

PUBLIC NOTICE

City of Berkley, Michigan
Regular Meeting of the Zoning Board of Appeals
Tuesday, November 12, 2019
7:00 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 September 9, 2019*

ITEMS FOR THE AGENDA

1. **APPLICATION PBA-04-19**
Jason and Kendra Bath, 1811 Earlmont, east half of Lot 130 in the Stephenson-Barber's Oakland Manors Subdivision, is requesting a dimensional variance for side yard setback along Mortenson Blvd.
2. **MEETING DATES**
Matter of reviewing meeting dates for 2020 calendar year.

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 7:00 PM,
MONDAY, SEPTEMBER 9, 2019 BY CHAIR EVANS.**

PRESENT: Chair Paul Evans
Steve Allen
Ryan Gesund
Joe Krug
Greg Butts
Sue McAlpine
Miles Uhlar

ALSO PRESENT: Erin Schlutow, Community Development Director
Dennis Hennen, City Council Liaison
Maria Ward, Alternate Board Member
Members of public

APPROVAL OF AGENDA

Chair Evans noted that there was an item that had been noticed to appear on the agenda, but had been removed by the Community Development Director prior to the publication of the agenda. Director Schlutow gave a brief explanation as to the reason PBA-02-19 for 1864 Dorothea was removed from the agenda. A variance was not required for the scope of the proposed project; therefore, it did not need to be reviewed by the ZBA.

It was moved by Sue McAlpine to approve the agenda as presented. Motion was seconded by Steve Allen and unanimously approved.

AYES: Krug, Allen, Butts, Gesund, Uhlar, McAlpine, Evans
NAYS: None

Motion Carried.

APPROVAL OF MINUTES

Board members identified minor errors to be corrected.

It was moved by Mr. Allen to approve the minutes of July 8, 2019 as amended and supported by Ms. McAlpine.

AYES: Allen, Butts, Gesund, Uhlar, McAlpine, Krug, Evans
NAYS: None

Motion Carried.

REGULAR AGENDA

1. Application PBA-03-19; 2219 Coolidge

Community Development Director Schlutow provided a brief summary of the requested side yard and height variances at 2219 Coolidge for the redevelopment of the former La Salette school building.

Applicant Steve Friedman provided explanation of the project and reasons for the variance.

Chair Evans opened the Public Hearing at 7:14pm.

No public comment.

Chair Evans closed the Public Hearing at 7:14pm.

Board members discussed the variance requests.

Based on the finding of fact, it was moved by Mr. Butts and seconded by Mr. Allen to approve the requested height and side yard setback variances for PBA-03-19.

AYES: Butts, Gesund, Uhlar, McAlpine, Krug, Allen, Evans

NAYES: None

Motion Carried

2. Discussion: Annual Discussion regarding Rules of Procedure

Chair Evans noted that the discussion was postponed at the July meeting due to the absence of regular Board members and in order for staff to incorporate requested revisions.

Mr. Allen commented that the requested changes had been incorporated. The Board discussed concerns with the schedule for election of officers.

Chair Evans noted a change regarding members who are unable to attend a regular meeting shall contact the Community Development Director.

It was moved by Ms. McAlpine to approve the Zoning Board of Appeals Rules of Procedure updated September 9, 2019, as provided by staff. Supported by Mr. Butts.

AYES: Gesund, Uhlar, McAlpine, Krug, Allen, Butts, Evans

NAYS: None

Motion Carried

3. ELECTIONS: Matter of Electing a Chair and Vice Chair of the Zoning Board of Appeals

Chair Evans noted that the matter of electing Chair and Vice Chair was postponed from the July meeting, as there were members of the Board who were absent. Chair Evans also stated that he would be interested in continuing as Chair as he has found it an excellent learning experience, but that anyone who would be interested should consider it.

It was moved by Mr. Allen to nominate Paul Evans for Chair. Supported by Mr. Gesund.

AYES: Uhlar, McAlpine, Krug, Allen, Butts, Gesund, Evans

NAYS: None

Motion Carried

It was moved by Mr. Butts to nominate Sue McAlpine for Vice Chair. Supported by Mr. Gesund.

AYES: McAlpine, Krug, Allen, Butts, Gesund, Uhlar, Evans

NAYS: None

Motion Carried

4. **MEETING DATES:** Matter of reviewing and adopting meeting dates for 2019 calendar year.

It was moved by Ms. McAlpine to adopt the meeting schedule for 2019 calendar year, as presented by staff. Supported by Mr. Uhlar.

AYES: Krug, Allen, Butts, Gesund, Uhlar, McAlpine, Evans

NAYS: None

Motion Carried

OTHER BUSINESS

Ryan Gesund noted the dedication of the new flagpole at the Public Safety building on September 11, 2019.

Steve Allen addressed his position about the La Salette development project. He stated that he is not anti-development, but he is anti-things not good for this community. The new development project would be good for the community, and is supported.

LIAISON COMMENTS

Councilmember Hennen summarized the previous City Council meetings, including a presentation regarding the multi-community grant with Oak Park and Huntington Woods, future development on Eleven Mile Rd, the status of Redevelopment Ready Certificate and best practices in the community. The City Council approved the first reading of an ordinance to permit day care facilities in the Office District and Local Business District through special land use approval, as well as the first reading of the Conditional Rezoning for the La Salette redevelopment project.

BOARD COMMENTS

Chair Paul Evans updated the Board on the process for developing the Master Plan. Mr. Evans noted that he would be sitting on a panel in the next week to interview the top three firms that submitted proposals to assist the City with the Master Plan.

PUBLIC COMMENTS

Maria Ward requested a final copy of the Rules of Procedure for all Board members to reference.

With no further business, Chair Evans adjourned the meeting at 7:35 PM.

CITY OF BERKLEY ZONING BOARD OF APPEALS



RULES OF PROCEDURE

Updated September 2019

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 by Berkley ordinances. The ZBA shall consist of seven regular members and 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. Alternate members called upon to serve in instances of vacancy or conflict of interest shall do so on a rotational basis, starting with the most senior alternate.

- a) **Training.** Each member is expected to attend a minimum of 4 hours of training every 3 years. Hours of training shall be tracked, documented by the Community Development Director, and published biannually in January and July of each year.
- b) **Materials.** Upon taking office for the first time, each member shall receive and maintain the following written materials to be provided by the Community Development Director:
 - A copy of 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 Community Development Director shall provide updated materials when available.
 - The Michigan Zoning Enabling Act.
 - The Zoning Board of Appeals Handbook published by the Michigan Municipal League
 - Any other materials deemed necessary by the 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.
 - Members who are unable to attend must contact the Community Development Director prior the meeting and alert them to the cause of the absence.
- b) Arrive prepared for the business at hand, having reviewed written materials and 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 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 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 7:00 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 or conflicts with a meeting of the Berkeley City Council, the ZBA shall select a suitable alternate date in the same month, if possible, in accordance with the Open Meetings Act.
- c) Meetings shall be presided over by the Chair or, in the absence of the Chair, the Vice Chair, or, in the absence of both the Chair and Vice Chair, the most senior member of the Zoning Board of Appeals present.

(3) Other Meetings. A special meeting can also be called by the 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
 - Staff Report
 - 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 January 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 January meeting, then the officers shall be elected no later than a February meeting.
- (2) **Duties.** 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 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 January meeting, or if there is no January meeting, no later than the February 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.



9/6/19
10/11/19 IN.

3338 Coolidge
Berkley, Michigan 48072
(248) 658-3320
FAX (248) 658-3301
www.berkleymich.org

CITY OF BERKLEY Zoning Board of Appeals – Application Form

A complete application, a check payable to the 'City of Berkley', and 15 copies of a survey, folded plans, and other applicable data must be submitted to the City of Berkley one month prior to the date of the ZBA hearing. Fee: \$300.00 If an application is withdrawn more than 3 weeks prior to the meeting date, 90% of the fee will be refunded. If the application is withdrawn less than 3 weeks prior to the meeting, no refund will be given. Account Number: 1019.

The Zoning Board of Appeals meets the second Monday of every month. The meetings are held at 7:30 p.m. in the Council Chambers at the City Hall, 3338 Coolidge Highway, Berkley, Michigan 48072.

APPLICANT:

Name: MICHAEL J. GORSON, ARCHITECT Phone: 248-549-4500
Address: 4351 DENVER COURT
ROYAL OAK, MI 48073

Relationship to Property (current tenant, representative, future tenant, future owner, owner)
OWNER REPRESENTATIVE, ARCHITECT

PROPERTY OWNER:

Name: JASON & KENDRA BATH Phone: 248-298-9991
Property Owner Address: 1811 EARLMONT
BERKLEY, MI 48072

PROPERTY DESCRIPTION:

Address: 1811 EARLMONT
Sidwell (Tax I.D. #): 25-17-132-018 Lot & Subdivision: #130 STEPHENSON - BARBER CONCRETE MANS
Current Zoning Classification: R1C Current Use of Property: SINGLE FAMILY

VARIANCE REQUEST:

Description of Request: TO REDUCE THE 10'-0" REQUIRED SIDEYARD SETBACK TO 5'-0".

From the City of Berkley Code, Chapter 138 Section 138-526
Has the City refused a permit for the request? NO

GROUND FORS FOR APPEAL:

There are two types of variances: non-use variances and use variances. A use variance permits the use of land that is otherwise not allowed in a zoning district. A non-use variance is a variance regarding setbacks; height; parking; sign size or placement; fences and walls.

In either case, the applicant must prove to the Zoning Board of Appeals that not receiving this variance will cause undue hardship or practical difficulty. Please complete either the use variance or non-use variance sections (whichever is applicable to your request)—DO NOT COMPLETE BOTH SECTIONS.

NON-USE VARIANCE

A non-use variance is a variance regarding setbacks; height; parking; sign size or placement; fences and walls. The need for the variance is due to unique circumstances or physical conditions of the property because

THE HOUSE IS A CORNER LOT AND SETS CLOSER TO THE SIDE STREET THAN REGULATIONS

The need for the variance is not the result of actions of the property owner or previous property owners because

THE HOUSE MAY PROPOSE CURB CUT SETBACKS AND NOT BUILT MANY OWNERS AGO

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 because

THE AGING IN PLACE PRIORITIES AND MULTI-GENERATIONAL UNITS AND ROOF IS AN ISSUE TO BE ENCOURAGED AND ACCOMMODATED

The requested variance is the minimum variance necessary to do substantial justice to applicant as well as other property owners because

IT ALLOWS FOR A FUNCTIONAL ROOM SIZE AND AS NOTES THE SIMILAR SETBACKS EXIST ON OTHER CORNER LOTS

The requested variance will not adversely impact the surrounding properties because

THE HOUSE SETS WAY BACK, WON'T IMPACT THE LINE OF SETS AT THE CORNER AND MATCHES OTHER HOMES IN THE AREA

USE VARIANCE

A use variance permits the use of land that is otherwise not allowed in a zoning district.

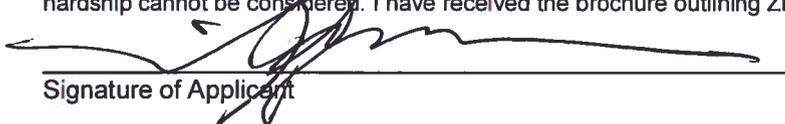
The building or land cannot be reasonably used for any of the uses permitted by right or by special use permit in the current zoning district because _____

The need for the variance is due to unique circumstances or physical conditions of the property because _____

Proposed use will not alter the essential character of the neighborhood because _____

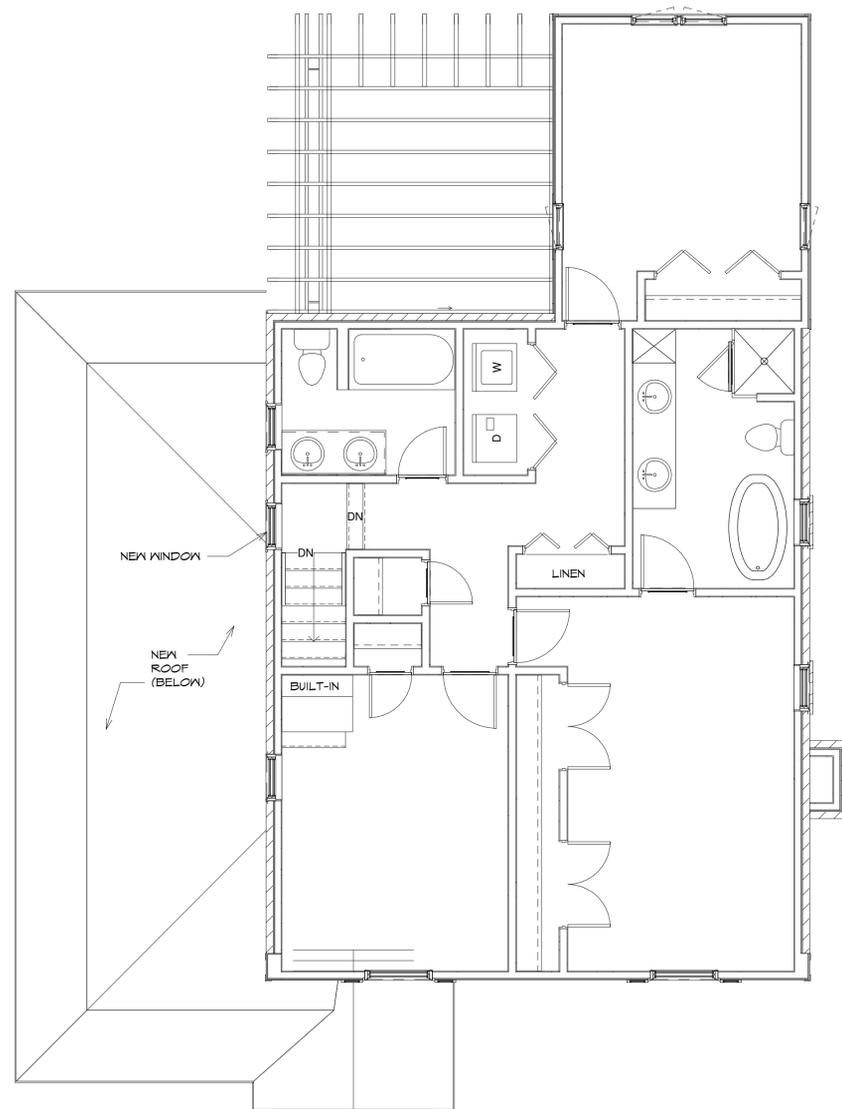
The need for the variance is not the result of actions of the property owner or previous property owners because _____

I understand that ZBA members may need to access my property to better understand my case. I understand that financial hardship cannot be considered. I have received the brochure outlining ZBA procedures and requirements.


Signature of Applicant

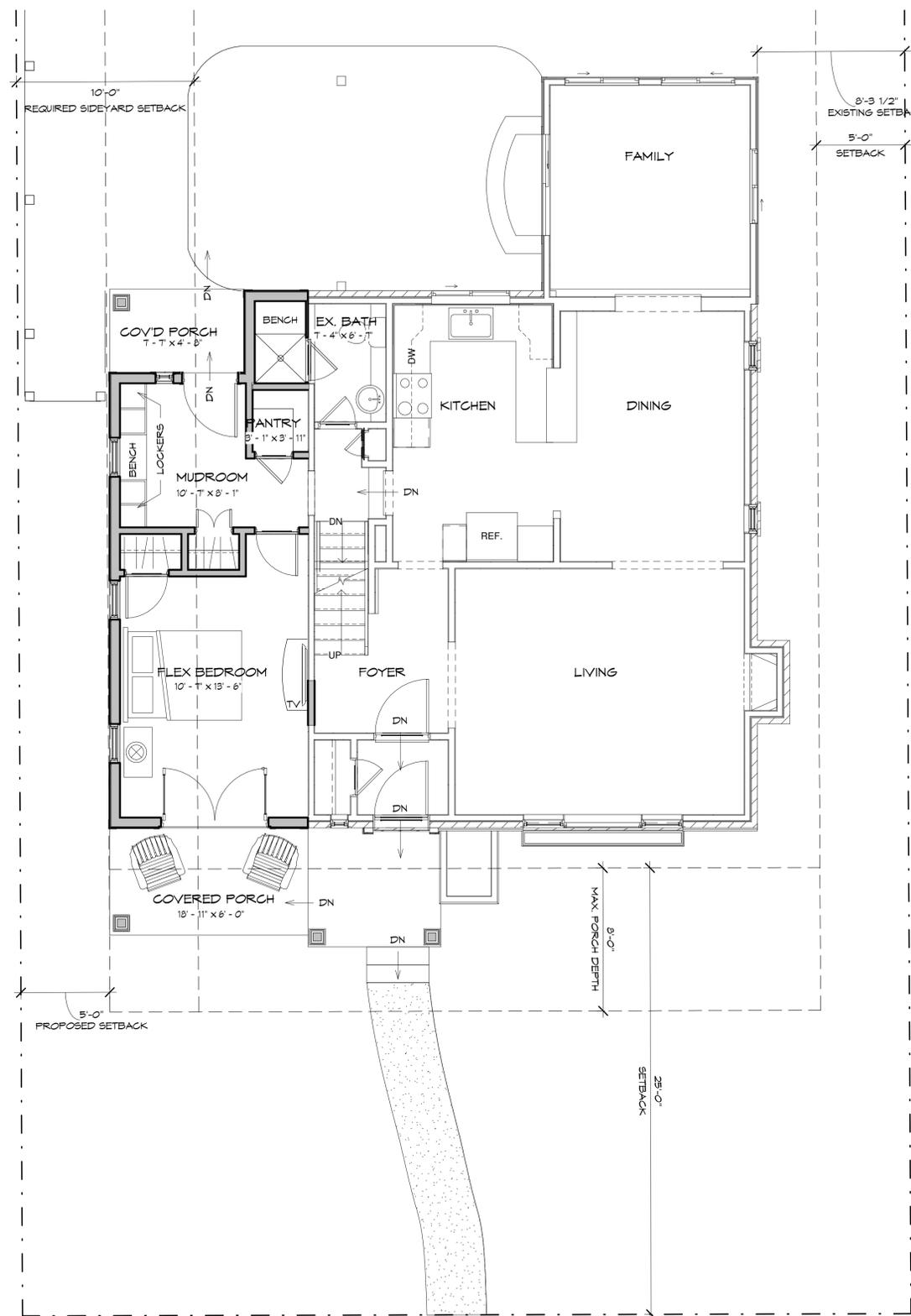
3 October 2019
Date

Office Use Only
Date Application Received: 10-3-19 Fee: \$300 Receipt Number: _____
Hearing Date: 11-12-19 Case Number: PBA-04-19
Zoning Board of Appeals Decision: _____



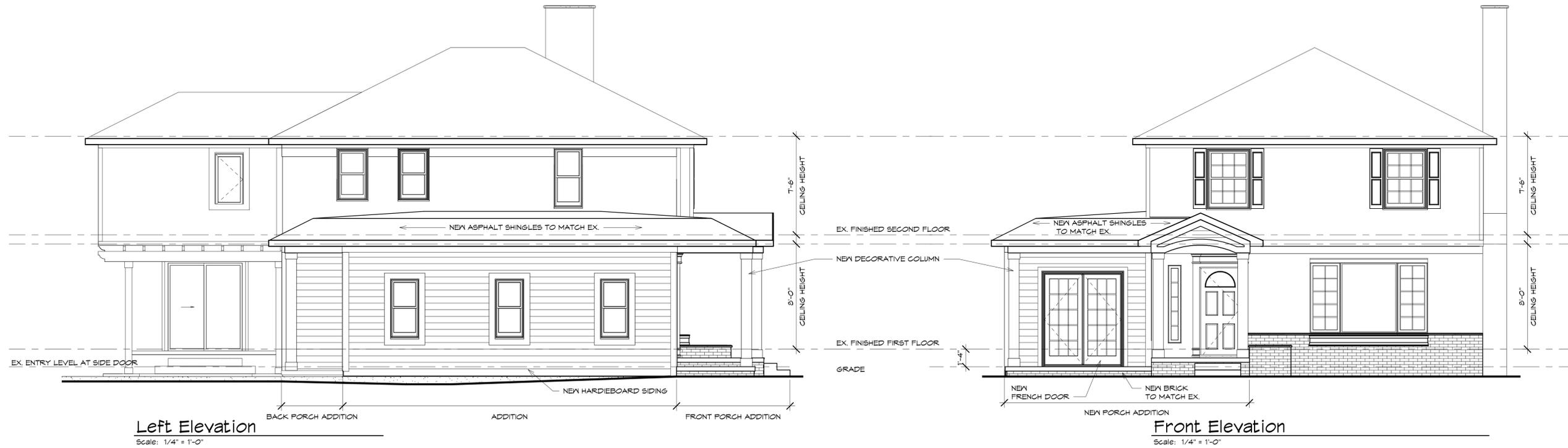
Second Floor Plan

Scale: 1/4" = 1'-0"



First Floor Plan

Scale: 1/4" = 1'-0"



Left Elevation

Scale: 1/4" = 1'-0"

Front Elevation

Scale: 1/4" = 1'-0"



Right Elevation

Scale: 1/4" = 1'-0"

Rear Elevation

Scale: 1/4" = 1'-0"

**Existing Setbacks Comparable to
Proposed Setback**



1760 Catalpa ~ 5' Setback



1811 Dorothea ~ 7' Setback



2111 Edgewood ~ 6' Setback



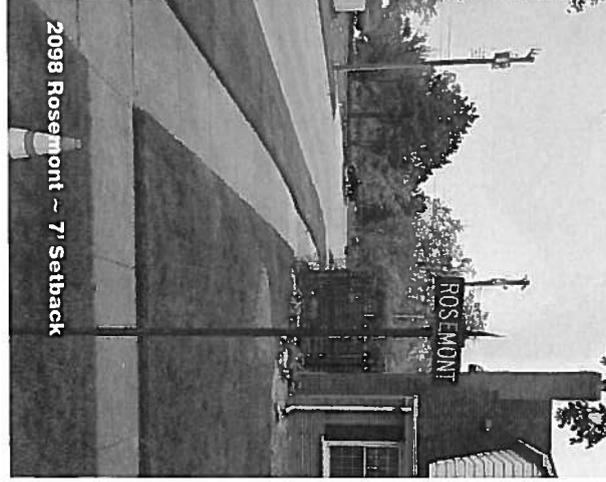
2319 Edgewood ~ 6' Setback



2309 Earlmont ~ 4' Setback



2088 Earlmont ~ 5' Setback



2098 Rosemont ~ 7' Setback



2098 Rosemont - 5' Setback

2088 Earlmont - 5' Setback

2309 Earlmont - 4' Setback

2319 Edgewood - 6' Setback

2111 Edgewood - 5' setback

1811 Dorothea Road - 7' Setback

1769 Catalpa - 5' Setback

Site



Community Development
3338 Coolidge Hwy
Berkley, MI 48072
(248) 658-3320

To: Zoning Board of Appeals
From: Erin Schlutow; Community Development Director
Subject: **PBA-04-19; 1811 Earlmont – Variance for sideyard setback**
Date: November 7, 2019

APPLICANT: Michael J. Gordon, Architect, on behalf of Jason & Kendra Bath
LOCATION: Southwest corner of Earlmont Rd and Mortenson Blvd.
PARCEL ID: # 25-17-132-018
East half of Lot 130 of Stephenson-Barber's Oakland Manors Subdivision
REQUEST: The applicant is seeking a dimensional variance for side yard setback along Mortenson Blvd. for the purpose of constructing an addition to the existing building.
REQUIRED: Section 138-526 of the Zoning Ordinance requires a side yard setback of 10 ft. for corner lots where rear yard abuts a rear yard in the R-1C, Single Family Residential District.

ZONING AND LAND USE

The subject property is zoned R-1C, Single Family Residential and is located in an entirely residential neighborhood. Properties to the north, east, and south are located in the R-1A, Single Family Residential District and the property to west is located in the R-1C, Single Family Residential District.

Section 138-527(c) states in the R-1C District, the exterior side yard setback on a corner lot where a rear yard abuts a rear yard shall be not less than 10 ft. The applicant is proposing to construct an addition to the existing principal structure that will encroach into the required 10 ft. side yard setback along Mortenson Blvd. by five (5) ft. Therefore, the applicant is requesting a five (5) ft. side yard setback variance on the east side of the property along Mortenson Blvd.

The proposed addition will not impact front and rear yard setbacks, height and lot coverage and will be in compliance with all applicable ordinance requirements.



STANDARDS FOR REVIEW

Per Section 138-606 of the Zoning Ordinance, the applicant must demonstrate a practical difficulty in order to be granted a dimensional variance. The Zoning Board of Appeals shall not vary the regulations of Section 138-606, unless it shall make findings based upon the evidence presented to it in each specific case that:

A. *The need for the variance is due to unique circumstances or physical conditions of the property.*

The subject site is located at the southwest corner of Earlmont and Mortenson. Per Section 138-527(c), for corner lots where a rear yard abuts a rear yard, the exterior side yard setback shall be not less than ten (10) feet. The subject property is the east half of Lot 130, measuring 50 ft. frontage on Earlmont and 125 deep along Mortenson Blvd. Properties to the north, east, and south occupy an entire lot and each have 100 ft. lot width fronting each applicable street, with lots ranging from 125 ft. – 135 ft. deep.

On the subject property, the 50 ft. width on Earlmont prohibits construction in the side yard, as it will encroach into the required side yard setback, and the 125 ft. depth prohibits construction in the rear yard, as it will be constructed too close to the detached rear yard garage. Additionally, constructing an addition into the rear yard will remove the majority of rear yard lawn space on the property.

B. *The need for the variance is not the result of actions of the property owner or previous property owners.*

The subject site is limited by the size of the lot that was created prior to the current owners taking ownership. The applicant has provided supplemental materials showing that there are other single family homes on 50 ft. wide corner lots in the surrounding neighborhood in the same zoning district that do not comply with the required 10 ft. side yard setback. We have reviewed the dwelling size and lot configuration of each property, as provided by the applicant. The single family residences, provided by the applicant, were constructed prior to the adoption of the Zoning Ordinance in 1981 or other adopted amendments thereafter.

Therefore, each dwelling and address provided by the applicant would be a legal nonconforming use.

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.*

Strict compliance with the side yard setback requirement will prohibit the property owner from constructing an addition to the principal structure for a bedroom, mudroom, and pantry. The



limited size of the lot prohibits the property owner from constructing an addition to suit the family needs.

D. *The requested variance is the minimum variance necessary to do substantial justice to applicant as well as other property owners.*

The applicant is requesting a five (5) ft. variance to encroach into the side yard setback along Mortenson Blvd. It is possible that the layout of the proposed addition could be manipulated so as to reduce the minimum variance in order to achieve an expansion of the existing principal structure that would serve the intended purpose. A reconfiguration of the proposed addition would require elimination of the second doorway, as well as closet space and living space in the bedroom.

It is unclear if reconfiguration of the proposed addition would be agreeable to the applicant or property owners.

E. *The requested variance will not adversely impact the surrounding properties.*

The requested variance will permit the addition to encroach into the side yard setback along a major roadway. The surrounding corner lot properties are located on 100 ft. wide lots, wherein there would be no need to encroach into the side yard setback.

Recommendation

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 whether a lesser variance would be acceptable.

If you have any questions regarding this case, please do not hesitate to contact us.

Sincerely,

Erin Schlutow
Community Development Director



BERKLEY
where you want to be

Cc: Matthew Baumgarten, City Manager
John Staran, City Attorney
Michael Gordon, michaelg@mga-architects.net
Justin Baranski, justinb@mga-architects.net



BERKLEY
where you want to be

Community Development
3338 Coolidge Hwy
Berkley, MI 48072
(248) 658-3320

MEMORANDUM

To: Zoning Board of Appeals
From: Erin Schlutow; Community Development Director
Subject: **ZBA Meeting Schedule 2020**
Date: November 7, 2019

The Zoning Board of Appeals is scheduled to meet on the second Monday of the month. The following schedule for the 2020 ZBA meetings is submitted for your consideration. Thank you.

Monday, January 13, 2020

Monday, February 10, 2020

Wednesday, March 11, 2020 – delayed due to Election Day

Monday, April 13, 2020

Monday, May 11, 2020

Monday, June 8, 2020

Monday, July 13, 2020

Tuesday, August 11, 2020 – delayed due to CruiseFest and conflict with City Council meeting

Monday, September 14, 2020

Monday, October 12, 2020

Monday, November 9, 2020

Monday, December 14, 2020



BERKLEY
where you want to be