

THE REGULAR MEETING OF THE BERKLEY CITY ZONING BOARD OF APPEALS WAS CALLED TO ORDER AT 7:00 PM, MONDAY, FEBRUARY 12, 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	Steve Allen
Erick McDonald	

ABSENT:

ALSO, PRESENT:

Kim Anderson, Zoning Administrator
Kristen Kapelanski, Community Development Director
Dennis Hennen, City Council Liaison

CONFIRMATION OF QUORUM MET

APPROVAL OF AGENDA

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

Voice vote to approve the agenda.

AYES: 7
NAYS: 0
ABSENT:

MOTION CARRIED

APPROVAL OF MINUTES

Motion to approve the minutes of the January 9, 2024 regular meeting by Wilner and supported by Creal.

Voice vote to approve minutes

AYES: 7
NAYS: 0
ASBENT:

MOTION CARRIED

OLD 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.

2114 Eleven Mile Rd dates back to 1956 with the use as a gas station. The previous business, Henley Gas & Service Center was in service as a gas station until approximately 2013 – 2014. Property continued as an automobile service. Property was sold February 28, 2022.

Property is currently vacant. No definitive date has been confirmed on when the automobile service, repair establishment seized operation. M-1 does not permit a use of a gas station under Permitted or Special Use.

We ask that the Zoning Board of Appeals determine an approval or denial for a Use Variance to allow 2114 Eleven Mile Rd the business use as a gas station.

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.

APPLICANT PRESENTATION

Fadi Fajk representing F & L Berkley, LLC

The applicant explained the property 2114 Eleven Mile Rd. was purchased approximately one and half years ago with the intent to be used as a gas station and was unaware that the gas station was not allowed. As it appears as a gas station with pumps on site. DEQ had shut the tanks down – tanks were recently repaired and approved with inspections from DEQ to operate the tanks.

Chair McAlpine opened the floor for the public hearing at 7:06 p.m.

PUBLIC COMMENT

No public correspondence received

Brad Cocklin, 2147 Princeton, Berkley MI. Property is backed up to 2114 Eleven Mile and spoke on behalf of allowing the gas station. Has always appeared as a gas station. Location will benefit the residents.

Chair McAlpine closed the floor for the public hearing at 7:08 p.m.

Zoning Board of Appeals discussion:

Chair McAlpine went over standards that have to be considered, such as; non-conformity: gas pumps have not been active for more than 180 days. Previous owners decided not to invest and bring pumps up to code back when DEQ tagged the tanks. Property lost its legal nonconformity when the tanks did not operate for 8 years plus and is to follow current Ordinances. Money invested cannot be a factor for a determination. Purchaser of a Property should know what the property is zoned and what is permitted – self created hardship.

Member Wilner: Property has been a nonconforming property as a nonfunctioning gas station for 8 years plus. Property can still be used as a service station.

Member Serr: agrees tanks have been out of use and has lapsed too long to be allowed a use variance.

Member Allen: Discussion whether the need for the variance is or not the results of the property owner or previous property owners: Allen's opinion is that the "action" is the "lack of action" from the previous owner resulted in the tanks not being used.

Member Creal presented a motion to approve the use variance:

- 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. ***Land cannot be reasonably used, key word reasonably. Property cannot be reasonably used, will remain vacant.***
- b. The need for the variance is due to unique circumstances or physical conditions of the property. ***Property has four tanks and is a unique circumstance.***
- c. The proposed use will not alter the essential character of the neighborhood. ***Will not alter the character of the neighborhood, always has appeared as a gas station also public testimony.***
- d. The need for the variance is not the result of actions of the property owner or previous property owners. ***Does not agree "action" can be used. Not the failure to perform but the actual affirmative action. No action was taken by the previous owner that caused the tanks to be tagged.***

Motion not supported

The Zoning Board of Appeals discussion:

Wilner, Chair McAlpine and Allen

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.

Motion to deny the use variance request based on findings of fact by Serr supported by Wilner

*In the matter of PBA-01-24, 2114 Eleven Mile Rd., parcel 25-17-358-017, motion to Deny the requested use variances from Section 138-363 and Section 138-364 of the City of Berkley Zoning Ordinance to grant a use variance under **Section 138-153** Nonconforming use that does not conform to applicable Zoning Ordinance regulations based on the following findings:*

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.

a. The building or land can be reasonably used for any of the uses permitted by right or by special use permit in the current zoning district. [Automobile service, repair establishment is an allowed permitted use under Section 138-363 \(k\)](#)

AYES: Members; Allen, Krug, McDonald, Serr, Wilner and Chair McAlpine

NAYS: Member Creal

ABSENT:

MOTION CARRIED

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NEW BUSINESS

1. Application Number PBA-02-24

Hillan Homes Inc, representing Parcel # 04-25-17-478-029 North side of Columbia Rd., between Stanford Rd. and Woodward Ave., is requesting a dimensional variance for approximately four feet and three quarters inch (4.67) feet on the West side yard setback. A minimum of a fifteen (15) foot setback between dwellings is required.

Previous case was denied and the applicant has come back with a lesser variance request.

Case by staff

Parcel # 04-25-17-478-029 dates back to at least 1934 when the Western parcel, 948 Columbia Rd., structure was built and is non-conforming to current side yard setback requirements, on the East side of parcel 25-17-478-028, of the minimum five (5) feet side yard setback. Parcel # 04-25-17-478-029 is the original platted lot size of 40' x 119.10 (average depth).

The requested 4.67 foot variance on the West side yard is in balance with the deficiency that parcel 25-17-478-028, 948 Columbia's nonconformity has on its East side yard setback. The requested variance would have 10.89 feet between dwellings, rather than the 15 feet between dwellings required. The Applicant exceeds the total side yard setback requirement, per 138-526 Schedule of Regulations, of a total of fifteen feet (15) for both side yards setback on parcel 25-17-478-029, with the proposed structure, total would be 20.28 feet for both side yards setback.

We ask that the Zoning Board of Appeals determine an approval or denial for a dimensional variance of 4.67 feet on the West side yard setback. **NOTE: in report provided for Standards for review under A should be WEST.**

We request the Zoning Board of Appeals to determine if there are unique characteristics for "practical difficulty" of the property and the requested dimensional variance should be granted.

Zoning Administrator, Anderson clarified members questions on previous request and history of the lot.

Member Allen requested to be put on public record the severity of drainage problems of the vacant lot.

Chair McAlpine clarified that grading issues is not to be considered on the variance request. Grading is handled through another department within the City and is to be taken off table for discussion and consideration.

APPLICANT PRESENTATION

Patrick Raye, Hillan Homes: upon the previous case denial in November 2023, with the main concern being the amount of the side yard request, the proposed build was redesigned and shrunk to the smallest, buildable, marketable and livable home for the property. Mr. Ray did state that the drainage issues on this property will be addressed per the city requirements. Request variance went from 8.06 to 4.67, from a 25' wide house to 20' wide house.

Chair McAlpine opened the floor for the public hearing at 7:34 p.m.

PUBLIC COMMENT

Chair McAlpine read three correspondences that were received:

Elliot S. Ross, Catherine Barker-Ross and Ruth Ann Clark

Chuck Tyrrell

Joshua & Alyssa Roman

Don Walker, 948 Columbia. Seller of parcel 04-25-17-478-029. Confirmed that the vacant lot ponds water and if not developed, grading would not be fixed as it will be when developed on. Sell of the property will allow the Walker's to make repairs to their property structures. Improvement and new development will increase values of the neighborhood. Pointed out that the only thing to be considered is the distance between the two houses. Pointed out that the houses across the street are 7' 2" apart with an A/C unit between them. The requested variance for the distance between dwellings only effects them as the current owners and any future owner.

Chair McAlpine closed the floor for the public hearing at 7:41 p.m.

Zoning Board of Appeals discussion:

Member Wilner: in favor – lot was never split, original platted lot, meets all of their own setback. Reduced width of house to 20', decreasing the previous requested variance by 4'.

Member Creal: previous request was not a minimum variance necessary

Motion to approve the dimensional variance by Wilner and supported by Creal:

In the matter of PBA-02-24, parcel 25-17-478-029, motion to approve the requested variances from Section 138-526 of the City of Berkley Zoning Ordinance to grant a variance of 4.67 feet at the West side yard, where 15 feet between dwellings is required, that does not conform to applicable Zoning Ordinance regulations based on the following findings:

- 1. The need for the variance is due to unique circumstances or physical conditions of the property.*
- 2. The need for the variance is not the result of actions of the property owner or previous property owners.*
- 3. Strict compliance with the ordinance will unreasonably prevent the property owner from using the property for a permitted purpose or will render conformity with those regulations unnecessarily burdensome.*
- 4. The requested variance is the minimum variance necessary to do substantial justice to the application as well as other property owners.*
- 5. The requested variance will not adversely impact the surrounding properties.*

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

NAYS: Members; McDonald and Allen

ABSENT:

MOTION CARRIED

2. Application Number PBA-03-24

Berkley Business Center, LLC, 2070 Eleven Mile Rd, Parcel # 25-17-382-051, North side of Eleven Mile Rd., between Henley Ave. and Mortenson Blvd., and associated parcel # 25-17-382-047, East side of Henley Ave., between Eleven Mile Rd. and Princeton Rd. is requesting a parking variance.

Case by Staff

Parcel 04-25-17-382-051 and 04-25-17-382-047 2070 Eleven Mile Rd. housed a warehouse business for many years. Per the current parking ordinance in order to meet parking requirements per Sec. 138-219(5) One space per 250 square feet of usable floor area, the usable floor area would need to calculate at approximately 4,250 sq. ft. from a 14,500 square foot building. In 1971 the parking requirements for a warehouse was one space for every one employee in largest working shift or one for every 1,700 sq. ft. of floor area.

The applicant is requesting a parking variance for a warehouse business with no retail. The proposed business plans to have approximately six (6) to ten (10) employees.

We ask that the Zoning Board of Appeals determine an approval or denial for a parking variance for 2070 Eleven Mile Rd.

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 there are unique characteristics for "practical difficulty" of the property and the requested parking variance should be granted.

Zoning Board of Appeals discussion:

Member Serr addressed some questions on the history of the parking allowed previously and if there had been complaints.

Zoning Administrator Anderson clarified and explained the previous business from the 1970's and the parking requirements at that time to when Drought became a business in 2016 and the parking ordinance had changed and possibly was permitted under a previous ordinance 138-603 that allowed administrative review that was repealed in May 2020. No known parking issues had been raised when Drought was in business as warehouse and retail.

Member Wilner asked about the zoning rewrite and the possible new parking requirements.

Director Kapelanski explained a final number has not been determined at this time but a typical requirement for a warehouse is 1 space per 750 sq. ft.

Zoning Administrator Anderson went over current parking requirements: 1 space per 250 sq. ft. and even with warehouse parking as one of the lowest parking space requirements per square foot of useable floor area, property could not be used for any purpose without a parking variance.

Chair McAlpine directed the members of the ability to implement conditions on the parking variance request.

Member Serr asked how, if approved with conditions, would that be carried on to any future businesses. Zoning Administrator Anderson replied that administratively it would be noted on the property and future businesses would need to be informed.

APPLICANT PRESENTATION

Talib Al-Ameri, representing the owners of 2070 Eleven Mile Rd., Berkley. Current use would not have retail. Mr. Al-Ameri's experience with parking is that Medical facilities usually are calculated at 200 sq. ft. per parking space for high traffic. Across the U.S. on studies, warehouse is normally 1 space per 750 sq. ft. on the conservative end and usually up to 1 per 1,500 sq. ft.

Mike Stanley, representing 2070 Eleven Mile Rd. addressed member Serr on number of shifts. 1 shift 5:30 am to approximately 4:00 pm 4 days a week, Tuesday through Friday with 9 employees at this time not planning to go over 10.

Member Serr asked about Loading. Loading would be from a tractor trailer 4 days a week in the morning and then 4 domicile trucks get loaded and are out on the road and come back at the end of the day. Ideally there would be one (1) person and a couple sales people in the building. Most times the building will be unoccupied. The four domicile trucks will take up 4 parking spots.

Chair McAlpine opened the floor for the public hearing at 7:59 p.m.

PUBLIC COMMENT

Chair McAlpine read one correspondence that was received:

Elizabeth Joyce

No other comments

Chair McAlpine closed the floor for the public hearing at 8:00 p.m.

The Zoning Board of Appeals discussion:

Board confirmed no retail and product: food distribution. Board members Wilner, Krug and Serr agreed to set parameters. Krug mentioned that it is already set up for warehouse and refrigerated. Discussion of parameters; 12 employees 4 trucks.

Chair McAlpine asked for clarification on trucks routine.

Mike Stanley confirmed trucks routine: truck tractor at 5:30 am tractor trailer unloaded and then local box trucks get loaded. Tractor trailer is in and out. Tractor trailer backs up to loading area – no street blockage.

Allen asked about privacy from the residents. Zoning Administrator, Anderson clarified that the receiving door is at the rear of the building and then the parking lot is between the building and

the adjacent residences. No previous complaints of previous businesses with truck loading are on record.

Motion to approve the requested parking variance by Creal and supported by Krug:

In the matter of PBA-03-24, parcels 25-17-382-047 and 25-17-382-051, motion to approve the requested variances from Section 138-219 (5) Industrial of the City of Berkley Zoning Ordinance to permit a parking variance based on the following findings of fact with conditions.

1. *The need for the variance is due to unique circumstances or physical conditions of the property.*
2. *The need for the variance is not the result of actions of the property owner or previous property owners.*
3. *Strict compliance with the ordinance will unreasonably prevent the property owner from using the property for a permitted purpose or will render conformity with those regulations unnecessarily burdensome.*
4. *The requested variance is the minimum variance necessary to do substantial justice to the application as well as other property owners.*
5. *The requested variance will not adversely impact the surrounding properties.*

Conditions: Provision that they are not permitted to have more than 12 employees on any given shift so as to not render the risk of any unnecessary congestion in the parking lot.

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

NAYS: 0

ABSENT: 0

MOTION CARRIED with conditions imposed

OTHER BUSINESS

NONE

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STAFF/BOARD MEMBER REPORT

Staff/Board Member Report:

Community Development Monthly reports: January 2024

Zoning Ordinance Steering Committee Activity update: February 2024

Members McDonald and Creal terms expire July 2024 – Applications for reapplying need to be submitted in order to go to Council – March 1 deadline to apply with Charlaine.

Alternate positions are still available. Two alternates are needed, one applicant has applied and in review.

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LIAISON REPORT

Dennis Hennen – Zoning Ordinance rewrite update.

PUBLIC COMMENT

NONE

With no further business, the meeting was adjourned at 8:10 p.m.

Motion by Wilner and support by Allen

Voice Vote to adjourn

AYES: 7

NAYS: 0

ABSENT:

MOTION CARRIED
