

**A MEETING OF THE ZONING BOARD OF APPEALS WAS CALLED TO ORDER AT 7:30 PM,
MONDAY, NOVEMBER 10, 2014 AT CITY HALL BY CHAIRPERSON BAILEY.**

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

ABSENT: None

ALSO PRESENT: John Chawa, 1920 Kipling
Gregory Gamalski, 101 West Big Beaver, Troy
Mark Adler, 5640 West Maple, West Bloomfield
Marie Simon, 4115 Oakshire
Alan Kideckel, Council liaison
Jane Bais-DiSessa, City Manager
Amy Vansen, City Planner

APPROVAL OF AGENDA

It was moved by Mr. Evans to approve the agenda.
Supported by Mr. Kerby.
AYES: Kerby, Morris, Assenmacher, Evans, Butts, Bailey
NAYS: None
Motion Carried.

APPROVAL OF MINUTES

It was moved by Mr. Kerby to approve the minutes of October 13, 2014.
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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.
Supported by Mr. Butts.
AYES: Kerby, Morris, Assenmacher, Evans, Butts, Bailey
NAYS: None
Motion Carried.

1. **Application Number BA-05-14** Mark Adler Homes, LLC, regarding 4081 Oakshire, west side of Oakshire, between Morrison and Webster, is seeking a variance of *Berkley City Code, Chapter 138 Zoning, Division 17 Schedule of Regulations, Section 138-527 Notes to schedule of regulations*. (d) There shall be a distance of at least 15 feet between dwellings. The applicant is seeking this variance to construct 2 new houses. The southernmost new house will be 14.1 feet from 4071 Oakshire and the new houses will be 10 feet from each other. A 15-foot separation is required.

Mr. Adler was present. He reviewed that the house at 4071 Oakshire is built too close to the property line. A variance was necessary for him to build on the south half of this property.

Chairperson Bailey confirmed that the property had been split.

Mr. Evans confirmed that the elevations and floor plan provided by the applicant are typical of what would be built.

Chairperson Bailey asked about the projections shown on the site plan. Mr. Adler explained that the fireplace and the egress window would project into the setback. The egress window is at grade. The fireplace projects about 22 inches. There is no foundation under the fireplace.

Chairperson Bailey opened the public hearing at 7:43 PM.

Marie Simon, 4115 Oakshire, was in favor of the proposed plan. She thought two new homes would be good for the neighborhood and the proposed setbacks are a good compromise.

Mr. Assenmacher asked Ms. Simon if the school parking and traffic situation would be further aggravated by two new homes.

Ms. Simon stated that the parking and traffic at Pattengill are already problematic and one additional house will not make a noticeable difference.

Ms. Vansen noted that the City had received a couple of letters in opposition.

Chairperson Bailey noted that the Board had received a letter from the DPW Superintendent.

Ms. Simon stated that homes in Berkley are too close together. But the people writing in opposition aren't directly affected like she is and she is in favor of the variance.

Chairperson Bailey closed the public hearing at 7:55 PM.

Chairperson Bailey reviewed the tests for practical difficulty.

Ms. Morris offered that this type of variance has been a recurring issue and is not unique. The Planning Commission creates ordinances for the City Council's consideration. The ZBA is now legislating due to the amount of variances it has approved. She stated that she was concerned about the large trees being removed and nonconformities being perpetuated.

Chairperson Bailey advised that she was concerned about the 10 foot distance from a public safety standpoint. She then read an excerpt from the Michigan Zoning Enabling Act.

It was moved by Mr. Evans to approve BA-05-14 citing that a practical difficulty has been proven due to the neighboring house at 4071 Oakshire being nonconforming; this variance is the minimum variance necessary in order to build reasonable, modern houses; and the 10 foot separation will not have a negative effect. This variance would be granted with the following stipulations:

- The new house shall be built no closer than 14.1 feet to the house at 4071 Oakshire.
- There shall be no less than 10 feet between the new house on the north ½ of Lot 327 and the new house on the south ½ of Lot 327.
- The house on the south ½ of Lot 327 shall be no wider than 24 feet.

Supported by Mr. Kerby.

AYES: Kerby, Evans, Butts, Assenmacher

NAYS: Morris, Bailey

Motion Carried.

2. **Application Number BA-07-14** John Chawa, 1920 Kipling, northeast corner of Kipling and Columbia, is seeking a variance of *Berkley City Code*, Chapter 138 *Zoning*, Article III General Provisions, Division 2 *Fences*, Section 138-85 *General Requirements by district*, (b) *Residential Districts*, (2) A fence shall not be erected between the front building line and the front lot line. The applicant is seeking this variance in order to replace a fence in the front yard.

Mr. Chawa was present. He stated that a split rail fence had been there since 1997. The split rail fence was falling apart. When he installed his privacy fence in 2011, he also upgraded the split rail to a picket fence.

The Board discussed the height of the fence, noting that it has a scalloped top.

Mr. Kerby suggested driving the fence down to a height of 30 inches and removing about half of it so it was only 12 feet long.

Chairperson Bailey opened the public hearing at 8:32 PM. Hearing no comments, she closed the public hearing at 8:32 PM.

It was moved by Mr. Butts to deny BA-07-14. The case does not meet the criteria; the applicant has received notices for 2 years regarding this issue; and there are many corner lots so this is not unique.

Supported by Ms. Morris.

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

NAYS: None.

Motion Carried.

OTHER BUSINESS

Ms. Vansen confirmed that the ZBA Training had been set for January 2015. The Board decided that having dinner during the training would be beneficial.

Ms. Vansen reported that no cases had been received so there would be no December meeting.

Councilmember Kideckel asked if the Board had received City Attorney John Staran's opinion on the Dean Smith matter. Chairperson Bailey advised that the Board is not obligated to act on Mr. Staran's opinion. Councilmember Kideckel stated that as noted in Mr. Smith's email, Dean Smith can't be a member of this Board since he is working in China. Chairperson Bailey opined that the emails didn't qualify as a resignation and that the City Council should move to remove Dean Smith from the Board for misfeasance. There was much discussion amongst Board members on the City Attorney's opinion, Dean Smith's emails, what qualified as a resignation, and who speaks for the Board. Chairperson Bailey clarified that she appreciated the City Attorney's opinion. Ms. Morris stated that the City Attorney did not answer when it was decided that Dean Smith had resigned. Chairperson Bailey thought a resignation from Mr. Smith was still necessary and asked the Board to make a motion to direct staff to ask Dean Smith to resign. No motion was made.

Ms. Morris asked the City to make a more concerted effort to fill vacancies via the website, mobile app, email blasts, and the like. Ms. Bais-DiSessa stated that staff had been busy lately with the rain event and FEMA information, but soon a press release and email blast could be completed.

There being no further business, Chairperson Bailey adjourned the meeting at 9:13 PM.