

**THE REGULAR MEETING OF THE BERKLEY CITY ZONING BOARD OF APPEALS WAS CALLED TO ORDER AT 7:00 PM, MONDAY, NOVEMBER 13, 2023 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/cityofberkeley>*

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

**ABSENT:**

**ALSO, PRESENT:** Kristen Kapelanski, Community Development Director  
Kim Anderson, Zoning Administrator

**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:

**MOTION CARRIED**

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**APPROVAL OF MINUTES**

Motion to approve the minutes of the August 15, 2023 regular meeting by Allen and supported by Serr.

Voice vote to approve minutes

AYES: 7  
NAYS: 0  
ASBENT:

**MOTION CARRIED**

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**OLD BUSINESS**

NONE

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**NEW BUSINESS**

**1. APPLICATION PBA-08-23; 04-25-17-478-029 – Dimensional Variance**

Hillan Homes, 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 Eight feet and three quarters inch (8.06) feet on the West side yard setback. There shall be a distance of at least 15 feet between dwellings.

Zoning Administrator, Kim Anderson advised the Zoning Board of Appeals of the Dimensional Variance request for parcel # 04-25-17-478-029.

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

948 Columbia's dwelling was built .94' (11.3") on the East side yard when a five (5) foot minimum side yard setback is required per Chapter 138 *Zoning*, Sec. 138-526. - Schedule of regulations: Minimum Yard setback.

Applicant exceeds the total two side yard setback requirement 138-526 Schedule of Regulations total of fifteen feet (15) on parcel 25-17-478-029 with the proposed structure of an additional one (1) foot on the West side yard where a minimum five (5) foot is required, giving a total side yard setback of 16.01 feet for parcel 25-17-478-029.

The schedule of regulations in Section 138-526 of the Zoning Ordinance requires that there shall be a distance of at least fifteen (15) feet between dwellings. Proposed development has 6.94 feet resulting in the 8.06 feet variance request on the West side.

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 of the property and the requested variances should be granted. Motions for approval and denial were included in the provided report for the convenience of the board.

## **APPLICANT PRESENTATION**

Beth Reaume representing Hilan Homes Inc. for parcel 25-17-478-029 presented that Hilan Homes Inc. is proposing to build on a parcel that is the original platted lot that has a non-conforming structure on the parcel to the West that constrains the development to meet the fifteen (15) foot setback between dwellings that is required. The proposed development would be a 1,944 square foot colonial where standard allowed square footage is 2,520. The proposed development would have a six (6) foot side yard setback on the West side when a five (5) foot is required. The structure on the property to the West has a 11.3" side yard setback at the East lot line resulting in the need to request the 8.06' foot variance request on the West side of parcel 25-17-478-029 to meet the fifteen (15) feet between dwellings requirement.

Quinton Foster representing the owners, Andrea Krasna of both properties 948 Columbia, 25-17-478-028 and 25-17-478-029 as sellers to parcel 25-17-478-029. Owners have owned the properties for approximately 10 years and has maintained and paid taxes on both parcels and look forward to selling parcel 25-17-478-029 for development.

Board members received clarification on the two parcels. The dwelling was built in 1934 on parcel 25-17-478-028 being non-conforming on the east lot line. The structure was built only 11.3" from the East lot line where the current ordinance requires five (5) foot minimum side yard setback. Without a variance, the structure would need to be approximately no wider than 16'.

Chair McAlpine opened the floor for the public hearing at 7:11 p.m.

## **PUBLIC COMMENT**

Correspondence was received from Josh and Alyssa Roman and Craig Andrew Childers, opposing the variance request.

Correspondence from Josh and Alyssa Roman was read.

The following residents spoke opposing the variance:

Craig Andrew Childers, 877 Columbia Rd., Berkley

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

The Zoning Board of Appeals discussion:

Serr asked for clarification on the garage. Ms. Anderson clarified that the proposed garage meets setback requirements.

Members discussed various aspects of the non-conforming dwelling to the West and the impacts on the vacant lot. House was built in 1934, lots are as platted, never split.

Creal would like further discussion from the board on #5 on how the request “will not adversely impact the surrounding properties”

Allen is concerned on the footing so close to the structure and causing any compromise.

Chair McAlpine asked for clarification that if the variance was granted and then the dwelling at 948 Columbia decided to be demolished would that parcel then need a variance. Ms. Anderson clarified that if the dwelling at 948 Columbia was torn down, that the new development would have to conform to current ordinances.

Krug – concerned on the size of variance request.

Wilner confirmed that parcel 25-17-478-029 meets all of the required setbacks for that property.

Serr, Creal and Wilner discussed “adversely impacting the surrounding properties” regarding the grading and digging of footings to be subjective - projecting what could happen. There are houses closer than 15’. Wilner pointed out all grading and footing concerns would have to be met per ordinances and codes and not to be considered as a fact.

Director Kapelanski directed the board that in regards to grading concerns the grading ordinance has to be complied with and that is done administratively. Drainage and construction practices of the building has no impact on the determination of adversely impacting the surrounding properties for a determination of the variance request. The variance request is on the setback and that is what has to be considered when determining if the request adversely impacts the surrounding properties.

Board members went through each standard to help reach a decision.

- A. Unique circumstances: **Yes** - original platted lot and dwelling to the west was built in 1934.
- B. Need for the variance is not the result of actions of the property owner or previous property owners: **Yes** - original platted lot and dwelling to the West was built in 1934.
- 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: **undetermined**.
- D. Minimum Variance: **No** – house could be smaller, less of variance requested.
- E. Property will not adversely impact the surrounding properties – **Undetermined**

Postponement was mentioned for the opportunity for a lesser variance request. Builder stated design and house were sold contingent on approval of variance.

**Motion to deny** the variance request by Serr, and supported by Creal

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

Chair McAlpine explained the 5 standards that have to be met per Zoning Ordinance Section 138-606 and State requirements per Michigan Zoning Enabling Act, MCL 125.3101 to approve a variance. As some items may have a “yes” (#1 and #2), all five standards were not able to be determined yes and in order to vote in favor, all five standards have to be met.

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

NAYS: Member Wilner

ABSENT:

**MOTION CARRIED**

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**OTHER BUSINESS**

Zoning Board of Appeals 2024 Meeting Schedule.

Motion to approve the proposed 2024 meeting schedule by Allen and supported by Krug.

Voice vote to approve

AYES: 7

NAYS: 0

ASBENT:

**MOTION CARRIED**

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**STAFF/BOARD MEMBER REPORT**

Staff/Board Member Report:

August, September and October 2023 Community Development Monthly reports.

Annual Report 2022-2023

September, October and November 2023 Zoning Ordinance Steering Committee Activity update.

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**LIAISON REPORT**

NONE

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**PUBLIC COMMENT**

Beth Reaume questioned about the postponement and reducing the variance request that was mentioned during discussion. Member Allen explained that a motion for postponement needed to be requested prior to the voting. Unfortunately, no motion was presented. A postponement would have allowed for the applicant to bring a smaller variance request back to the board.

**With no further business, the meeting was adjourned at 7:50 p.m.**

Motion by Krug and support by McDonald

Voice Vote to adjourn

AYES: 7

NAYS: 0

ABSENT:

**MOTION CARRIED**

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