

**A MEETING OF THE ZONING BOARD OF APPEALS WAS CALLED TO ORDER AT 7:31 PM, TUESDAY, JUNE 13, 2017 AT CITY HALL BY VICE- CHAIRPERSON MCALPINE.**

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**PRESENT:** Susan McAlpine      Dean Smith      Ryan Gesund  
                 Miles Uhlar      Steve Allen

**ABSENT:** Greg Butts      Paul Evans      Mike Kerby  
                 Scott Emmons

**ALSO PRESENT:**

Maureen and Melvin Busch, 3658 Gardner      Tom Obertynski, 3695 Robina  
Joanne Bierwirth, 2414 Cambridge      Dennis Hennen, 2411 Earlmont  
Joe Krug, 1991 Phillips      Amy Vansen, City Planner  
AC and Teri Pigeon, 1722 Eaton  
Kurt Hite, 3525 Robina  
Chris and Jennie Rose Stearns, 2392  
Cambridge

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**APPROVAL OF AGENDA**

**It was moved by Mr. Allen to approve the agenda.**

**Supported by Mr. Gesund.**

**AYES: Smith, McAlpine, Uhlar, Allen, Gesund**

**NAYS: None**

**ABSENT: Emmons, Kerby, Butts, Evans,**

**Motion Carried.**

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**APPROVAL OF MINUTES**

**It was moved by Mr. Allen to approve the minutes of April 10, 2017, with an addendum that a notation be included per Mr. Gesund's request that Mr. Gesund was not present due to observance of the Passover holiday.**

**Supported by Mr. Uhlar.**

**AYES: Smith, McAlpine, Uhlar, Allen, Gesund**

**NAYS: None**

**ABSENT: Emmons, Kerby, Butts, Evans,**

**Motion Carried.**

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Vice Chairperson McAlpine advised attendees that four votes were needed in order to

approve or deny any of the cases. She gave applicants the option to ask for a postponement prior to hearing their case if they wished.

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1. **Application Number BA-04-17** Melvin & Maureen Busch, 3658 Gardner, south half of Lot 14 of the Cottage Homes Subdivision, Parcel ID #25-07-453-039, east side of Gardner, between Twelve Mile and Edwards, is seeking an appeal of the zoning officer classifying a generator as an accessory structure. *Berkley City Code, Chapter 138 Zoning, Article III General Provisions, Division 1 Accessory Buildings and Structures, Section 138-53 Yard Location* Accessory buildings or structures shall not be erected in any yard, except a rear yard. If appeal is denied, applicant is seeking a variance.

Maureen and Melvin Busch were present. They stated that given their personal circumstances they wanted to install a generator. Portable ones are very loud. They have more room on the side of their house than they do in the rear.

Mr. Smith questioned where along the side the generator would be installed. The applicant replied toward the front because of the position of the neighbor's air conditioning condenser and because of window placement and the living space at the front of the house.

Vice-Chairperson McAlpine acknowledged receiving a letter from Joann Anderson, 3618 Gardner in favor of the request. She opened the public hearing at 7:44 PM. Hearing no comments, she closed the public hearing at 7:44 PM.

The Board discussed noise, minimum distance from buildings, and the practice of allowing air conditioning condensers in the side yard.

Mr. Uhlar asked a legal procedural question regarding the appeal of the decision and the interpretation as an accessory structure or the finding of a practical difficulty.

Mr. Allen opined that the City should require that the next door neighbor consents to either an air conditioning condenser or a generator in the side yard.

**It was moved by Mr. Gesund to approve BA-04-17 citing that a practical difficulty had been proven due to the fact that Berkley City Code does not address generators; given the location of the neighbor's bedroom window and the existing air conditioning condenser, this location will mitigate any impacts; the existing outdoor living space at the rear of the house is very small; the proposed location is the best location for this property. This variance is condition upon the neighbor's consent, which has been received by the City. Supported by Mr. Allen.**

**AYES: Smith, McAlpine, Uhlar, Allen, Gesund**  
**NAYS: None**  
**ABSENT: Emmons, Kerby, Butts, Evans**  
**Motion Carried.**

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2. **Application Number BA-05-17** Chris Stearns, 2392 Cambridge, Lot 68 of the Hannan's West Royal Oak Subdivision, Parcel ID #25-17-351-018, north side of Cambridge, between Coolidge and Berkley, is requesting a variance of *Berkley City Code, Chapter 138 Zoning, Division 17 Schedule of Regulations, Section 138-526 Schedule of Regulations*. In the R-1D District, the smallest side yard setback shall not be less than 5 feet; both side yards shall total 15 feet; and 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 in order to construct an addition.

Chris and Jennie Rose Stearns were present as was their builder, Joe, from Total Home Solutions.

The Board confirmed that the property was 60 feet wide and that the existing house was 1900 square feet and would be changed to a 2500 square foot house if the variance was approved.

The Board asked if a detached garage was possible. The applicant stated that it was, but an attached garage was confirmed.

Vice Chairperson McAlpine opened the public hearing at 8:10 PM.

The following people spoke:

Joanne Bierwirth, 2414 Cambridge

Hearing no further comments, Vice Chairperson McAlpine closed the public hearing at 8:11 PM.

Mr. Smith acknowledged that the placement of the garage was in order to give a proper turning radius. The applicant advised that there was a sliding glass door that they had wanted to preserve. Mr. Smith then suggested separating the garage from the house with a breezeway. The builder conceded that they have options.

Vice Chairperson McAlpine asked if any of the other options require a variance. Ms. Vansen reviewed Section 138-603 regarding the standards for Administrative Review.

**It was moved by Mr. Gesund to deny BA-05-17 upon finding that no practical difficulty has been proven.**

**Supported by Mr. Allen.**

**AYES: Smith, McAlpine, Uhlar, Allen, Gesund**

**NAYS: None**

**ABSENT: Emmons, Kerby, Butts, Evans,**

**Motion Carried.**

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3. **Application Number BA-06-17** Tom & Ewa Obertynski, 3695 Robina, north 20 feet of Lot 96 and all of Lot 97 of the McGiverin-Haldeman's Berkley Subdivision, Parcel ID #25-07-454-039, southwest corner of Robina and Edwards, is seeking an appeal of the zoning officer classifying a generator as an accessory structure. *Berkley City Code, Chapter 138 Zoning, Article III General Provisions, Division 1 Accessory Buildings and Structures, Section 138-53 Yard Location* Accessory buildings or structures shall not be erected in any yard, except a rear yard. If appeal is denied, applicant is seeking a variance.

Tom Obertynski was present. He advised that the generator had been installed by a company that had neglected to get permits. The location was chosen due to the basement egress window and the air conditioning condenser. He stated that there is no fence between his property and the neighbor to the south and they share the back yard. The location behind the house is low and tends to get wet. He stated he had provided 47 letters of support.

Vice-Chairperson McAlpine opened the public hearing at 8:35 PM.

The following people spoke during the public hearing:

Kurt Hite, 3525 Robina

Maureen Busch, 3658 Gardner

Vice-Chairperson McAlpine opened the public hearing at 8:38 PM.

The Board observed that the generator was quite innocuous and that all utilities had been huddled along that property line.

**It was moved by Mr. Smith to approve BA-06-17 citing that a practical difficulty had been proven due to the fact that Berkley City Code does not address generators; given the location of both the neighbor's and the applicant's air conditioning condenser, this location will mitigate any impacts; the existing outdoor living space at the rear of the house is small; the proposed location is the best location for this property. This variance is condition upon the neighbor's consent, which has been**

received by the City.  
Supported by Mr. Allen.  
AYES: Smith, McAlpine, Uhlar, Allen, Gesund  
NAYS: None  
ABSENT: Emmons, Kerby, Butts, Evans  
Motion Carried.

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## **OTHER BUSINESS**

Mr. Gesund offered a comment regarding the proposed exterior appliance ordinance discussion. He commented that commercial appliances, such as vacuums at a car wash were not addressed in this ordinance and probably those types of appliances should be included.

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## **LIAISON REPORTS**

Councilmember Kideckel was absent, so there was no report.

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## **PUBLIC COMMENTS**

None.

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There being no further business, Vice Chairperson McAlpine adjourned the meeting at 8:49 PM.