

THE REGULAR MEETING OF THE BERKLEY CITY ZONING BOARD OF APPEALS WAS CALLED TO ORDER AT 7:00 PM, MONDAY, JANUARY 11, 2022 BY VICE-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/cityofberkley>.

PRESENT: Ryan J. Gesund Kevin Wilner
Sue McAlpine Miles Uhlar
Joseph V. Krug Maria Ward
Erick McDonald

ABSENT: NONE

ALSO, PRESENT: Steven Nowak, 1490 Franklin
Evan Bouren, 13691 Winchester St, Oak Park
Rocky Huddleston, 3651 Royal
Megan Masson-Minock, Interim Community Development Director

Motion by Mr. Wilner to excuse the absences of Board Member Ward, and Board Member McDonald for the December 13, 2021 meeting. Motion supported by Mr. Krug.

AYES: Gesund, Krug, McAlpine, McDonald, Uhlar, Ward, Wilner
NAYS: NONE
ABSENT: NONE

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APPROVAL OF AGENDA

Motioned to approve the agenda by Mr. Gesund and supported by Ms. Ward with the amendments of:

1. Changing the date to 2022
2. Item #2 under old business on the last meeting's agenda and was a mistake and was not removed from the last meeting agenda.
3. Changing the spelling on Absences on the item Excuse of Absences

AYES: Gesund, Krug, McAlpine, McDonald, Uhlar, Ward, Wilner
NAYS: NONE
ABSENT: NONE

MOTION CARRIED

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APPROVAL OF MINUTES

Motion to approve the minutes of December 13, 2021 by Mr. Gesund and supported by Mr. Krug with the revision of:

1. In the minutes, Sue McAlpine is referred to as Chair and officially she is Vice-Chair.

AYES: Gesund, Krug, McAlpine, McDonald, Uhlar, Wilner
NAYES: NONE
ABSTAINED: Ward
ABSENT: NONE

MOTIONED CARRIED

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OLD BUSINESS

1. ELECTIONS

Matter of electing a Chair and Vice Chair to the Zoning Board of Appeals.

Vice-Chair McAlpine officially resigned to allow nominations and election of officers.

Nominations:

Motioned by Mr. Gesund with support by Ms. Ward.

Chair: Sue McAlpine

Vice-Chair: Miles Uhlar

Chair

AYES: Gesund, Krug, McDonald, Uhlar, Ward, Wilner

NAYS: NONE

ABSENT: NONE

MOTION CARRIED

Vice-Chair

AYES: Gesund, Krug, McAlpine, McDonald, Ward, Wilner

NAYS: NONE

ABSENT: NONE

MOTION CARRIED

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NEW BUSINESS

- 1. APPLICATION PBA-10-21; 3679 Royal - Dimensional variance request for a five (5) foot, six (6) inch variance from the required fifteen (15) feet between dwellings.**

Petitioner:

Patrick Raye

555 Old Woodward

Birmingham, MI 48009

Interim Community Development Director Masson-Minock summarized the history of the address and lot split. She also summarized the building permit history on this lot. Interim Community Development Director Masson-Minock summarized the review letter and read the five standards of review by which the ZBA would discuss the dimensional variance request.

Mr. Raye stated that to build a house 20 feet in width on the property, which is what strict adherence to the ordinance would require, is unreasonable. He summarizes what has been changed on this lot to conform to the Zoning Ordinance as much as possible. He reiterated that the City has allowed houses of this size and setback before. Regarding the concerns expressed from the Fire Marshall, he stated that the walls of the new house would have fire rated drywall installed.

Homeowner:

Kevin Peree
319 West Marshall
Ferndale MI

Landowner Kevin Peree stated that they would be willing to do anything to make this work. He stated that working with Hillan Homes has been a great experience, and summarized that a 25-foot wide house in Berkley would be a perfect fit for his wife and himself as first-time homebuyers.

Chair McAlpine opened the floor for the Board to ask questions.

Board members asked about the previously submitted plans that were withdrawn, where no variance had been needed. Board Members also expressed concern that granting this variance would create a precedent for future houses.

Petitioner Mr. Raye stated other options that were considered for this specific lot.

The Board mentioned correspondence with a property dispute that could impact the voting on this until the dispute is resolved. The Board discussed that the house next door may or may not have a fire rated wall, which is an issue to surrounding neighborhoods.

Co-Chair Uhlar reiterated that the lot split was legal, but the Board should not grant the variance when the circumstances presented not meeting the criteria.

Chair McAlpine read correspondence on this particular matter:

Letter from Julia and Bruce Wilhoff who are residents at 3713 Oakshire who wrote in opposition to the variance.

Letter from Alan Cowie who is a resident at 3678 Royal who wrote in opposition to the variance.

Correspondence from Pete Kelley Fire Inspector:

From a position of a life and property safety standpoint is to absolutely maintain the required separation. Allowing any reduction in the separation requirement increases the likelihood of a structure fire involving multiple buildings. As is not uncommon in some nearby municipalities, it is very rare here in significant part due to the distance between structures. The present case you indicate here a three-inch non-conformity involving a lot split from the past. This is consequential compared to us allowing a new hazard to be created. If alternatives such as non-combustible construction or fire suppression were offered, I might be inclined to reconsider, but to create a hazard when none exists would be negligent and unconscionable

The Petitioner, Mr. Raye, formally asked for this to be tabled by the Board.

Chair McAlpine opened the floor for public hearing at 7:25pm

Janice Zelay, 3675 Royal: Stated that she is the resident owner of 3675 Royal since 1993. The properties for this building construction plan are 3679 Royal and 3689 Royal. 3689 Royal is adjacent to her property to the north and 3679 is immediately adjacent to her property. She stated that she has been protesting this lot split since it was first requested. She requested the Board to stay this proceeding until her adverse possession claim is resolved in Oakland County Circuit Court.

Rocky Huddleston, 3651 Royal: Stated that he agrees with the Fire Inspector. It would be a shame if something happened and had a disastrous fire. He was against this proposal.

Chair McAlpine closed the floor for public hearing at 7:40pm

Chair McAlpine asked the board to entertain the petitioner's request to table this motion.

Motion by Mr. Krug to table APPLICATION PBA-10-21; 3679 Royal - Dimensional variance request for a five (5) foot, six (6) inch variance from the required fifteen (15) feet between dwellings.

Motion supported by Mr. Gesund.

AYES: Gesund, Krug, McAlpine, McDonald, Ward, Wilner

NAYS: Uhlar

ABSENT: NONE

MOTION CARRIED

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2. APPLICATION PBA-11-21; 1490 Franklin - Appeal, interpretation and/or use variance as to whether the definition of a home occupation includes a Federally Firearms Dealer.

Interim Community Development Director Masson-Minock gave an explanation and summarization of the appeal letter. She then reviewed the history of this site in city records. She stated that the board's first order of business is to decide on the appeal of the decision made upon by the City Manager on November 10th, stating that since the business includes in-person purchase and transfer of ownership that the Wolverine State Armory (WSA) is not permitted as a home occupation. She stated that the Zoning Board of Appeals can affirm, reverse, or modify the decision of the City Manager, who was acting as the zoning officer.

Chair McAlpine wanted to clarify that they will determine if the appeal should be granted based upon the interpretation of what a home business as currently defined in the Zoning Ordinance.

Co-Chair Uhlar questioned the lack of clarity in terms of standards used by the City Manager in making his decision in the letter dated November 10.

Petitioner:

Steve Nowak
1490 Franklin

Berkley, MI 48072

Mr. Nowak gave a history of the business at 1490 Franklin. He has included in the application for appeal his initial Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) application. He summarized how he felt that his home-based business complies with the Zoning Ordinance. He reiterated that his first application was denied by the City for a manufacturing Type 7 license, but was granted approval with a change to Type 1.

Co- Chair Uhlar asked for clarification on how this business works, an explanation of a Third-Party Purchase and how the initial application was denied.

Petitioner, Mr. Nowak, described the process of how guns are stored and kept while waiting for paperwork to clear. He gets paid for the paperwork, not the actual item itself.

Mr. Wilner asked more questions pertaining to the stock and commodity on the premises, and discussed if trade was present on the premises.

Ms. Ward asked questions pertaining to the application for the Federal Firearms License.

Mr. Gesund asked about the chain of custody when the items are shipped in and out of the premises. Mr. Nowak stated that someone has to be a licensee and age over 21 to receive a package with a firearm.

Mr. McDonald asked about the nature of business, with paperwork working, compliance with federal law, and working with the person who has purchased the firearm. He also asked for clarification on whether manufacturing of ammunition was allowed under the current Type 1 license.

Mr. Nowak said they were considering manufacturing of actual firearms, prior to their Type 1 approval which does not allow manufacturing of ammunition.

Co-Chair Uhlar stated an anonymous complaint that was sent from ATF, about heavy foot traffic on the premises. Mr. Nowak addressed it as a false accusation, and at most there is maybe one car a day in his driveway. He also stated that the firearms enter and leave the premise boxed and unmarked.

Chair McAlpine stated that she looked up the business on social media and asked questions pertaining to the facts present on the pages.

Business/Co-Owner

Evan Bouren
13691 Winchester St
Oak Park, MI 48237

Mr. Bouren addressed Chair McAlpine concerns when building the website and the limitations that were presented.

Ms. Ward asked about more clarification on a specific raffle advertised on the social media page of Wolverine State Armory. She also expressed her concern about a gun shop in the neighborhood.

Mr. Nowak stated that it is done in the industry to create followers. Mr. Nowak clarified that they are licensed dealers and are not a gun shop.

Mr. McDonald asked if this permit can be transferred to the business partners house in Oak Park. Mr. Bouren stated that their type of business is expressly forbidden as a home-based business in Oak Park.

Chair McAlpine opened the floor up for public comment.

Mary Glynn, 1350 Franklin: Stated that the homeowners seeking this variance are stellar neighbors. They are utterly innocuous, have never observed any disruptive behavior, or visitors or noises. She is fully in favor in overturning the City Manager's decision and, in a broader context, asked the Board to think long and hard about granting the variance, before taking a course of action possible leading with downstream ripple effects, which could impact any other Berkley residents with home-based businesses.

Ryan Cocciolone, 1474 Franklin: Stated that his house is immediately east to 1490 Franklin. He agreed with the prior statement on how great the neighbors are. He is aware of the business and the nature of the business. He has been reassured and has no reason to disbelieve anything that Mr. Nowak told him previously about the nature of the business. His biggest concern is the Amazon deliveries that go up and down the street. He has never had an issue with cars going in and out of the drive. He also touched on some implications that are far-reaching when talking about the definition of what a home-based business is, so to be careful about precedent.

Michael Day, 1692 Wiltshire: He affirmed the same thing as the last two people giving public comments. In living there for 11 years, he had not noticed an issue with traffic. He stated he has used his service and outlined the process.

Chair McAlpine read correspondence on this particular matter:

Letter from Michael and Megan Kennedy 1406 Franklin who wrote in support of the City's decision and opposition to the use variance.

Letter from Tom Rolewicz 1350 Franklin who wrote that he did not have any objections to the city granting Mr. Nowak's variance for his home business.

Letter from Brian Eggers 1335 Franklin who wrote in support of the City's decision.

Letter from Rosalynn Newberg 1455 Franklin who wrote in opposition to the use variance.

Senior officers at the Sons of American Legion Post 374 - Dale Hagland Senior Vice Commander, Sean VanWormer Financial Officer Judge Advocate – who wrote in support for Mr. Nowak's appeal.

Letter from James and Angela Tiura 1490 Dorothea who wrote in support of the city's decision and opposition to the use variance.

Letter from Jim and Nancy McChesney 1491 Wiltshire who wrote in opposition to the use variance.

Unknown, 1440 Franklin wrote in opposition to the use variance.:

Chair McAlpine closed the floor up for public comment.

Chair McAlpine opened discussion for ZBA members.

Chair McAlpine stated that the Board is affirming, reversing or modifying Mr. Baumgarten's decision. The Board is being asked to interpret something that has already been decided.

Mr. Wilner wanted clarification if the applicant was a renter or owner of the residence. Mr. Nowak stated that he is the owner of the house. The first year he was leased the home, and then purchased the house.

Mr. Gesund stated that he does not see this as a retail outlet. They are doing the paperwork. They are more mostly a licensing and storage facility for somebody else's sale. He was not sure how that violates the ordinance.

Mr. Wilner stated that they are not acting as a retail business. The part that stands out is that the Zoning Ordinance states that no stock or commodities sold should be kept on the premises, but, in this case, they are on the premises.

Mr. Krug asked for clarification on the principles of Wolverine State Armory owning or not owning the guns being transported there, holding until the paperwork is processed properly. He stated what he thinks holding stock is, which in his opinion is not happening here.

Co-Chair Uhlar stated that he finds the applicant very credible, with his statements to the Board. He also discussed the false anonymous complaint, when Berkley has approved this before. He discussed that this seems like somebody had a problem with guns and not the actual applicant. He does not think Mr. Baumgarten's letter provides us a sufficient factual basis to support his decision, especially when the letter states that the decision based on conversations between the City Manager and the applicant, which that applicant has stated did not take place.

Mr. McDonald agreed that this is a commodity that is just being transferred and the paperwork is being handled. When it comes to the anonymous letter about foot traffic, again, there is nothing in the Zoning Ordinance pertaining to that either. He recommended to Mr. Nowak to clean up the website, making it specific for transferring guns.

Chair McAlpine read the description on the Wolverine State Armory website. She clarified that it does say transfer service. She also read from the website that "we can also special order almost any firearm or NFA item on the market for direct sale."

The Board discussed how the decision can be modified, suggestions on the modification and whether and how they would keep up with the monitoring of social media. Also, the Board discussed where information would be kept and how it would be used.

Chair McAlpine questioned whether the home occupation of the particular business of Wolverine State Armory is retail use and specific verbiage on the ATF and their requirements. She clarified that the Board must make a decision within 90 days of tonight's public hearing.

Interim Community Development Director Masson-Minock stated that the Board would have the ability to further winnow down what the uses are, setting a precedent for future FFL licenses.

The Board asked the applicant for an explanation of the length of the license and amount of time of operation and when it would expire, while waiting on the decision and discussion of the Board.

Co-Chair Uhlar asks Mr. Nowak to explain this particular sentence pertaining to direct sales aside from transfers. Mr. Nowak states that is from the initial application in which their business platform has changed since then.

Co-Chair Uhlar asked Mr Nowak if he has ever done a direct sale, and Mr. Nowak confirmed that in the past he has done one, but it has been years since that has happened.

Chair McAlpine asked for clarification on the website creation, and if they are responsive to people who ask about buying particular items such ammunition or guns.

The Board communicated to Mr Nowak about possibilities of changing the verbiage on the website to reflect the business.

The Board discussed that tabling would provide for any questions and clarification points to be addressed. It would also allow for more clarification from Mr Baumgarten on the letter. The Board listed specific questions and information they would like staff to obtain for the next meeting.

Mr. McDonald, respectfully disagreed and stated that he thinks there is enough information here to vote on a modification.

The Board discussed possible alternatives on writing a rough draft of the modification and who it would be submitted and shared to.

Chair McAlpine closed discussion for ZBA members.

Ms. Ward motions to table application PBA-11-21; 1490 Franklin - Appeal, interpretation and/or use variance as to whether the definition of a home occupation includes a Federally Firearms Dealer. The motion included a request to staff to consult with the City Manager about the information used to draft the November 10th letter; to draft a motion for a modification that allowed transfers only with no direct sales based on a finding that the transfers are not a sale of goods, to be reviewed by corporation counsel; and to obtain written information from the applicant about direct sales by Wolverine State Armory since 2017.

Motion supported by Mr. Gesund

AYES: Gesund, Krug, McAlpine, McDonald, Uhlar, Ward, Wilner

NAYS:

ABSENT: NONE

MOTION CARRIED

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OTHER BUSINESS

Ms. Ward had a request to Staff: it would be nice to have a list of the board members, the alternates and contact information.

Ms. Ward stated that she was at the Post Office and met a young lady named Michelle who works at the Clawson Post office, but was shifted to the Berkley for extra help. She watches ZBA whenever they are on TV. Ms. Ward thanked her and others for their viewership.

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STAFF/ BOARD MEMBER REPORT

In the packet is the community development report from November and December.

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LIAISON REPORT

NONE

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PUBLIC COMMENTS

NONE

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With no further business, the meeting was adjourned at 9:42 p.m.