

THE REGULAR MEETING OF THE BERKLEY CITY ZONING BOARD OF APPEALS WAS CALLED TO ORDER AT 7:00 PM, MONDAY, July 08, 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: 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 Serr.

Voice vote to approve the agenda.

AYES: 7
NAYS: 0
ABSENT: 0

MOTION CARRIED

APPROVAL OF MINUTES

Motion to approve the minutes of the June 10, 2024 regular meeting by Allen and supported by Wilner.

Voice vote to approve minutes

AYES: 7
NAYS: 0
ASBENT: 0

MOTION CARRIED

OLD BUSINESS

None

NEW BUSINESS

1. Application Number PBA-06-24 - Dimensional variances to construct an addition.

Ethan Gurski, representing 3072 Robina Ave., Parcel # 04-25-18-210-008 East side of Robina Ave., between Wiltshire Rd., and Beverly Blvd., built in 1928 is requesting a dimensional variance to allow the construction of a second story addition to a nonconforming structure in the required setbacks; front yard setback and the distance between dwellings.

Zoning Administrator, Kim Anderson provided the Zoning Board of Appeals an overview of the dimensional variance requests for an addition on a nonconforming structure.

Per *Berkley City Code*, Chapter 138 *Zoning*, Article III General Provisions, Division 5 Nonconforming Buildings and Uses: Section 138-154 Requirements for Nonconforming Structures: A building may be added to or enlarged if such addition conforms to the regulations of the applicable zoning district. Such addition or enlargement shall be treated as a separate building in determining conformity to all of the requirements of this chapter.,

Article V District Regulations, Division 17 Schedule of Regulations, Section 138-527(b): The front yard setback shall be 25 feet or equal to the average setback of the six adjacent buildings on the same block, whichever is greater. The Front yard setback is 23.5' and the average of the six adjacent properties is 23.25'. Requiring the front yard setback to be 25'. A variance of 1.5' is being requested.

Section 138-527(d): There shall be a distance of at least 15 feet between dwellings. The South side does not meet the required 15' between dwellings. The South side distance between dwellings is 12.083'. A variance of 2.917' is being requested to add a second-floor addition where the south side distance between dwellings is nonconforming. The North side distance between dwellings is 22.5' and meets the required distance between dwellings.

Member Serr and Allen confirmed that there was no increase to the existing footprint.

APPLICANT PRESENTATION

Applicant Ethan Gurski, 2142 Dorothea the Builder representing 3072 Robina Ave., is requesting variances for a second story addition going straight up from the existing footprint. The existing foundation will have existing beams replaced.

Chair McAlpine disclosed that she lives on Dorothea, but does not know the builder.

Chair McAlpine opened the floor for the public hearing at 7:09 p.m.

PUBLIC COMMENT

Two correspondence were received:

Elliott & Sally Sherman, 3060 Robina dated June 15, 2024 in support
Matthew & Dawn Kennedy, 3048 Robina dated July 3, 2024 in support

No additional public comment

Chair McAlpine closed the floor for the public hearing at 7:10 p.m.

Zoning Board of Appeals discussion:

Member Wilner asked about any requirement for fire separation. Ms. Anderson confirmed fire separation is not required.

Motion to approve by Creal and supported by Krug.

In the matter of PBA-06-24, parcel # 04-25-18-210-008, motion to approve the requested variances from Section 138-154, Section 138-527(b) and Section 138-527(d) of the City of Berkeley Zoning Ordinance to grant a front yard setback variance of approximately 1.5' where a total of 25', as required, that does not conform to the applicable Zoning Ordinance regulations and to grant a distance between dwellings variance of approximately 2.917' where a total of 15', as 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.*
Dwelling was constructed in 1928 and property to the South built in 1950 prior to current zoning codes.
2. *The need for the variance is not the result of actions of the property owner or previous property owners.*
Dwelling was constructed in 1928 and property to the South built in 1950 prior to current zoning codes.
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.*
Strict compliance with the ordinance would be burdensome to the property owner.
4. *The requested variance is the minimum variance necessary to do substantial justice to the application as well as other property owners.*
Addition will do substantial justice to the property.
5. *The requested variance will not adversely impact the surrounding properties.*
Addition is going straight up with no expansion to existing footprint.

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

NAYS: None

ABSENT: 0

MOTION CARRIED

2. Application Number PBA-07-24 – Dimensional variance to construct an addition.

Great Lakes Building Co, for 1992 Gardner Ave., Parcel # 04-25-18-453-001, East side of Gardner Ave., between Eleven Mile Rd. and Cambridge Rd., is requesting a dimensional variance to allow the construction of a second story rear dormer to a nonconforming structure in the required minimum yard setback for exterior side yards on corner lots.

Zoning Administrator, Kim Anderson provided the Zoning Board of Appeals an overview of the non-use dimensional variance request.

Per *Berkley City Code*, Chapter 138 *Zoning*, Article III General Provisions, Division 5 Nonconforming Buildings and Uses: Section 138-154 Requirements for Nonconforming Structures: A building may be added to or enlarged if such addition conforms to the regulations of the applicable zoning district. Such addition or enlargement shall be treated as a separate building in determining conformity to all of the requirements of this chapter. Per Section 138-527 (c) - Schedule of regulations: Minimum Yard setback. Exterior side yards on corner lots: When a rear yard abuts a rear yard, the exterior side yard setback shall not be less than ten feet.

1992 Gardner dates back to 1948 and was constructed with the North side yard setback at 6.03' and is nonconforming to current minimum exterior side yard setback requirement of 10'. All other setback requirements are met.

A dimensional variance for approximately 3.97' on the North exterior side yard setback is being requested.

APPLICANT PRESENTATION

Applicant Kurt Reinking of Great Lakes Building Co representing 1992 Gardner is requesting a variance to construct a rear dormer on existing footprint.

Chair McAlpine opened the floor for the public hearing at 7:17 p.m.

PUBLIC COMMENT

One correspondence was received:

Petitioner Jim and Jane Bitner of 1992 Gardner Ave dated July 6, 2024 had a petition signed by nine neighbors in support of the variance.

No additional public comment

Chair McAlpine closed the floor for the public hearing at 7:18 p.m.

Zoning Board of Appeals discussion: No questions

Motion by Serr to approve, supported by Krug

In the matter of PBA-07-24, parcel 04-25-18-453-001, motion to approve the requested variances from Section 138-154, Section 138-526 and 138-527 (c) of the City of Berkeley Zoning Ordinance to grant a variance of approximately 3.97' on the North side yard setback, where 10 feet 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.
Dwelling was constructed in 1948 prior to current standards.*
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.
Strict compliance with the ordinance would be unnecessarily burdensome to the property owner.*
4. *The requested variance is the minimum variance necessary to do substantial justice to the application as well as other property owners.
The requested variance would do substantial justice to the property owner and surrounding properties*
5. *The requested variance will not adversely impact the surrounding properties.
There are surrounding properties with the same style rear dormer.*

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

NAYS: None

ASBENT:0

MOTION CARRIED

3. Application Number PBA-08-24 – Determination of Commercial Message for Mural/Work of Art

Zoning Administrator, Kim Anderson provided the Zoning Board of Appeals an overview of the case for a Determination of Commercial Message for Mural/Work of Art.

Bethany Nixon for 2985 Twelve Mile Rd., Parcel # 04-25-18-205-028, South side of Twelve Mile Rd., between Robina Ave. and Wakefield Rd., is requesting a Determination of Commercial Message for Mural/Work of Art.

2985 Twelve Mile Rd., is located in the DDA, and eligible for the DDA Mural Program. DDA has approved the Mural Program application to Reware Vintage and Avenue

Group Real Estate. Method of approving a proposed mural is contingent upon the Zoning Board of Appeals determining if the design contains a commercial message.

Property Owner of 2985 Twelve Mile, LLC is allowing Reware Vintage of 2965 Twelve Mile Rd., Suite 200 permission to have a mural displayed on the back South/East side of the building facade at 2985 Twelve Mile Rd.

The Zoning Board of Appeals has the authority to determine if a mural or work of art contains a commercial message. If the ZBA determines that the proposed design **DOES NOT** contain a commercial message, it shall be considered a mural or work of art and can proceed with installation. If the ZBA determines that the proposed design **DOES** contain a commercial message, the design would be subject to the regulations of the sign ordinance, including height, area, etc.

APPLICANT PRESENTATION

Bethany Nixon, 2868 Bacon Ave, Berkley owner of 2965 Twelve Mile Rd., Reware Vintage. Does not feel that the design contains any commercial message. The artist was not given any direction or information of the business.

Chair McAlpine opened the floor for the public hearing at 7:24 p.m.

PUBLIC COMMENT

E-mail/letters – No Correspondence:

In person:

Katey Wagner, 3696 Cumberland Rd., Berkley, owner of 2985 Twelve Mile Rd. is in support of Mural/Work of Art and feels it will really help the back alley.

Chair McAlpine closed the floor for the public hearing at 7:24 p.m.

Zoning Board of Appeals discussion:

Chair McAlpine let board members know that included in their packets was the proposed design as well as the "Agreement for Mural Installation and Maintenance".

Allen commented that he thinks the design is a very nice looking mural and is in support of the Downtown Mural program - it brings eyes to Berkley.

Members Creal confirmed that if they felt there was a commercial message that the board would have to identify what the commercial message was.

Members confirmed the name and type of business

Chair McAlpine asked about the records on the design and if records were sold – Applicant stated that there is one crate of records that is sold but is not the primary business

Member discussed the design and do not see a commercial message.

Motion by Krug to approve application PBA-08-24, that the proposed mural design is a piece of art work with no commercial message at 2985 Twelve Mile Rd., Parcel # 04-25-18-205-028, South side of Twelve Mile Rd., between Robina Ave. and Wakefield Rd., with a condition that business is not to become exclusively record sales, supported by Serr.

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

NAYS: None

ASBENT:0

MOTION CARRIED

4. Application Number PBA-09-24 - Determination of Commercial Message for Mural/Work of Art

Time Travelers, 3116 Twelve Mile Rd., Parcel # 04-25-07-454-041, North side of Twelve Mile Rd., between Griffith Ave. and Robina Ave., is requesting a Determination of Commercial Message for Mural/Work of Art.

Zoning Administrator, Kim Anderson provided the Zoning Board of Appeals an overview of the case for a Determination of Commercial Message for Mural/Work of Art.

3116 Twelve Mile Rd., is located in the DDA, and eligible for the DDA Mural Program. DDA has approved the Mural Program application to Time Travelers. Method of approving a proposed mural is contingent upon the Zoning Board of Appeals determining if the design contains a commercial message.

The applicant is proposing to have a Mural/work of art painted on the North and West walls of the building.

The Zoning Board of Appeals has the authority to determine if a mural or work of art contains a commercial message. If the ZBA determines that the proposed design **DOES NOT** contain a commercial message, it shall be considered a mural or work of art and can proceed with installation. If the ZBA determines that the proposed design **DOES** contain a commercial message, the design would be subject to the regulations of the sign ordinance, including height, area, etc.

Included in packets is the proposed design as well as the "Agreement for Mural Installation and Maintenance".

Time Travelers location of their new building was confirmed.

APPLICANT PRESENTATION

Michael Morgan, presented that the mural is a celebration of pop culture designed by Kobie Solomon in an abstract style.

Member Wilner confirmed the abstract style

Serr – questioned the words on athlete cards – Applicant clarified names are an example and most likely would not be in the abstract version.

Allen – concerns about copy right infringement on the recognizable super heroes, and characters.

Members confirmed that the Zoning Board of Appeals is only determining if there is or is not a commercial message.

Applicant explained that fan art/fair use is allowed and transformative medium is allowed, Artist interpreted the mural/work of art. It cannot be commercialized/advertised, cannot be put on merchandise; shirt, etc. Applicant is continuing to check to be sure that there would not be any infringement.

Chair McAlpine opened the floor for the public hearing at 7:36 p.m.

PUBLIC COMMENT

E-mail/letters – No Correspondence:

No additional public comment

Chair McAlpine closed the floor for the public hearing at 7:37 p.m.

Zoning Board of Appeals discussion:

Creal motioned to deem this application PBA-09-24 as a work of art that does not convey a commercial message and approved the request before the ZBA as written, supported by Wilner

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

NAYS: Allen

ASBENT:0

MOTION CARRIED

5. Application Number PBA11-24 – Dimensional variance to construct an addition.

Ryan & Rebecca Duffy, 3600 Kenmore Rd., Parcel # 04-25-07-479-007, East side of Kenmore Rd., between Twelve Mile Rd. and Edwards Ave., is requesting a dimensional variance to allow the construction of a rear second story addition to a nonconforming structure in the required minimum side yard total setback.

Zoning Administrator, Kim Anderson provided the Zoning Board of Appeals an overview of the non-use dimensional variance request.

3600 Kenmore dates back to 1941. The rear addition to the dwelling was constructed in 1984. Approved plans for the addition in 1984 did not have side yard setbacks indicated on the site plan. In 1988 an addition was constructed to the back of the garage and removed the breezeway between the dwelling and garage creating an attached garage. Side yard setbacks are: North 5.25', South 6.67' with a total of two side yards of 11.92' leaving a deficiency of 3.08' to the required 15'. There is a total of 24.29' between dwellings on the South side and 17.083 on the North side, meeting Sec. 138-527(d) the required distance between dwellings.

Per Berkley City Code, Chapter 138 Zoning, Article III General Provisions, Division 5 Nonconforming Buildings and Uses, Section 138-154 Requirements for Nonconforming Structures: A building may be added to or enlarged if such addition conforms to the regulations of the applicable zoning district. Such addition or enlargement shall be treated as a separate building in determining conformity to all of the requirements of this chapter. Article V District Regulations, Division 17 Schedule of Regulations, Section 138-526 Table, R1-D Minimum Yard Setback; At least one Side Yard 5', Total of two Side Yards 15'.

Wilner asked what year the house was purchased. The Duffy's purchased in 2016. Allen asked about any change in footprint. Anderson clarified that the second story addition is only proposed to expand up at the rear addition that was done in 1984. Nothing proposed for the front portion of the house.

APPLICANT PRESENTATION

Ryan Duffy, 3600 Kenmore Rd., Berkley confirmed the request is to go directly above the existing rear addition. Applicant was not aware there was a nonconformity of the total side yard setbacks on the property when designing the second story addition. Setbacks are met between dwellings.

No questions from the board

Chair McAlpine opened the floor for the public hearing at 7:45 p.m.

PUBLIC COMMENT

E-mail – Correspondence: 2) email received 7/8/2024

Carrie Leitner, 3581 Kenmore – in support

Jon and Hayley Hauger, 3696 Kenmore, in support

Applicant provided a petition signed by ten neighbors in support of the variance

No additional public comment

Chair McAlpine closed the floor for the public hearing at 7:46 p.m.

Zoning Board of Appeals discussion:

Serr – asked if the property to the South 3581 Kenmore signed in support – confirmed yes

Motion to approve by Serr and supported by Krug.

In the matter of PBA-11-24, parcel 04-25-07-479-007, motion to approve the requested variances from Section 138-154, and Section 138-526 of the City of Berkeley Zoning Ordinance to grant a variance of approximately 3.08’ where the minimum yard setback – total of two side yards is 15’ as 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.
Nonconformity was existing when purchased.*
2. *The need for the variance is not the result of actions of the property owner or previous property owners.
Nonconformity was existing when purchased.*
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.
Would be burdensome if they can’t increase because of the nonconformity*
4. *The requested variance is the minimum variance necessary to do substantial justice to the application as well as other property owners.
Not increasing the footprint of the nonconformity*
5. *The requested variance will not adversely impact the surrounding properties.
Will not be noticeable for the street and will not impact surrounding properties*

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

NAYS: None

ASBENT:0

MOTION CARRIED

OTHER BUSINESS

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1. Rules of Procedure

Motion to approved as written by Wilner, supported by Creal

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

NAYS: None

ASBENT:0

MOTION CARRIED

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2. Election of Officers:

Seat for Chair

Chair McAlpine stepped down from seat

Wilner nominated McAlpine for Chair, supported by Creal

McAlpine accepted nomination of position as Chair

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

NAYS: None

ASBENT:0

MOTION CARRIED

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Seat of Vice-Chair

Krug nominated Allen for Vice-Chair, supported by Serr

Allen accepted nomination of position as Vice-Chair

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

NAYS: None

ASBENT:0

MOTION CARRIED

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STAFF/BOARD MEMBER REPORT

Zoning Administrator, Kim Anderson reported:

Member Creal and Member McDonald have been reappointed by City Council for Zoning Board of Appeals members – terms expire 2027

BS&A on line will be active soon

Still seeking two alternate zoning board of appeal members
Community Development Monthly Report for May 2024
Zoning Ordinance Steering Committee Activity update: June Draft for Planning Commission and
City Council joint meeting July 9, 2024
Emails will be changing to berkley.mi.gov and the end of July.

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LIAISON REPORT

Dennis Hennen asked if the ZBA has denied variances for straight up on existing footprints of nonconformities. Zoning Administrator, Anderson will get reports together for further discussion.

PUBLIC COMMENT

NONE

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With no further business, the meeting was adjourned at 7:57 p.m.

Motion by Allen and support by Wilner

Voice vote to adjourn

AYES: 7

NAYS: 0

ABSENT: 0

MOTION CARRIED

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