

**A MEETING OF THE ZONING BOARD OF APPEALS WAS CALLED TO ORDER AT 7:30 PM,  
THURSDAY, OCTOBER 20, 2016 AT CITY HALL BY CHAIRPERSON EVANS.**

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

**ABSENT:**        None

**ALSO PRESENT:** Barb Smithson, 3971 Oakshire  
                         Gary Smithson, 3971 Oakshire  
                         Tricia and Scott Losey, 3083 Thomas  
                         Rachel Piacentini, 1726 Oxford  
                         Sue Blair, 3995 Oakshire  
                         Greg Blair, 3995 Oakshire  
                         Conor Shaw-Draves, 2287 Franklin  
                         Barbara Morris, 1714 Wiltshire  
                         Matt Sharron, 3555 Kenmore  
                         Brian Alimoff, 2660 Ellwood  
                         Dennis Hennen, 2411 Earlmont  
                         Steve Allen, ZBA Alternate  
                         Miles Uhlar, ZBA Alternate  
                         Alan Kideckel, Council Liaison  
                         Amy Vansen, City Planner

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**APPROVAL OF AGENDA**

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

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**APPROVAL OF MINUTES**

**It was moved by Mr. Gesund to approve the minutes of September 12, 2016.  
Supported by Ms. McAlpine.  
AYES: Smith, Gesund, McAlpine, Kerby, Butts, Emmons, Evans  
NAYS: None  
Motion Carried.**

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1. **Application Number BA-08-16** Gary Smithson, 3971 Oakshire, west side of Oakshire, between Edwards and Morrison, is seeking a variance of the following codes: *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; Berkley City Code, Chapter 138 Zoning, Article V District Regulations Division 17 Schedule of Regulations, Section 138-527 Notes to the Schedule of Regulations, (d) There shall be a distance of at least 15 feet between dwellings; Berkley City Code, Chapter 138 Zoning, Article III General Provisions, Division 5 Nonconforming Buildings and Uses, Section 138-154 Requirements for nonconforming structures, If a nonconforming building is damaged or partially destroyed by 50% or more construction must comply with all current building and zoning codes. The applicant is requesting this variance in order to rebuild a nonconforming house. The house is 4.8 feet from the north side lot line and 10.1 feet from the south lot line; the house is 9.4 feet from the house at 3995 Oakshire and 11.2 feet from the house at 3927 Oakshire.*

Mr. Gary Smithson and the contractor, Tom Lucaj, were present. Mr. Smithson stated he had lived at the house for 38 years. He doesn't want to make any changes in the house.

It was clarified that the house is built on a slab.

Chairperson Evans opened the public hearing at 7:39 PM.

Susan Blair, 3995 Oakshire, spoke in favor of the variance.

Hearing no further comments, Chairperson Evans closed the public hearing at 7:41 PM.

The Board asked questions about the Michigan Residential Code which regulates construction codes for single family detached houses.

The contractor advised that he hasn't yet examined the footings.

**It was moved by Mr. Smith to approve BA-08-16 the citing that a practical difficulty has been proven due to the fact that the location of the neighboring houses would result in the applicant's house being less than 16 feet wide; the applicant does not have control of the neighboring properties; a lesser variance would deny the applicant the use of the property; the house in question as well as the surrounding houses are at least 50 years old; the requested variance is not a result of the applicant's actions; and it won't adversely impact the neighboring properties. This variance has the following stipulations:**

- **If the applicant can use the foundation and build the house 2 ½ inches farther south so that the distance between the house and the lot line is 5 feet, then the applicant should comply.**
- **If the foundation cannot be so used, then the applicant may alter the foundation or install a fire rated wall plus windows as windows will have a positive effect on the neighborhood.**

**Supported by Mr. Gesund.**

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

**NAYS: None**

**Motion Carried.**

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2. **Application Number BA-09-16** Alimoff Building and Development, regarding the parcel west of 2380 Franklin, north side of Franklin, between Berkley and Coolidge, is requesting a variance of *Berkley City Code, Chapter 138 Zoning, Article V District Regulations, Section 138-527 Notes to the Schedule of Regulations*, (d) There shall be a distance of at least 15 feet between dwellings. The applicant is requesting this variance in order to construct a new house that is 24.9 feet wide. The new house would be 12.1 feet from the house at 2380 Franklin when 15 feet is required. The variance would result in the house at 2380 Franklin becoming nonconforming.

Mr. Alimoff was present. The Board discussed that there were discrepancies between the survey, house elevations and floor plan. Mr. Alimoff clarified that there would be no projections on the driveway side of the house. The elevations are correct, but the floor plan is not.

Chairperson Evans opened the public hearing at 8:11 PM.

Rachel Piacentini, 1726 Oxford, spoke in opposition to the request.  
Conor Shaw-Draves, 2287 Franklin, spoke in opposition to the request.

Hearing no further comments, Chairperson Evans closed the public hearing at 8:14 PM. The Board discussed the following issues: the options the developer has; whether granting a variance would benefit the neighborhood; the issue of parcels in the middle of the block where the driveways switch sides making the 15 foot separation difficult; and a conforming house being made nonconforming.

**It was moved by Ms. McAlpine to deny BA-09-16 citing that no practical difficulty has been proven.**

**Supported by Mr. Kerby.**

**AYES: Kerby, Emmons, Gesund, McAlpine**

**NAYS: Smith, Butts, Evans**

**Motion Carried.**

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3. **DISCUSSION:** Discussion regarding Rules of Procedure

The Board reviewed the addition of the item Liaison Reports to the agenda as well as the changes made from last month.

**It was moved by Ms. McAlpine to approve the Rules of Procedure.**

**Supported by Mr. Gesund.**

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

**NAYS: None**

**Motion Carried.**

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## **OTHER BUSINESS**

Ms. Vansen advised that the City has received items for both the November and December Zoning Board of Appeals meetings.

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## **LIAISON REPORTS**

Councilmember Kideckel thanked the Board for their hard work. He reviewed the City's ice arena situation.

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## **PUBLIC COMMENTS**

Mr. Dennis Hennen, 2411 Earlmont, Berkley Citizens United, spoke regarding Ms. Vansen's memo regarding the presentation made at the September Zoning Board of Appeals meeting by Ms. Piacentini and Ms. Kempner. Written comments were presented to the Board.

Ms. Amy McIntire, 3109 Thomas, presented a written statement regarding her driveway undermining due to the excavation at 3095 Thomas. She disagreed with Ms. Vansen's portrayal of the situation.

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There being no further business, Chairperson Evans adjourned the meeting at 9:03 PM.