CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL
APPROVAL OF AGENDA
APPROVAL OF MINUTES — Meeting minutes of July 27, 2021
COMMUNICATIONS
CITIZEN COMMENTS
OLD BUSINESS

1. **PUBLIC HEARING**: Matter of conducting a public hearing to amend Section 138-192 to clarify ordinance language related to projections into given yard.

NEW BUSINESS

2. **DISCUSSION**: Matter of discussing ordinance amendment related to exterior appliances.

LIAISON REPORTS
COMMISSIONER / STAFF COMMENTS
ADJOURN

**Notice**: Official Minutes of the City Planning Commission are stored and available for review at the office of the City Clerk. If you would like to attend the electronic Planning Commission meeting, follow the link below or call the telephone number.

Join Zoom Meeting: [https://berkleymich.zoom.us/j/93323204434](https://berkleymich.zoom.us/j/93323204434)
Dial by Phone: 1-312-626-6799
Meeting ID: 933 2320 4434
THE REGULAR MEETING OF THE BERKLEY CITY PLANNING COMMISSION WAS CALLED TO ORDER AT 7:00 PM, JULY 27, 2021 AT BERKLEY CITY HALL BY CHAIR KRISTEN KAPELANSKI.

The minutes from this meeting are in summary form capturing the actions taken on each agenda item. To view the meeting discussions in their entirety, this meeting is broadcasted on the city’s government access channel, WBRK, every day at 9AM and 9PM. The video can also be seen, on-demand, on the city’s YouTube channel: https://www.youtube.com/user/cityofberkley.

PRESENT:  Joe Bartus  Shiloh Dahlin
            Lisa Kempner  Greg Patterson
            Daniel Petrosky  Mark Richardson
            Martin Smith  Julie Stearn
            Kristen Kapelanski

ABSENT: None

ALSO, PRESENT: Mike McGuinness, Berkley Downtown Development Authority
               Erin Schlutow, Community Development Director
               Daniel Hill, Public Policy Assistant

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APPROVAL OF AGENDA

Motion by Commissioner Kempner to approve the amended agenda. Motion supported by Commissioner Patterson.

AYES:  Dahlin, Kempner, Patterson, Petrosky, Richardson, Smith, Stearn, Bartus, Kapelanski
NAYS: None
ABSENT: None

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APPROVAL OF MINUTES

Motion by Commissioner Richardson to approve the minutes from the regular Planning Commission meeting on June 22, 2021 and supported by Commissioner Kempner.

AYES:  Kempner, Patterson, Petrosky, Richardson, Smith, Stearn, Bartus, Dahlin, Kapelanski
NAYS: None
ABSENT: None

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COMMUNICATIONS
City staff provided copies of Michigan Planner newsletter and Planning and Zoning News.

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CITIZEN COMMENTS
Chair Kapelanski read instructions for public to submit comments during the hybrid meeting. Comments can be made in person and via Zoom.
OLD BUSINESS

1. **PUBLIC HEARING:** Matter of conducting a public hearing to amend Section 138-32 to add a definition for Entertainment Establishments and amend Section 138-417 to add Entertainment Establishments as a permitted use in the Downtown District.

   Community Development Director Schlutow provided a summary of the discussion and proposed amendment for consideration.

   Chair Kapelanski opened the Public Hearing at 7:06pm.

   No comment.

   Chair Kapelanski closed the Public Hearing at 7:06pm.

   Motion by Commissioner Kempner to recommend approval Section 138-32 and amend Section 138-417 to City Council. Motion supported by Commissioner Patterson.

   AYES: Patterson, Petrosky, Richardson, Smith, Stearn, Bartus, Dahlin, Kempner, Kapelanski
   NAYS: None
   ABSENT: None

2. **PUBLIC HEARING:** Matter of conducting a public hearing to amend Section 138-192 to clarify ordinance language related to projections into a given yard.

   Community Development Director Schlutow provided a summary of the discussion and proposed amendment for consideration.

   Chair Kapelanski opened the Public Hearing at 7:09pm.

   No comment.

   Chair Kapelanski closed the Public Hearing at 7:09pm.

   Commissioner Richardson inquired about projections with foundations and proposed language. Commissioners discussed potential amended language.

   Motion by Commissioner Smith to recommend approval of amended Section 138-192 to City Council. Motion supported by Commissioner Petrosky.

   AYES: Petrosky, Richardson, Smith, Stearn, Bartus, Dahlin, Kempner, Patterson, Kapelanski
   NAYS: None
   ABSENT: None
NEW BUSINESS

3. **DISCUSSION:** Review and discussion for proposed ordinance amendments for the permitted location of exterior appliances on residential properties.

   Community Development Director Schutlow summarized the previous discussions related to Exterior Appliances, specifically generators, and looking at circumstances in which they may be permitted in the side yard of residential properties.

   Commissioners discussed regulations for generators in the side yard and possible language and provided direction to city staff.

4. **ELECTIONS:** Matter of electing a chair person, vice chairperson, and secretary of the Planning Commission.

   Commissioner Richardson nominated Chair Kristen Kapelanski to continue to serve as Chair of the Planning Commission. Motion supported by Commissioner Patterson.

   **AYES:** Richardson, Smith, Stearn, Bartus, Dahlin, Kempner, Patterson, Petrosky, Kapelanski
   **NAYS:** None
   **ABSENT:** None

   Chair Kristen Kapelanski nominated Vice Chair Smith to continue to serve as Vice Chair of the Planning Commission. Motion supported by Commissioner Dahlin.

   **AYES:** Smith, Stearn, Bartus, Dahlin, Kempner, Patterson, Petrosky, Richardson, Kapelanski
   **NAYS:** None
   **ABSENT:** None

   Vice Chair Smith nominated Secretary Richardson to continue to serve as Secretary of the Planning Commission. Motion supported by Commissioner Patterson.

   **AYES:** Stearn, Bartus, Dahlin, Kempner, Patterson, Petrosky, Richardson, Smith, Kapelanski
   **NAYS:** None
   **ABSENT:** None

5. **APPOINTMENTS:** Matter of appointing Planning Commission liaisons to the following Boards and Commissions:

   a. City Council – Chair Kristen Kapelanski
   b. Downtown Development Authority – Commissioner Lisa Kempner
   c. Chamber of Commerce – Commissioner Petrosky
   d. Environmental Advisory Committee – Commissioner Richardson

   Commissioner Smith asked about having a liaison to the Zoning Board of Appeals.
Commissioner Smith motioned for the above appointments, as noted. Motion supported by Commissioner Bartus.

AYES: Bartus, Dahlin, Kempner, Patterson, Petrosky, Richardson, Smith, Stearn, Kapelanski
NAYS: None
ABSENT: None

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LIAISON REPORTS

Commissioner Richardson provided an update on the Environmental Advisory Committee and discussions related to proposed ordinance amendments related to sustainability and climate change. Beginning in September, the Committee will resume meeting monthly.

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STAFF/COMMISSIONER COMMENTS

Community Development Director provided an update on the Master Plan process. At the July 19, 2021 meeting, the City Council approved the distribution of the draft Plan to adjacent communities, Oakland County, and reviewing agencies. The draft plan is available on the website for review by the public. There are also comment boxes at all City facilities, including City Hall, DPW, DPS, Library, and Parks and Rec for people to review the plan and make any comments. Comments may also be submitted to City Hall or can be emailed to masterplan@berkleymich.net. The public comment period will conclude on September 23, 2021.

Chair Kapelanski asked about next steps. Director Schlutow summarized the public comments would be gathered in September and will be submitted to the Planning Commission for their review to determine if any changes to the draft plan need to be made.

For the adoption process, the Planning Commission will set a public hearing and hold the public hearing on the draft Master Plan. They will make a recommendation of approval to the City Council.

Commissioner Smith noted that he had recently frequented one of the new Oak Park facilities on 11 Mile Rd. He noted that it is hoped that some of that would spill over to Berkley side.

Commissioner Smith also asked about Citizens Bank on Woodward. Director Schlutow noted that there have been some inquiries from developers, but there have not been any formal plans submitted as of yet.

Commissioner Smith asked about the decision from the City Council related to the ZBA case. Councilmember Ross noted that conversations have been on-going between ZBA, staff and councilmembers.

Commissioner Richardson asked about the La Salette project. Director Schlutow noted that some work is being done inside the building. There have been discussions related to modifying the parking requirements on the site.

Commissioner Kempner noted excitement for the AquaTots project moving forward.
Motion to adjourn by Commissioner Richardson. Motion supported by Commissioner Kempner

AYES: Dahlin, Kempner, Patterson, Petrosky, Richardson, Smith, Stearn, Bartus, Kapelanski
NAYS: None
ABSENT: None

With no further business, the meeting was adjourned at 7:46pm.
MEMORANDUM

To: Berkley Planning Commission
From: Erin Schlutow, Community Development Director
Subject: Projections Revisited #2
Date: August 18, 2021

This item is being brought back to the Planning Commission to clarify language in the recently adopted Ordinance amendment related to Projections.

Earlier this year, the Planning Commission provided clarification on what types of architectural features should be classified as a projection. As you may recall, the previous administration determined that fireplaces did not classify as a projection, as it did not increase the livable floor area of the residential dwelling.

While the area of confusion was not amended during our previous discussions, additional questions have arisen when building permits have been submitted.

The Planning Commission reviewed and determined that the limitations on all projections, specifically related to the 30 percent of that wall’s surface, was related to projections into a given setback. If the projection was to be within the building envelope and adhere to all setback distances, then it shall not be limited to percentage of a given wall’s surface.

Included in the packet is draft ordinance language specific to the projections to clarify the language for the Building Department.
Sec. 138-192. Projections.

Projections may extend into a required side yard setback not more than two inches for each one foot of width of such setback. And may extend or project into a front or rear yard setback not more than three feet. The total of all projections into a given yard, required setback shall not exceed 30 percent of that wall’s surface area.

Projections may have a foundation, such as brick or masonry fireplaces, or may be without foundation, such as box fireplaces, bay windows, and other types of cantilevers, including second story cantilevers.

Projections without a foundation shall be above grade at least 12 inches.

In nonresidential districts, where no front yard setback is required, the Planning Commission may permit a projection to extend into the right of way three feet, provided that it is at least 11 feet above the sidewalk if the Planning Commission determines the public health, safety, and welfare will not be adversely affected. The total of all projections into a given right of way shall not exceed 30 percent of that wall’s surface.
MEMORANDUM

To: Berkley Planning Commission

From: Erin Schlutow, Community Development Director

Subject: Exterior Appliances Non-Conforming – Revisited #1

Date: August 18, 2021

The intent of looking at Air Conditioning Units in the side yard was to codify an existing practice whereby air conditioning units could be placed in the side yard without the approval of the adjacent neighbor.

Earlier this year, it was approved to allow the units in the side yard with screening.

As part of that discussion, it was noted that non-confirming air conditioning units may be continued, maintained and replaced provided there is no increase or enlargement of the area occupied or devoted to such use.

The Planning Commission had noted during discussion that replacement units could be installed and did not need to conform to the new provisions of screening and site plan requirements. As we are seeing, many of the new units are a little bit larger than the existing units.

It is suggested, that non-conforming replacement units may be installed in its current position without additional requirements. The units have been in place and would not incur additional frustrations to the neighbors.

Updates related to the placement of generators will return at a later date for future discussion.

We look forward to discussing with the Planning Commission.
THE CITY OF BERKLEY ORDAINS:

SECTION 1: Add new Division 1.5, Exterior Appliances, to Article III, General Provisions, in Chapter 138 of the Berkley Code of Ordinances, as follows:

Division 1.5. Exterior Appliances

Sec. 138-71. Purpose

The purpose of this division is to promote the public health, safety and welfare by regulating the manner and location of exterior appliances on residential and commercial properties in the city. For purposes of this division, the following definitions shall apply.

Sec. 138-72. - Definitions

Air Conditioning Unit: The central air conditioning system located on the exterior of a building including a compressor, fan, condenser coil, evaporator coil and a refrigerant.

Power Generator: A stationary device, such as a reciprocating internal combustion engine or turbine that serves solely as a secondary source of mechanical or electrical power whenever the primary energy supply is disrupted or discontinued during power outages or natural disasters. A power generator may operate during power interruptions or during regularly scheduled testing.

Exterior Appliance: Mechanical equipment located on the exterior of a residential or commercial building. Such types of equipment shall include air conditioning condenser unit, power generators, and any noise producing mechanical system components located at the exterior of a building. Exterior appliances specific to swimming pools are subject to the regulations in Section 138-59.

Sec. 138-73. - Location

Exterior appliances are prohibited from being located in the front yard or within a recorded easement or right-of-way that would prohibit, hinder or disrupt utilities, drainage, access, etc.

(a) Residential.
   1. Power Generators and other exterior appliances shall be located in the rear yard at least six (6) feet from side property line.
   2. Air Conditioning Units may be permitted in the side yard under the following conditions:
      a. The unit must be at least 18 inches from side property line;
b. The unit must be at least 12 feet from adjacent dwelling;
c. The unit must be screened on at least three (3) sides by opaque fencing or landscaping, measuring at least four (4) feet in height from grade.
   1. The principal structure may be considered one side of screening.
   2. Screening must be provided from street view and facing the closest adjacent property.
   3. Chain link fencing is not permissible as a screening material for exterior appliances.

(b) Nonresidential.
   1. At Grade.
      a. Exterior appliances shall be at least five (5) feet from a property line.
      b. Power Generators shall be enclosed in a sound-attenuating enclosure, if located adjacent to residential property.
      c. Exterior appliances shall be screened on at least three (3) sides with opaque fencing or landscaping, measured at least four (4) feet in height from grade.
         1. The principal structure may be considered one side of screening.
         2. Screening must be provided from street view and facing the closest adjacent property.
         3. Chain link fencing is not permissible as a screening material for exterior appliances.
   2. Rooftop.
      a. Exterior appliances located on the rooftop of commercial buildings shall be screened so as to not be visible from street level. Screening materials shall be consistent with the color, materials, design and aesthetic of the building.
   3. The Planning Commission may modify location of the exterior appliances on non-residential properties during site plan review, if the applicant can demonstrate an alternative location does not negatively impact adjacent properties, pedestrian or vehicular traffic.

Sec. 138-74. — Restrictions.

Generator testing shall be permitted Monday – Friday, 9:00am – 6:00pm.

Sec. 138-75. — Non-Conforming Exterior Appliances.

Non-conforming exterior appliances include appliances that were lawfully installed but are no longer in compliance with the provisions of this chapter.

Non-conforming exterior appliances may be continued, maintained and replaced provided there is no increase or enlargement of the area occupied or devoted to such use.

If the structure that is served by a non-conforming exterior appliance is damaged or partially destroyed by less than 50 percent of its market value, the exterior appliance may be restored and its previous use continued. If the structure that is served by a non-conforming exterior appliance is damaged or partially destroyed by 50 percent or more than 50 percent of its market value, then any restoration or new construction must comply with all current building and zoning codes.
Sec. 138-76. - Permits required.

Permits are required for the installation of exterior appliances.

SECTION 2: Severability Clause

Should any word, phrase, sentence, paragraph, or section of this Ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 3: Penalty

All violations of this ordinance shall be municipal civil infractions and upon a determination of responsibility therefore shall be punishable by a civil find or not more than $500, and/or such other sanctions and remedies as prescribed in Article IX of Chapter 82 of the Code of Ordinances.

SECTION 4: Effective Date

This Ordinance shall become effective 30 days following the date of adoption.

SECTION 5: Publication

The City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1992, as amended, and Section 6.5 of the Berkley City Charter.

Daniel J. Terbrack
Mayor

Attest:

______________________________
Victoria Mitchell
City Clerk