

THE REGULAR MEETING OF THE BERKLEY CITY ZONING BOARD OF APPEALS WAS CALLED TO ORDER AT 7:00 PM, TUESDAY, August 13, 2024 BY VICE CHAIR ALLEN

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

ABSENT: Chair Sue McAlpine

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

CONFIRMATION OF QUORUM MET

APPROVAL OF AGENDA

Motion to approve the agenda with a date correction to the "Approval of Minutes" from June 10, 2024 to July 08, 2024 presented by Krug, and supported by Wilner.

Voice vote to approve the agenda.

AYES: 6
NAYS: 0
ABSENT: 1

MOTION CARRIED

APPROVAL OF MINUTES

Motion to approve the minutes of the July 08, 2024 regular meeting by Creal and supported by Serr.

Voice vote to approve minutes

AYES: 6
NAYS: 0
ASBENT: 1

MOTION CARRIED

OLD BUSINESS

None

NEW BUSINESS

1. Application Number PBA-12-24 - Dimensional variances to construct an addition.

Member Serr disclosed that she knows the applicant through her daughter and has not discussed the case with them. Member Krug disclosed that he knows the applicant as well through his son. Vice Chair Allen asked if an informed decision could be made. Both Serr and Krug stated they could. Members were satisfied as Serr and Krug felt confident in remaining impartial.

The applicants, Steven and Jennifer Naumann for 2274 Earlmont Rd., Parcel # 04-25-17-106-013 is requesting a dimensional variance of 2.38' to allow the construction of a first-floor addition on the East side of the dwelling where the proposed total of the two side yards would be 12.62' when 15' is required per Chapter 138 *Zoning*, Sec. 138-526 Table - Schedule of regulations: Minimum Yard setback. Total of two side yards is 15'.

Zoning Administrator, Kim Anderson provided the Zoning Board of Appeals background on the 1927 dwelling and an overview of the current property setbacks and proposed dimensional variance request of 2.38' to add a first-floor addition to the East side of the dwelling where the total of two side yards is to be 15'.

Per *Berkley City Code*, Chapter 138 *Zoning*, 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'.

APPLICANT PRESENTATION

Applicants Steven and Jennifer Naumann representing 2274 Earlmont Rd., is requesting a variance of 2.38' for a first-floor addition to the East side of the dwelling. Naumann's family are long time Berkley residents. Steven and Jennifer would like to raise the fifth generation in Berkley and require a more practical space. Applicant explained the existing floor plan consists of different levels and the 285 square foot addition is minimal but practical. The requested 8' for the East side addition is minimal, as without the 2.38' variance it would leave a 5.62' addition that is not practical to achieve what is needed for a proper bedroom. The setback on the East side would be 10.03' and would not impact the property to the East for any future development to that property. There will be 37' between dwellings to the East.

Member Wilner confirmed with Ms. Anderson on the site plan in regards to the West side nonconformity and that the setbacks are met on the East side.

Creal asked if they are only requesting the variance because of the West side nonconformity. Ms Anderson explained that the nonconformity is on the West side but because the West side does not have a minimum 5' side setback, with the addition on the East there would not be a total two side yards of 15' requiring the variance of 2.38'.

Creal spoke that he feels this request is the minimum that can be done and meets the standards.

Wilner asked if it was possible to get the 10' and 5'. Anderson explained that currently for the minimum yard setback; the East side yard is 18.3' – total of two side yards met; although, minimum one side 5' is not met because the West side is only 2.32'.

Krug asked if there would be any issue if the garage was detached – Anderson confirmed if the garage was detached there would not be an issue.

Serr read off the five standards for discussion with the board members:

- A. ***The need for the variance is due to unique circumstances or physical conditions of the property.*** Constructed in 1927 true nonconformity is on the West side and the addition is for the East side and there will still be a fairly large setback on the East side.
- B. ***The need for the variance is not the result of actions of the property owner or previous property owners.*** Built in 1927 prior to current zoning ordinance codes.
- C. ***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.*** Practicality to reduce to 5' would be burdensome
- D. ***The requested variance is the minimum variance necessary to do substantial justice to the applicant as well as other property owners.*** Request is the minimum to do substantial justice for the space needed
- E. ***The requested variance will not adversely impact the surrounding properties.*** No impact to neighbors. Neighbor to the East supports.

Vice Chair Allen opened the floor for the public hearing at 7:19 p.m.

PUBLIC COMMENT

Ms. Anderson read public correspondence:

Nine signed form letters from surrounding neighbors in support was received.

One letter from Emily and Michael Staffiere, 2254 Earlmont Rd. dated August 12, 2024 in support

Dale Goodcourage of 2233 Earlmont Rd. spoke in support of the Naumann's project with the family history in Berkley and need to help keep family's here in Berkley. Mr. Goodcourage is in favor as well as several neighbors. Project is not evasive to the East property.

Vice Chair Allen closed the floor for the public hearing at 7:23 p.m.

Zoning Board of Appeals discussion: No further discussion

Motion to approve by Creal and supported by Krug.

In the matter of PBA-12-24, parcel 04-25-17-106-013, motion to approve the requested variances from Section 138-526 of the City of Berkley Zoning Ordinance to grant a variance of 2.38' 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. Constructed in 1927.*
- 2. The need for the variance is not the result of actions of the property owner or previous property owners. Discussion of board believes it was in compliance at the time it was built.*
- 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. To reduce addition to 5' would be 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; Wilner, Creal, Krug, McDonald, Serr and Vice-Chair Allen

NAYS: None

ABSENT: Chair McAlpine

MOTION CARRIED

2. Application Number PBA-13-24 – Dimensional variance to construct an addition.

JSN Architecture representing Forged Homes LLC, for 3764 Tyler Ave., Parcel #04-25-07-407-037 East side of Tyler Ave., between Edwards Ave. and Morrison Ave., built in 1975 is requesting a dimensional variance to allow the construction of second story addition to a non-conforming structure in the required distance between dwellings of 15 feet not met to the North and front setback.

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

Per *Berkley City Code*, Chapter 138 *Zoning*, Article III General Provisions, Division 5 Nonconforming Building 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 and Section 138-527(d): There shall be a distance of at least 15 feet between dwellings.

3764 Tyler Ave. was split in 1970 with no record being found other than a note from a previous inspector. Dwelling was Demolished in 1973. In 1974 a permit for new construction was obtained along with a permit for the property to the North, 3786 Tyler Ave. by the same builder. There are no building plans found for either parcel or any record of a variance previously granted for the two dwellings being built at the same time at 11.583' between the dwellings rather than the required 15'.

Front setback is 25' and the average of the six adjacent properties is 25.208'. The required front setback is 25.208'. A variance of .208' is being requested.

The North side setback requires 15' between dwellings and there is 11.583'. A variance of 3.417' is being requested.

The South side setback distance between dwellings is 15'. All other setbacks are met on parcel 25-07-407-037.

Wilner, Creal and Serr confirmed that the addition is not increasing the existing footprint of the current nonconformity.

APPLICANT PRESENTATION

Maurice Charbonneau representing JSN Architecture for 3764 Tyler Ave. confirmed there is no footprint change and that it is the distance between dwellings to the North that has the nonconformity.

No questions from the board.

Krug read off the five standards for discussion with the board members:

- A. *The need for the variance is due to unique circumstances or physical conditions of the property.***
Dwelling and the dwelling to the North, where the nonconformity exist, were constructed at the same time in 1975.
- B. *The need for the variance is not the result of actions of the property owner or previous property owners.***
Dwelling and the dwelling to the North were both constructed in 1975.
- C. *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.*** Unnecessarily burdensome not to allow to go straight up on existing footprint – no increase.
- D. *The requested variance is the minimum variance necessary to do substantial justice to the applicant as well as other property owners.***
The request is the minimum.
- E. *The requested variance will not adversely impact the surrounding properties.***
The requested variance is not increasing the existing footprint of the foundation and will not adversely impact the surrounding properties.

Vice Chair Allen opened the floor for the public hearing at 7:37 p.m.

PUBLIC COMMENT

Ms. Anderson read public correspondence received:

Email from William Scherer, 3855 Gardner not in support

Email from Joe Novitsky with adjacent property owners signing off on the site plan

No additional public comment

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

Zoning Board of Appeals discussion: No questions.

Motion by Serr to approve, supported by Creal

In the matter of PBA-13-24, 3764 Tyler Ave., parcel # 04-25-07-407-037, motion to approve the requested variances from Section 138-154, Section 138-527(b) and Section 138-527(d) of the City of Berkley Zoning Ordinance to grant a front yard setback variance of .208' where a total of 25.208', as required, that does not conform to the applicable Zoning Ordinance regulations and to grant a distance between dwellings variance of 3.417' 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.* Property and adjacent property were built non-conforming.
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.* Unnecessarily burdensome – not changing the footprint.
4. *The requested variance is the minimum variance necessary to do substantial justice to the application as well as other property owners.* Footprint is not being increased.
5. *The requested variance will not adversely impact the surrounding properties.* Neighbors also support.

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

NAYS: None

ABSENT: Chair McAlpine

MOTION CARRIED

OTHER BUSINESS

None

STAFF/BOARD MEMBER REPORT

Zoning Administrator, Kim Anderson reported:

BS&A on line update: up and running

Community Development Monthly Report for June 2024

Zoning Ordinance Steering Committee Activity update: Final draft will be submitted. There will be public engagement, planning commission public hearing and then council for adoption – looking at approximately November. Any comments please email Kristen and I rather than putting any further comments on google drive.

Alternates – have one applicant that will go to September Council meeting to be appointed to the

ZBA - still needs one more alternate.
Next meeting – September 9th – no cases
Update on new .gov emails – any issues or questions contact Stan

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LIAISON REPORT

Dennis Hennen – no items to report

PUBLIC COMMENT

NONE

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With no further business, the meeting was adjourned at 7:44 p.m.

Motion by Wilner and support by Creal

Voice vote to adjourn

AYES: 6

NAYS: 0

ABSENT: 1

MOTION CARRIED

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