

A MEETING OF THE ZONING BOARD OF APPEALS WAS CALLED TO ORDER AT 7:30 PM, MONDAY, SEPTEMBER 12, 2016 AT CITY HALL BY CHAIRPERSON EVANS.

PRESENT: Ryan Gesund Susan McAlpine Paul Evans
 Dean Smith Mike Kerby Greg Butts
 Scott Emmons

ABSENT:

ALSO PRESENT: Don Wood, 3162 Bacon
 Tod Copacia, 3152 Bacon
 Lisa Kempner, 2660 Columbia
 Rachel Piacentini, 1726 Oxford
 Barbara Morris, 1714 Wiltshire
 Chris Keller, 2312 Buckingham
 Elizabeth Petry, 3446 Thomas
 Miles Uhlar, ZBA Alternate
 Alan Kideckel, Council Liaison
 Amy Vansen, City Planner

APPROVAL OF AGENDA

**It was moved by Mr. Gesund to approve the agenda.
Supported by Ms. McAlpine.
AYES: Smith, Butts, Kerby, Emmons, Gesund, McAlpine, Evans
NAYS: None
Motion Carried.**

APPROVAL OF MINUTES

**It was moved by Ms. McAlpine to approve the minutes of June 13, 2016.
Supported by Mr. Gesund.
AYES: Smith, Gesund, McAlpine, Kerby, Butts, Emmons, Evans
NAYS: None
Motion Carried.**

Chairperson Evans reviewed the procedure for hearing cases. He advised that no clapping or cheering would be permitted.

1. **Application Number BA-07-16** Don Wood, 3162 Bacon, east side of Bacon, between Beverly and Catalpa, is seeking a variance of the *Berkley City Code*, Chapter 138 *Zoning*, Article V *District Regulations*, Division 17 *Schedule of Regulations*, Section 138-526 *Schedule of Regulations*, In the R-1D District, the smallest side yard shall not be less than 5 feet. Both side yards shall total at least 15 feet; and Article III *General Provisions*, Division 1 *Accessory Buildings*, Section 138-52 Where the accessory building is attached to the main building it shall conform to all regulations applicable to main building. The applicant is seeking a variance to convert a nonconforming attached carport into a garage. The structure is 2.1 feet from the side lot line when at least 5 is required. The total side yard setback for the structure is 7.1 feet when 15 feet is required.

Ms. Vansen reviewed the case and answered the Board members' questions.

The applicant, Don Wood, was present. He reported that he had a significant rat issue at his property and that burrowing had occurred under the carport slab. While he had been advised to not commence work until receiving the variance, he felt he did need to address the infestation by digging and pouring a proper ratwall for the structure. He presented photos of what the garage looks like now. To convert from a carport to a garage only involved a few studs being installed.

Mr. Kerby asked about the variance referenced in the application. Ms. Vansen stated that no variance had been given or applied for. While her reading of the code from 1996 (when the carport was built) indicated that all structures attached to a house needed to comply with the same setbacks as a house, it appears that carports were reviewed differently and did not have to comply with same standards. Ms. Vansen stated that likewise in 1996, the ordinance said that driveway couldn't be wider than 12 feet. However, there were driveways on every corner lot that didn't comply with that ordinance and had not received a variance.

Mr. Smith complemented the applicant on his craftsmanship. He established that the roof had not changed, but that the concrete had been replaced. The definition of a carport was reviewed.

Ms. McAlpine established that the structure had not gotten any bigger.

The applicant stated that he had gone ahead with construction but had no issue getting inspections and complying with any requirements of the building department.

Chairperson Evans opened the public hearing at 7:52 PM.

Mr. Copacia, 3152 Bacon, stated that he had no issues with the requested variance.

Hearing no further comments, Chairperson Evans closed the public hearing at 7:55 PM.

Mr. Kerby expressed concern over the lack of inspections.

Mr. Smith also expressed concern over the lack of inspections. However he observed that the applicant didn't change the foot print of the structure. He was concerned about the precedent of going ahead with work and then asking for forgiveness.

Mr. Butts confirmed that if the Board approved the variance, permits would then be required.

Mr. Kerby and Mr. Smith stated that a carport was a little like a front porch. Front porches are open and can occupy a portion of the front yard. The ordinance doesn't allow front porches to be enclosed. A carport is open and could be treated differently than an enclosed garage.

There was discussion about alternatives, the footprint remaining the same, and the lack of permits for the work.

It was moved by Mr. Kerby to deny BA-07-16 citing that no practical difficulty had been proven: the property is not unique, the ordinance is not unreasonably burdensome, and alternatives exist.

Supported by Mr. Smith.

AYES: Smith, Gesund, McAlpine, Kerby, Evans

NAYS: Emmons, Butts

Motion Carried.

2. **DISCUSSION:** Annual discussion regarding Rules of Procedure

Chairperson Evans observed that the Rules should consistently use the term "chair" rather than "chairperson". Ms. McAlpine observed that likewise the term "vice-chair" should be used instead of "vice chairperson".

It was moved by Ms. McAlpine to approve the Rules of Procedures with the changes to chair and vice chair as noted.

Supported by Mr. Kerby.

AYES: Smith, Gesund, McAlpine, Kerby, Butts, Emmons, Evans

NAYS: None

Motion Carried.

3. ELECTIONS: Matter of electing a chairperson and vice chairperson to the Zoning Board of Appeals.

Dean Smith nominated Evans as chair and McAlpine as vice-chair. Kerby concurred. It was established that Evans and McAlpine were both interested in serving. There were no other nominees.

It was moved by Mr. Gesund to elect Paul Evans as Chairperson and Susan McAlpine as Vice-Chairperson.

Supported by Mr. Kerby.

AYES: Butts, McAlpine, Gesund, Emmons, Smith, Evans, Kerby

NAYS: None

Motion Carried.

OTHER BUSINESS

Chairperson Evans pointed out a case described in Planning and Zoning News. A court case was sent back to a zoning board of appeals because the findings were not adequately reflected. Chairperson Evans stated that this good reminder to always have a sufficient record and use those 5 standards when making a motion.

PUBLIC COMMENTS

Rachel Piacentini of Oxford and Lisa Kempner of Columbia told the Board they felt sorry for the applicant of Case BA-07-16 and hopes those same standards are followed for builders.

Ms. Piacentini stated that they have heard from residents who have reached out to the City's Building Department and had their concerns dismissed. She and Ms. Kempner met with the City Manager regarding these concerns. The City Manager told them to request any copies of building files under the Freedom of Information Act and then file an appeal at the Building Board of Appeals. Currently the City's Building Board of Appeals has only two members so they then called State Senator Knollenberg and asked who can help us. He forwarded them to the State of Michigan's Construction Board of Appeals. So they talked to the State of Michigan's Construction Board of Appeals who advised them that they have no oversight over local zoning. The only recourse is to go before the City's Zoning Board of Appeals.

Ms. Piacentini then relayed that she requested a spot on the agenda from Chairperson Evans. She didn't hear from him, but then received an email from Ms. Vansen. She

read the email. Ms. Piacentini took exception to the \$300 fee and questioned whether the Building Department was treating residents differently than businesses. She advised that she was not asking for an appeal as Ms. Vansen stated but an interpretation. Ms. Piacentini then recalled Case BA-04-15 where the business House of Renew sought an interpretation. She stated that they were going to present 4 cases (which would cost \$1200) to the Board. She reviewed the Zoning Enabling Act. She stated the City did not charge House of Renew, but if she was mistaken she was sure the City could produce a receipt. Ms. Piacentini reiterated that she wanted the Building Department held accountable.

Ms. Kempner then presented photos. There were pictures of 3095 Thomas, 2650 Ellwood, 2971 Cumberland, and 2651 Harvard presented to the Board showing construction, stakes, fencing, and tape measures. The pictures were labeled. With regard to the work done at 2651 Harvard, Ms. Kempner stated that the Building Department falsified permits by back dating the permits.

Ms. Piacentini stated that these are only four cases, how many more are there?

They continued that there are numerous sidewalks being blocked by construction fencing. Residents shouldn't have to live like this. Ms. Piacentini read Berkley City Code, Section 106-37. She asked if she could put a porta john in front of her house or were builders receiving preferential treatment?

Ms. Kempner read Ms. Vansen's email regarding the sidewalk obstructions. She emphasized that the City Planner cannot just change the law on her own. Ms. Piacentini stated that she cannot drive 40 mph in a 30 mph just because she feels like it. Likewise, Berkley's laws ought to be followed. Ms. Piacentini then asked that a special meeting with city council and the zoning board of appeals be scheduled to address problems in the building department. Ms. Piacentini stated that we have rules for a reason.

They advised that their next step was a court room.

Hearing no further comments, Chairperson Evans closed public comments.

He stated that Ms. Kempner and Ms. Piacentini had clearly spent a lot of time on this presentation. He asked if they had shared this information with the City Manager. They advised that they had, but it didn't get them anywhere.

Councilmember Kideckel thanked the Board for its work and welcomed new members Emmons and Uhlar to the Board. He stated that one alternate position is still open. He stated that there is a council meeting on September 19. Robina at Twelve Mile will close for a 2 month trial period. He then reported that Berkley had been voted one of the happiest cities and one of the best cities. He stated that the recognition happens because of the good hard work of our department heads, staff, and our volunteers.

Mr. Smith remarked about the photos the Board had just received. He stated that it is no fun living next to a construction site but after the work is done, they look good. He stated he does not have enough facts to address the photos specifically. He hopes it gets resolved.

Patty Curtis of Kenmore stated that no one in the audience is against new builds. But the residents of the City have been victimized by the Building Department for two years. People send emails and don't get responses. She then stated that you work for us. She stated that builders are allowed to run rough shod in the City.

Chairperson Evans asked how many people agree with Ms. Curtis. 15 people raised their hands.

Mr. Butts asked if any of them had volunteered to be on a Board, Commission or Committee.

Ms. Piacentini replied that Steve Allen had applied for multiple boards and has been told no.

Councilmember Kideckel was surprised. There was then discussion about which department handles board appointments. It was determined that the City Clerk's office handles them.

Patsy Blackwell of Royal recalled a story about Roy West writing her a ticket. Her conclusion was that codes should be enforced.

Barbara Morris of Wiltshire advised that codes are not being enforced. She opined that the City of Birmingham has superior enforcement.

Mr. Kerby observed that the Board is not in the position to enforce laws. The Board can interpret but it doesn't enforce codes. The Board can't cause an inspector to act. He observed that the photos represented a private investigation and that there were no seals or stamps from an engineer on the photos.

Dennis Hennen of Earlmont stated these are zoning issues not code enforcement issues. He read from the Michigan Zoning Enabling Act. He questioned staff's enforcement at various addresses.

Barbara Morris of Wiltshire thought that the code did give the board authority to tell the city planner what to do.

Wendy Zabramski asked who is the boss of the Code Enforcement officer. She thought that was the issue. She also thought that if some builders can keep sidewalks clear during construction, then they all should be made to.

There being no further business, Chairperson Evans adjourned the meeting at 9:14 PM.