

PUBLIC NOTICE

City of Berkley, Michigan
Regular Meeting of the Zoning Board of Appeals
Monday, September 10, 2018
7:30 PM – City Hall
Council Chambers
Information: (248) 658-3320

CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL
APPROVAL OF AGENDA
APPROVAL OF MINUTES – *Meeting of July 9, 2018*

ITEMS FOR THE AGENDA

1. **AMENDMENT—ZONING BOARD OF APPEALS RULES OF PROCEDURE**
Suggested amendments to the Rules of Procedure
2. **UPDATE**
Brief update on upcoming Variance requests.

OTHER BUSINESS
LIAISON REPORT
PUBLIC COMMENTS
ADJOURN

Notice: Official Minutes of the Zoning Board of Appeals are stored and available for review at the Office of the City Clerk. The City of Berkley will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting upon four working days notice to the city. Individuals with disabilities requiring auxiliary aids or services should contact the city by writing or calling: City Clerk, ADA Contact, Berkley City Hall, 3338 Coolidge, Berkley, Michigan 48072, (248) 658-3300.

A MEETING OF THE ZONING BOARD OF APPEALS WAS CALLED TO ORDER AT 7:30 PM, MONDAY, July 9, 2018 AT CITY HALL BY CHAIR EVANS. UNOFFICIAL MINUTES

PRESENT: Steve Allen Paul Evans Scott Emmons
 Ryan Gesund Joe Krug Sue McAlpine

ALSO PRESENT: Timothy McLean, Community Development Director
 John Barbuscak (Applicant)
 A few members of the public

APPROVAL OF AGENDA

It was moved by Ms. McAlpine and supported by Mr. Gesund to approve the agenda as written.

AYES: Allen, Emmons, Gesund, Krug, McAlpine, Evans
NAYS: None

Motion Carried.

APPROVAL OF MINUTES

It was moved by Mr. Allen to approve the minutes of June 11, 2018, and supported by Mr. Emmons.

AYES: Emmons, Gesund, Krug, McAlpine, Allen, Evans
NAYS: None

Motion Carried.

3. Application Number PBA-05-18—1405 Franklin.

Community Development Director McLean began the discussion with a brief summary of the request for a dimensional variance. The property owner at 1405 Franklin had a generator installed in the side yard of his residence. He was informed by the contractor that all permits would be obtained before the generator was installed and that all zoning regulations would be followed. The contractor applied for the permit, but installed the generator before the permit could be approved.

Mr. Krug disclosed that he has a professional working relationship with Oak Electric, the company who installed the generator for the applicant.

Chair Evans asked Mr. Krug if he felt that relationship would present any conflict of interest relative to these proceedings.

Mr. Krug responded that he was impartial relative to this case. John Barbuscak—Applicant explained the circumstances with the generator. He stated that due to flooding concerns in the rear yard, it would not be possible to install the generator there. He

stated he was unaware that placing a generator in the side yard would create the need for a variance. He stated he believed the contractor was going to obtain any permits and follow applicable zoning laws.

Mr. Allen stated that he believed this circumstance was created by the contractor and not the applicant.

Chair Evans opened the Public Hearing at 7:43PM

Shirley Hanson, Royal Oak: Stated that she was a former resident of Berkley and a friend of the Barbuscak family. She presented letters of support for the variance from neighbors on Franklin. She also stated that the generator is very quiet and that due to flooding issues in the rear yard, it could not be placed in that location.

Chair Evans closed the Public Hearing at 7:45PM

Ms. McAlpine stated that one of the letters referenced the fact that one neighbor noticed no noise from the generator.

Chair Evans stated that there were six letters of support for this variance from neighbors with no objections noted.

Ms. McAlpine addressed the practical difficulty test that must be applied to variance requests. She stated that she believes the criteria has been met.

Mr. Gesund asked the applicant when the generator was installed.

Applicant responded that the generator was installed in October 2017. He also stated that while the generator is tested once a week, it has never actually been fully used.

Ms. McAlpine cited the practical difficulty test and that she would be inclined to make a motion to approve the variance request.

Chair Evans stated he would vote in favor of approval.

It was moved by Ms. McAlpine and seconded by Mr. Emmons to approve a dimensional variance for 1405 Franklin on the grounds that a practical difficulty had been proven by the applicant.

AYES: Emmons, Gesund, Krug, McAlpine, Allen, Evans

NAYS: None

Motion Carried.

4. Discussion—Annual review of Rules of Procedure.

Chair Evans stated that it is a statutory requirement that the Rules of Procedure be reviewed annually.

Mr. Allen stated he would like to see language added to the Rules that addresses the tracking of

trainings attended by ZBA members.

Mr. Emmons pointed out some grammatical errors in the Rules of Procedure.

Ms. McAlpine asked if future amendments could be made.

Chair Evans responded that the Rules of Procedure could be amended at any time.

Mr. Gesund asked that the Rules of Procedure be amended to reflect that the Community Development Director is the Zoning Officer.

Community Development Director McLean stated that he would have revisions made and brought back before the ZBA at the next meeting.

Ms. McAlpine asked that ZBA members be allowed to respond in writing with any comments on amendments to the Rules of Procedure if they will be absent.

It was moved by Mr. Allen and seconded by Mr. Gesund to postpone any decision on the Rules of Procedure until revisions are made and brought back to the ZBA.

AYES: Gesund, Krug, McAlpine, Allen, Emmons, Evans

NAYS: None

Motion Carried.

5. Election: Chair & Vice Chair

Chair Evans stated he has enjoyed being the Chair. He also indicated he would continue to do so at the wishes of the ZBA, but that he would be supportive of anyone else being nominated for Chair.

Ms. McAlpine stated she echoed the sentiments of Chair Evans regarding her role as Vice Chair.

It was moved by Mr. Gesund and seconded by Mr. Emmons to nominate Paul Evans as Chair and Sue McAlpine as Vice Chair of the ZBA.

AYES: Krug, McAlpine, Allen, Emmons, Gesund, Evans

NAYS: None

STAFF COMMENTS

Community Development Director McLean gave a brief summary of the Planning Commission proceedings and recommendation to City Council regarding the proposed LaSalette Planned Unit Development.

BOARD COMMENTS

Mr. Gesund asked everyone to please attend the street art festival the weekend of July13.

Mr. Allen stated he was pleased that the ZBA meetings are now televised.

Ms. McAlpine thanked staff for budgeting to have these meetings televised.

PUBLIC COMMENTS

None

With no further business, Chair Evans adjourned the meeting at 8:08 PM.

MEMORANDUM

AUGUST 30, 2018

TO: CITY OF BERKLEY ZONING BOARD OF APPEALS
FROM: TIMOTHY McLEAN, COMMUNITY DEVELOPMENT DIRECTOR
RE: REPORT FOR THE ZBA AGENDA

1. ZONING BOARD OF APPEALS RULES OF PROCEDURE—PROPOSED AMENDMENTS

No applications for variances were received by the deadline for the regularly scheduled meeting for September 2018.

At the July 2018 meeting, the Rules of Procedure were discussed per the annual requirement. Suggested revisions were incorporated into the Rules of Procedure. New language is highlighted in red. Language to be removed is identified by the strike-through lines.

Under Training, language has been added that addresses the tracking and documentation of training. All references to “Zoning Officer” have been changed to “Community Development Director.” Grammatical errors have been amended and some of the language has been cleaned up as well.

One item that Board Members might want to consider is the addition of language that addresses a rotation for alternate members. Alternates are called upon frequently to stand in for other members in the case of a vacancy. To date, there has been an informal process for rotating alternate members. The Board may want to consider language such as “Alternate members called upon to serve in instances of vacancy or conflict of interest shall be done on a rotational basis, beginning with the most senior alternate.” However, as there have been no noted issues with the utilization of alternate members, the Board may opt not to address this in the Rules of Procedure.

2. UPDATE: UPCOMING VARIANCE REQUESTS

There is currently one application for a variance for the regularly scheduled meeting in October. The request is for a dimensional variance for a non-conforming sign.

There will very likely be an additional dimensional variance request regarding setback requirements in a residential district. As of today, the application has not been received. Based on conversations with the property owner, that application will be submitted in time to make the October agenda.

**CITY OF BERKLEY
ZONING BOARD OF APPEALS
RULES OF PROCEDURE**

SECTION ONE – AUTHORITY

The City of Berkley Zoning Board of Appeals (hereinafter referred to as the ZBA) adopts these rules of procedure pursuant to the Michigan Zoning Enabling Act, MCL 125.3101 et seq., as amended and the ordinances of the City of Berkley (as amended).

SECTION TWO - MEMBERSHIP

(1) Membership. Members shall be appointed according to the procedure as established in ~~by~~ Berkley ordinances. The ZBA shall consist of seven regular members and ~~the City Council shall appoint two alternate members~~ **two alternate members all to be appointed by City Council.** An alternate member may be called as specified in the zoning ordinance to serve and vote as a member of the ZBA in the absence of a regular member. An alternate member may also be called to serve as a member for purposes of reaching a decision on a case in which a member has abstained for reasons of conflict of interest.

- a) **Training.** Each member is expected to attend a minimum of 4 hours of training every 3 years. **Hours of training shall be tracked and documented by the Community Development Director.**
- b) **Materials.** Upon taking office for the first time, each member shall receive and maintain the following written materials to be provided by the ~~zoning officer (staff)~~ **Community Development Director:**
 - A copy of ~~these rules and procedures~~ **the Zoning Board of Appeals-Rules of Procedure.**
 - Chapter 2 - Section 40 (Ethics), Chapter 94 (Signs) and Chapter 138 (Zoning) of the Berkley ordinances. The ~~zoning officer~~ **Community Development Director** shall provide updated materials when available.
 - The Michigan Zoning Enabling Act.
 - Any other materials deemed necessary by the ~~zoning officer~~ **Community Development Director** and approved by the Chair of the ZBA to familiarize a new member with the appeals process and the duties of the ZBA.

(2) Duties.

- a) **Attendance.** Each regular and alternate member has a duty to attend all meetings except for good cause.
- b) **Arrive prepared for the business at hand, having reviewed written materials and ~~done~~ completed site visits as necessary to be educated on the agenda issues.**
- c) **Ex Parte Contact.** Members shall avoid *Ex Parte* contact concerning questions or matters pending before the ZBA.

- d) *Ex Parte* Contact shall include discussions among members, applicants, or the public outside of a ZBA meeting, including emails, about matters pending before the ZBA.

SECTION THREE - MEETINGS

- (1) **Notices.** Notice of meetings shall be provided in accordance with the Open Meetings Act. The notice shall include the date, time and place of the meeting.
- a) The ~~zoning officer~~ **Community Development Director** shall notify all members of the ZBA, including regular and alternate members, **a minimum of 15 days** prior to a scheduled public hearing, that a meeting is scheduled. Notice to members shall be by mail, phone or by e-mail.
- b) Prior to the scheduled meeting date, the ~~zoning officer~~ **Community Development Director** shall provide the agenda for the meeting and all documentation relevant to agenda items as well as any other information requested by the ZBA.
- (2) **Regular Meetings.** Regular meetings of the ZBA shall be held monthly in the City Hall on the second Monday of every month at 7:30 p.m.
- a) If there are no appeals, requests for variances or requests for interpretation of the zoning ordinance to consider, a regular meeting shall be postponed to the next (otherwise) regular meeting date when there are such requests to consider. All other business shall be held over to the agenda for the next regular meeting.
- b) When a regular meeting date falls on or near a legal holiday, the ZBA shall select a suitable alternate date in the same month, if possible, in accordance with the Open Meetings Act.
- (3) **Other Meetings.** A special meeting can also be called by the ~~zoning officer~~ **Community Development Director**, the Chair of the ZBA, or, in the Chair's absence, the Vice-Chair.
- (4) **Membership.** Any changes in Board membership will be announced prior to roll call.
- (5) **Quorum.** In order for the ZBA to conduct business or take any official action, a quorum consisting of 4 voting members of the ZBA must be present unless a use variance is under consideration, in which case, a quorum shall be 5 voting members present. When a quorum is not present, no official action, except for closing of the meeting may take place. All items scheduled to be heard, shall be rescheduled for the next regular meeting. No additional public notice shall be required provided the date, time and place are announced at the meeting.
- (6) **Hearings.** Hearings shall be scheduled and due notice given in accordance with the provisions of the Acts and ordinance cited in Section 1.

Public hearings conducted by the ZBA shall be run in an orderly and timely fashion. This shall be accomplished by the following procedure:

- Introduction of case by staff.
- The Chair confirms that the applicant is present and receives an opportunity to present the case.
- The Chair opens discussion. The ZBA may ask the applicant or staff questions.
- The Chair opens the public hearing. Each person must state his/her name and address for the record and may address the ZBA regarding the case for a reasonable period of

- time. The Chair may set a time limit and/or invite people to speak row by row to eliminate lines at the microphone.
- The Chair closes the public hearing.
 - Discussion. The ZBA may ask staff or the applicant questions.
 - The Chair shall call for a motion.
 - After a motion has been made and supported, there may be additional discussion.
 - The Chair will call for a roll call vote.
- (7) **Motions.** The Chair shall restate motions before a vote is taken. The name of the maker and supporters shall be recorded. The motion shall state whether or not a practical difficulty or undue hardship has been found. The reasons for such a finding shall also be stated.
- (8) **Voting.** The concurring vote of 2/3's of the ZBA members shall be required for the approval of a use variance. The concurring vote of a simple majority of the ZBA members shall be required to reverse an order, requirement, decision, or determination of the zoning officer to approve a non-use variance, to decide in favor of the applicant on a matter upon which the ZBA is required to pass under the zoning ordinance, and for all other business. Voting shall be by roll call unless the Chair decides another method of voting would be appropriate. All members of the ZBA, including the Chair shall vote on all matters except as provided below. The order of the voting members shall be varied.
- a) No member shall abstain from voting on any matter except in the case of a conflict of interest as provided below in Section 3 (12) of these rules.
- (9) **Conditions.** The ZBA may modify a request or impose reasonable conditions designed to maintain the public health, safety and welfare.
- (10) **Withdrawals.** In the event that an applicant withdraws an application after the notices have been sent and the meeting posted, the ZBA shall introduce the case and advise that the item has been withdrawn. A motion to accept the withdrawal will be entered. In the event that an applicant withdraws an application before the notices have been sent and the meeting posted, the ZBA shall receive a copy of the withdrawal, but no motion to accept the withdrawal shall be necessary.
- (11) **Dismissals.** When the petitioner fails to appear at a properly scheduled meeting of the ZBA, the Chair may entertain a motion to dismiss the case for want of prosecution. In the absence of a motion, the Chair shall rule. In such cases, the petitioner will be furnished written notice of the action.
- (12) **Conflict of Interest.** Per City of Berkley Code Section 2- 40 (**Ethics**), A ZBA member shall declare a possible conflict of interest and reasons for such, after the introduction of a case. The ZBA shall discuss and determine if such a conflict exists. Fellow ZBA members shall make and support a motion to excuse the ZBA member from deliberating. The excused member shall leave the meeting room during deliberation of the case. An alternate member may be called to serve as a member for the purpose of reaching a decision on the case. The excused ZBA member shall be called back prior to the introduction of the next case. In the event that the ZBA member is the applicant, then he shall be allowed to remain in the meeting to present his case.
- a) Failure of a member to disqualify himself from a vote in which the member has a conflict of interest constitutes malfeasance in office.
- (13) **Order of Business.** A written agenda for all regular meetings shall be prepared as follows. The order of business shall be:

- Open the meeting – call meeting to order, confirm recorder, if any, is on
 - Pledge of Allegiance
 - Roll Call
 - Confirmation of a Quorum
 - Approval of Agenda
 - Approval of Minutes – Each set of minutes shall be approved individually
 - Old Business – Items that have been postponed or referred to staff
 - New Business
 - Other Business – Administration or ZBA members may discuss upcoming items or interpretation concerns unrelated to agenda items
 - Liaison Reports
 - Public Comments
 - Adjourn
- (14) **Rules of Order.** All meetings of the ZBA shall be conducted in accordance with generally accepted parliamentary procedure, as governed by the most current edition of “Robert’s Rules of Order, Newly Revised.”
- (15) **Notice of Decision.** The City shall send a copy of the approved minutes containing the ZBA decision and any conditions to the petitioner within five days of the minutes being approved.

SECTION FOUR – OFFICERS

- (1) **Selection.** Annually, at the July meeting, the ZBA shall select by majority vote from its membership, a **Chair** and **Vice-Chair**. Officers shall be eligible for re-election. If there is no July meeting, then the officers shall be elected no later than a September meeting.
- (2) **Duties.** A **The Chair** shall preside at all meetings and shall conduct all meetings in accordance with the rules provided herein. If the Chair is not able to chair a meeting or portion of a meeting, the Vice-Chair shall act in place of the **Chair** for that meeting or portion of meeting.
- a) The Vice-Chair shall act in the capacity of the **Chair** and shall succeed to the office of **Chair** in the event of a vacancy in that office.
 - b) If there is a vacancy in the office of **Vice-Chair** for whatever reason, the ZBA shall select a successor to the office of **Vice-Chair** at the earliest practicable time.
 - c) The ~~zoning officer~~ **Community Development Director** (from the Building Department of the City of Berkley) shall be responsible for the preparation of minutes, keeping of pertinent public records, delivering communications, petitions, reports and related items of business of the ZBA, issuing notices of public hearings and performing related administrative duties to assure efficient and informed ZBA operations.
- (3) **Tenure.** The officers shall take office at the next meeting after their election. They shall hold their offices until their successors are elected and assume office.

SECTION FIVE – MINUTES

The minutes shall contain a synopsis of the meeting including a complete restatement of all motions and recording of votes; a complete statement of the conditions or recommendations

made on any action; and recording attendance. All communications, actions, and resolutions shall be attached to the minutes. The official records shall be deposited with the City Clerk.

SECTION SIX – OPEN MEETINGS AND FREEDOM OF INFORMATION PROVISIONS

- (1) All meetings of the ZBA shall be opened to the public and held in a place available to the general public.
- (2) All deliberations and decisions of the ZBA shall be made at a meeting open to the public.
- (3) A person shall be permitted to address a hearing of the ZBA under the rules established in section 3 (6) and to address the ZBA concerning non-hearing matters under the rules established under section 3 (13) to the extent that they are applicable.
- (4) A person shall not be excluded from a meeting of the ZBA except for breach of the peace committed at the meeting.
- (5) All records, files, publications, correspondence, and other materials are available to the public for reading, copying and other purposes as governed by the Freedom of Information Act.

SECTION SEVEN – ANNUAL REVIEW

These rules of procedures shall be reviewed annually, at the July meeting, or if there is no July meeting, no later than the September meeting.

Care shall be taken to insure that these rules shall not conflict with any federal or state law or City of Berkley ordinance; however, if any such conflict exists, then the federal or state law or city ordinance shall override these rules, but only to the extent of such conflict.

SECTION EIGHT – AMENDMENTS

These rules may be amended by the ZBA by a concurring vote pursuant to section 3 (8) during any regular meeting, provided that all members have received an advanced copy of the proposed amendments at least three days prior to the meeting at which such amendments are to be considered.