

**THE REGULAR MEETING OF THE BERKLEY CITY ZONING BOARD OF APPEALS WAS CALLED TO ORDER AT 7:00 PM, MONDAY, June 10, 2024 BY CHAIR MCALPINE.**

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*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:** Sue McAlpine Kevin Wilner  
Joseph Krug Andrew Creal  
Joann Serr Steve Allen  
Erick McDonald

**ABSENT:** None

**ALSO, PRESENT:** Kim Anderson, Zoning Administrator  
Dennis Hennen, Liaison

**CONFIRMATION OF QUORUM MET**

**APPROVAL OF AGENDA**

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

Voice vote to approve the agenda.

AYES: 7  
NAYS: 0  
ABSENT: 0

**MOTION CARRIED**

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**APPROVAL OF MINUTES**

Motion to approve the minutes of the April 8, 2024 regular meeting by Allen and supported by Wilner.

Voice vote to approve minutes

AYES: 7  
NAYS: 0  
ASBENT: 0

**MOTION CARRIED**

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## **OLD BUSINESS**

### **1. Application Number PBA-04-24**

Applicant Flame Furnace, representing 1957 Edgewood Blvd, Parcel #25-17-176-005, South side of Edgewood Blvd., between Henley Ave. and Mortenson Blvd. is requesting a non-use variance for a side yard generator.

Zoning Ordinance: Chapter 138, Article III, Division 1.5 Exterior Appliances was adopted March 1, 2021 by City Council and effective April 1, 2021. 138-73 (a) (1) Power generators and other exterior appliances shall be located in the rear yard at least six feet from side property line

*Rear yard setback.* A yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the *rear lot line and the nearest line of the main building.* The rear of the main building has different extending points and would be required to go from the furthest point horizontal.

Zoning Administrator, Kim Anderson provided the Zoning Board of Appeals an overview of the non-use variance request for a side yard generator already installed by Flame Furnace.

Member Wilner disclosed that prior to the April 08, 2024 meeting he did a site visit on the property at the side yard and had a brief interaction with the property owner(s). Chair McAlpine asked the Board Members if anyone had concerns that Member Wilner would not be able to make an unbiased decision based on that encounter. No member had concerns. Chair McAlpine confirmed quorum was still met.

## **APPLICANT PRESENTATION**

Matt Morsiglio of Flame Furnace Co., presented to the board that the generator was installed in the side yard to follow National Fire Protection Association (NFPA) requirements, the Manufactures requirements on distance from operable windows and states that the gas line would be a trip hazard if the generator was place in the rear yard.

Member Wilner asked the applicant specific questions pertaining to the circumstances of the already installed generator in the side yard rather than the rear yard. Petitioner expressed that it is not standard practice and possibly occurred due to staff change.

Member Serr asked about the gas line and trip hazard. Petitioner indicated that the gas line would have to be trenched and MISS DIG would need to be involved for any underground utility locations.

Member Creal asked the petitioner if there was no other feasible location in the rear yard for the generator to be placed. Petitioner states that with the setback requirements there is no other feasible location without modifications of landscape or without effecting NFPA or City Ordinances.

Board members asked about placing the generator behind the enclosed porch, and testing noise to neighbors.

Chair McAlpine opened the floor for the public hearing at 7:13 p.m.

### **PUBLIC COMMENT**

No additional correspondence was received other than the one correspondence received for the April 08, 2024 meeting.

Jack Blanchard chose to speak.

Jack Blanchard, 1927 Edgewood Blvd., Berkley in support for the variance. Testing is not a concern, generator cannot be heard from his house. The generator on the side is the best location because it is located behind his garage and shields his house from any noise. Mr. Blanchard is concerned if the generator is placed in the rear yard it would sit more in line with his family room. There is a distance of 45 feet from his house to generator.

Roman Przekop, owner of 1957 Edgewood presented to the Zoning Board of Appeals the need for the variance is due to the unique lot size and configuration behind the house and lack of alternative locations from landscaping and operable doors and windows. The property is in the R-1A district that has larger lot sizes and is a small percentage of the Cities properties. The side yard is the least invasive location for the placement of the generator.

Chair McAlpine closed the floor for the public hearing at 7:19 p.m.

Zoning Board of Appeals discussion:

Member Allen expressed the concern of contractors performing work prior to approval and then applying for a variance.

Zoning Administrator, Ms. Anderson went over that "Rear Yard" has historically been determined as the rear yard measured from the furthest line of the main building extending across the full width of the lot horizontally.

Member Wilner feels that the generator can be in compliance if it is installed behind the enclosed porch.

Member Creal stated that those regulations render it to be unnecessarily burdensome.

Board members discussed various locations of where the generator could be placed in accordance with behind the rear yard line.

Motion to approve by Creal and supported by Krug.

*In the matter of PBA-04-24, parcel 25-17-176-005, 1957 Edgewood Blvd., motion to approve the requested variances from Section 138-73 (a) (1) of the City of Berkeley Zoning Ordinance to permit a non-use variance based on the following findings:*

1. *The need for the variance is due to unique circumstances or physical conditions of the property.  
Larger parcel and the backyard area vs the rear yard setback.*
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.  
Conformity would render 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.  
Unnecessary noise burden on the neighbor if located closer to their property.*
5. *The requested variance will not adversely impact the surrounding properties.*

AYES: Members; Creal and Krug

NAYS: Members; McDonald, Serr, Wilner, Allen and Chair McAlpine

ABSENT: 0

**MOTION TO APPROVE – DENIED 5 to 2**

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Motion to Deny by Allen and supported by Wilner

*In the matter of PBA-04-24, parcel 25-17-176-005, 1957 Edgewood Blvd., motion to deny the requested variances from Section 138-73 (a) (1) of the City of Berkeley Zoning Ordinance to permit a variance that does not conform to applicable Zoning Ordinance regulations based on the following findings:*

1. *The need for the variance is not due to unique circumstances or physical conditions of the property.*

AYES: Members; McDonald, Serr, Wilner, Allen and Chair McAlpine  
NAYS: Members; Creal and Krug  
ABSENT: 0

**MOTION TO DENY – CARRIED 5 TO 2**

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**NEW BUSINESS**

**1. Application PBA-05-24**

Tom Obertynski, 3803 Robina Ave., Parcel # 04-25-07-409-030, 3803 Robina Ave., West side of Robina Ave., between Edwards Ave. and Morrison Ave is requesting a dimensional variance to allow a driveway that is larger than allowed per ordinance.

Zoning Administrator, Kim Anderson provided the Zoning Board of Appeals an overview of the non-use dimensional variance request; The applicant is asking for a dimensional variance to allow the driveway to be the width of the attached 32.5' garage and taper to 26' rather than 16' at the front lot line for a more proportional access to the garage door bays.

Per City Ordinance Chapter 138 *Zoning*, Article IV, Sec. 138-222 (a) (3) f: *Interior lots with attached garages*. The width of a driveway area or parking strip shall not exceed the width of the garage and shall taper uniformly to a width of 16 feet at the front lot line.

The Applicant is constructing a new construction single family dwelling with approved plans from 2021. It was recently discovered that the plans approved in 2021 had a driveway width of 30' and not in compliance with the ordinance for an interior attached garage.

Lot size is 11,520 sq. ft. in the R-1D district where the minimum requirement is 4,400 sq. ft.

Ms. Anderson explained to Member Serr the ordinance on interior lot driveways with attached garages vs corner lot driveways at the side street.

Chair McAlpine asked for confirmation that the request is for 10' (confirmed), if the design was by choice, and is it a standard size. Ms. Anderson provided that the garage size is larger than standard but meets all the requirements for an attached garage per the ordinance because of the size of the lot. The current ordinance for an interior lot attached garage driveway is not proportional with the size of this garage to taper to 16'.

Member Wilner asked about the plans being approved in 2021. Ms. Anderson explained that the plans approved in 2021 was prior to the Zoning Administrator position where all zoning is looked at now by the Zoning Administrator.

Member McDonald was confirming that the current 20' approach that is there is nonconforming and if kept it would not be in line with the ordinance of the driveway to be Sixteen feet 16'. Ms. Anderson clarified that the current approach will have to be uniform with the determined approved driveway width.

### **APPLICANT PRESENTATION**

Tom Obertynski, 3695 Robina Ave., Berkley is building the dwelling at 3803 Robina Ave on a double lot. Plans were approved and house has been constructed accordingly. The Garage is 32.5' wide and if tapered to 16' it would be difficult to navigate and use to its full capacity safely. Petitioner is requesting 26' rather than the 30' that was approved on the plans. The 26' corresponds to the proportional taper that consist with a two-car garage, with a 80% taper ratio. The uniqueness is that it is a double lot in an area where the dwellings are not set back further for the availability of a deeper driveway.

Mr. Obertynski spoke with his neighbors and obtained 28 signatures in support of the request.

Board members asked the applicant about plans approved in 2021 and length of construction. Ms. Anderson confirmed Building Permits can be extended with approval from the Building Official six months at a time.

Member McDonald asked what the distance from the top of the sidewalk to the garage was. Mr. Obertynski confirmed it is 30' from the sidewalk.

Chair McAlpine opened the floor for the public hearing at 7:55 p.m.

### **PUBLIC COMMENT**

Public correspondence: 28 signatures from neighbors in support of the variance were provided in the meeting packet.

No public comment

Chair McAlpine closed the floor for the public hearing at 7:55 p.m.

Zoning Board of Appeals discussion:

Members discussed the already approved plans, the safety, uniqueness of lot size and garage size, proportional access and aesthetics.

Motion by Serr to approve, supported by Creal

*In the matter of PBA-05-24, parcel 25-07-409-030, 3803 Robina Ave. motion to approve the requested variances from Section 138-222 (a) (3) f, of the City of Berkley Zoning Ordinance to grant a variance to allow a 26' foot driveway/approach at the front lot line, 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; Serr, Wilner, Allen, Creal, Krug, McDonald and Chair McAlpine

NAYS: None

ASBENT:0

**MOTION CARRIED**

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**OTHER BUSINESS**

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No other business

**STAFF/BOARD MEMBER REPORT**

Community Development Monthly Report for March and April 2024  
Zoning Ordinance Steering Committee Activity update for May 2024

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**LIAISON REPORT**

Dennis Hennen  
Homeowner guide to permits is available on City Website under Community Development,  
Permits: [berkleymich.org/permitguide](http://berkleymich.org/permitguide), or at City Hall  
Building Official office hours for questions are Wednesdays 3:00 pm to 4:30 pm  
Columbia PUD went back to Planning Commission with changes and recommend approval and  
is scheduled for City Council consideration at the June 17, 2024 City Council Meeting along with  
the consideration of changes to parking to allow overnight parking permits.  
Two Alternate positions needed for Zoning Board of Appeals.

**PUBLIC COMMENT**

NONE

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Prior to adjournment, member Allen asked for clarification on the plans that were approved with a zoning requirement not met on the driveway, if the reviewer was still reviewing.

Ms. Anderson assured the board that now as the Zoning Administrator, zoning is being reviewed carefully.

**With no further business, the meeting was adjourned at 8:06 p.m.**

Motion by Allen and support by Krug

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

NAYS: 0

ABSENT: 0

**MOTION CARRIED**

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