity is not the fault of the current property owner. Will not alter the character of the neighborhood. It has appeared as a gas station with the tanks and remains to appear as a gas station since 1956.

Public Hearing Opened at 7:24

PUBLIC COMMENT

No public correspondence received

Karlo Facherpour, prior owner and operator of Henley Gas & Service Center, provided history on ownership and operation of the service repair and gas station. Explained that when the State/DEQ came to them and told them that they had to do the testing and the requirements involved, they were unable to afford the requirements that had to be performed. DEQ flagged the tanks and it is claimed that when they complied with the requirements, the tanks could be reopened.

Mr. Facherpour emphasized that the building and tanks have been there for all these years and the appearance has not changed.

Board asked Mr. Facherpour when they had purchased it.

States that him and his father were partners for many years with the owner from 30 years ago and then took ownership – was not sure of the year.

Remodeled building about 20 years

Board asked how much the testing of the tanks were back when the tanks were tagged. Mr. Facherpour stated that at that time, the cost was higher because DEQ wanted them to remove the tanks and put fiberglass tanks in. With the technology today, repairs were able to be done inside the existing tanks.

Fadi Fajk indicates that there are four tanks underground. If removed, there are state requirements as to the type of businesses that can operate on land with removed tanks.

Chair McAlpine closed the floor for the public hearing at 7:30 p.m.

Board members went through each standard to help reach a decision.

- a. The building or land cannot be reasonably used for any of the uses permitted by right or by special use permit in the current zoning district.
- b. The need for the variance is due to unique circumstances or physical conditions of the property.
- c. The proposed use will not alter the essential character of the neighborhood.
- d. The need for the variance is not the result of actions of the property owner or previous property owners.

The Zoning Board of Appeals discussion:

Creal: not the result of property owners, environment standards changed, requirements became more stringent.

Wilner and Chair McAlpine: The actions of the previous owner of not having the tanks kept up to DEQ requirements resulted in losing the legal non-conformity.

The building can be reasonably used for any of the uses permitted by right or by special use permit in the current zoning district

Can the tanks be considered a unique circumstance? Director Kapelanski informed the board that there are various locations throughout the city that have tanks and it does not make it a unique circumstance.

McDonald confirmed Zoning M-1 Industrial does not permit gas stations as a permitted use or a special use.

Serr asked about inspections on the tanks. If the tanks are inspected regularly if that would be a benefit to the surrounding neighborhood. Ms. Anderson and Director Kapelanski clarified that the Tanks would be inspected by the State/DEQ and not part of our jurisdiction and we do not get reports.

Wilner discussed with the board that inspections on the tanks is irrelevant to deciding now if a non-conforming property can get a use variance

When the gas tanks stopped being used, there were implications that resulted in the non-conformity of the business.

Serr – talked through that this was an existing gas station and feels it is unique with the existing tanks on site rather than a request where it is being asked to put a gas station on a site where tanks are not in existence.

It has not been used as a gas station for 8 years.

Motion to postpone the use variance by Creal, and supported by Serr

AYES: Members; Creal, Krug, McDonald, Serr and Chair McAlpine

NAYS: Member Wilner

ABSENT: Allen

MOTION CARRIED

OTHER BUSINESS

Zoning Board of Appeals 2024 Meeting Schedule. Monday, August 12, 2024 date corrected to Tuesday, August 13, 2024 due to conflict with City Council meeting date.

Motion to approve the proposed 2024 meeting schedule correction to Tuesday, August 13, 2024 by Wilner and supported by Krug.

Voice vote to approve

AYES: 6
NAYS: 0
ASBENT: Allen

MOTION CARRIED

STAFF/BOARD MEMBER REPORT

Staff/Board Member Report:
Community Development Monthly reports: November 2023
Zoning Ordinance Steering Committee Activity update: December 2023

LIAISON REPORT

Dennis Hennen was not in attendance – Director Kapelanski passed on that the City Council adopted in December the Parklets Ordinance for outdoor dining taking up parking space(s).

PUBLIC COMMENT

NONE

With no further business, the meeting was adjourned at 7:52 p.m.

Motion by Wilner and support by Krug

Voice Vote to adjourn

AYES: 6
NAYS: 0
ABSENT: Allen

MOTION CARRIED
