

A MEETING OF THE ZONING BOARD OF APPEALS WAS CALLED TO ORDER AT 7:30 PM, MONDAY, OCTOBER 13, 2014 AT CITY HALL BY CHAIRPERSON BAILEY.

PRESENT: Linda Bailey Paul Evans Greg Butts
Mike Kerby Barbara Morris Andrew Assenmacher

ABSENT:

ALSO PRESENT: Nancy DeCoursey, 1776 Stanford
Gregory Gamalski, 101 West Big Beaver, Troy
Mark Adler, 5640 West Maple, West Bloomfield
Alan Kideckel, Council liaison
Jane Bais-DiSessa, City Manager
Amy Vansen, City Planner

APPROVAL OF AGENDA

It was moved by Mr. Butts to approve the agenda reordered as follows:

- 1. Application BA-06-14**
- 2. Approval of Minutes**
- 3. Consider Motion to Rescind**
- 4. Discussion on Training**

Supported by Mr. Kerby.

AYES: Kerby, Morris, Assenmacher, Butts, Bailey

NAYS: Evans

Motion Carried.

1. **Application Number BA-06-14** Nancy DeCoursey, 1776 Stanford, east side of Stanford, between Eleven Mile and Princeton, is seeking a variance of *Berkley City Code*, Chapter 138 *Zoning*, Article III *General Provisions*, Division 1 *Accessory Buildings and Structures*, Section 138-60 *Swimming pools*, (a) A wall of a swimming pool shall not be located less than 6 feet from any rear or side property line and (b) A wall of a swimming pool. . . shall not be located less than 6 feet from the main building or other accessory building or structure. The applicant is requesting this variance in order to have a swimming pool 3 feet from the garage and 5 feet from the north property line when a 6 foot setback is required.

The applicant was present. She indicated that she has a small back yard. The location of the 2 ½ car garage, the driveway, and patio make it difficult to locate the pool in a conforming location.

The applicant conceded that the pool could be moved closer to the house but that wouldn't help get the pool away from the north property line. The applicant was concerned about placing the pool closer to the driveway.

Mr. Evans offered that a smaller pool might fit the back yard better.

Ms. Morris and Mr. Assenmacher were concerned about safety relative to the gate, the ladder and the garage roof. The applicant advised that because there are solar panels on that section of the garage, it would be very difficult to climb onto the garage roof at the location.

Mr. Kerby and Mr. Butts maintained that the pool could be easily moved one foot from the north property line, toward the house and away from the garage.

There was discussion relative to DTE power lines and having them removed from the property.

Chairperson Bailey opened the public hearing at 7:54 PM. Hearing no comments, she closed the public hearing at 7:54 PM.

It was moved by Mr. Evans to deny BA-06-14 due to reasonable alternatives being available, that a smaller pool could fit onto the property more easily, and that given the 2 ½ car garage, patio, driveway and pool, the matter is self-created.

Supported by Ms. Morris.

AYES: Kerby, Morris, Evans, Assenmacher, Butts, Bailey

NAYS: None

Motion Carried.

APPROVAL OF MINUTES

It was moved by Mr. Kerby to approve the minutes of September 9, 2014 with the following corrections:

Page 2:

Chairperson Bailey opened the public hearing at 7:56 PM. Hearing no comments, she closed the public hearing at 7:56 PM. It was noted that several written comments had been received.

Page 3:

Ms. Morris asked why two houses need to be built instead of just one larger house. The applicant advised that the City of Berkley's housing market tops out at \$300,000. A new house on a double lot would price around \$500,000 and it wouldn't sell at that location. The Board noted that financial matters cannot be considered.

Page 3:

Ms. Morris wondered how this case was different from BA-02-14 that involved similar circumstances on Bacon. Ms. Morris advised that if they both have the same circumstances ~~than~~ then they are no longer unique situations and not eligible for a variance.

Page 3:

Chairperson Bailey opened the public hearing at 8:30 PM. The owner of 4071 Oakshire, Josif Ribusovski, spoke against granting the variance. Chairperson Bailey closed the public hearing at 8:32 PM. It was noted that written comments had been received by the Board.

Page 3:

Following the failed motion, Ms. Morris inquired about moving this item to another meeting. No further motions were made.

Supported by Mr. Evans.

AYES: Kerby, Morris, Evans, Assenmacher, Butts, Bailey

NAYS: None

Motion Carried.

It was moved by Mr. Butts to approve the minutes of October 6, 2014.

Supported by Mr. Assenmacher.

AYES: Morris, Assenmacher, Bailey

NAYS: Kerby, Evans, Butts

Motion Failed.

It was moved by Mr. Kerby to approve the minutes of October 6, 2014 with the correction that Dean Smith be struck from the roll with an overstrike mark.

AYES: Kerby, Morris, Evans, Assenmacher, Butts, Bailey

NAYS: None

Motion Carried.

2. Consider Motion to Rescind September 9, 2014 decision pertaining to Application Number BA-05-14 Mark Adler Homes LLC, 4081 Oakshire, west side of Oakshire, between Morrison and Webster.

It was moved by Mr. Kerby to rescind September 9, 2014 decision pertaining to Application Number BA-05-14

Supported by Mr. Butts.

AYES: Kerby, Morris, Assenmacher, Butts, Evans

NAYS: Bailey

Motion Carried.

Mr. Kerby advised that there had been many questions regarding this vote. He believes that the 3 to 1 vote should have passed. The motion failed according to the minutes, but it was not denied. So action has yet to be taken on this matter. However, there were residents at that meeting and he thinks that the matter should be readvertised and reheard at the November meeting. He added that Mr. Adler should not pay for the new hearing. Mr. Kerby added that it was important to have a fully occupied board.

Mr. Gamalski, attorney for Mr. Adler, stated that the motion should have been approved.

It was moved by Ms. Morris to postpone BA-05-14 to the November 10, 2014 meeting so that proper notice can be provided.

Supported by Mr. Assenmacher.

AYES: Kerby, Morris, Assenmacher, Butts, Evans, Bailey

NAYS: None

Motion Carried.

3. **DISCUSSION:** Discussion regarding content and dates for ZBA training.

The Board members determined that they wanted LSL Planning and City Attorney Staran to provide training.

The Board determined a Thursday from 7 to 9 PM or from 6:30 to 8:30 PM would work best. Ms. Vansen advised that there was money for dinner if the Board wanted to have a working dinner meeting.

The Board specifically wanted training on the 5 tests for practical difficulty. But would like Ms. Vansen to assemble the Board's email comments and determine if there are other topics that should be covered.

OTHER BUSINESS

Chairperson Bailey inquired about Resolution BA-02-01. Ms. Vansen advised that the resolution had been codified in 2008. An annual report from Administration was required per BA-02-01 but since being codified, no report is required.

Ms. Morris complemented her fellow Board members on their decorum during this evening's discussions.

There being no further business, Chairperson Bailey adjourned the meeting at 9:25 PM.