PUBLIC NOTICE

City of Berkley, Michigan
Regular Meeting of the Zoning Board of Appeals
Monday, March 12, 2018
7:30 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 December 11, 2017

ITEMS FOR APPEAL

1. Application Number PBA-01-18
   Don Swanson—Creative Land Development Inc., 3179 Kipling Ave, Lot 584 of Brookline Hills Subdivision, Parcel Id: 04-25-18-230-020 is requesting a dimensional variance to construct a residential home less than fifteen (15) feet from the adjacent dwelling.

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 7:30 PM, TUESDAY, DECEMBER 12, 2017 AT CITY HALL BY CHAIRPERSON EVANS.

PRESENT: Paul Evans  Dean Smith  Ryan Gesund  Scott Emmons
          Steve Allen  Mike Kerby  Greg Butts

ABSENT: Susan McAlpine  Miles Uhlar

ALSO PRESENT:

Matthew Baumgarten, City Manager
Alan Kideckel, City Council Liaison

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APPROVAL OF AGENDA
It was moved by Mr. Kerby and supported by Mr. Gesund to approve the agenda noting a correction on the description of Item 1.

AYES: Evans, Smith, Gesund, Allen, and Kerby Emmons, and Butts
NAYS: None
ABSENT: McAlpine, Uhlar

Motion Carried.

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APPROVAL OF MINUTES
Board Members discussed possible corrections and clarifications.

It was moved by Mr. Allen to approve the minutes of November 13, 2017, with the suggested corrections included and supported by Mr. Gesund.

AYES: Evans, Smith, Gesund, Allen, and Kerby Emmons, and Butts
NAYS: None
ABSENT: McAlpine, Uhlar

Motion Carried.

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1. Application Number PBA-08-17
Tim Chapman, 3012 Oakshire Ave, S 1/2 of Lot 344 & N 20 ft of Lot 345, Thomas Brothers Beverly Park Subdivision, Parcel ID #25-18-132-014, east side of Oakshire, between Beverly and Wiltshire is requesting a variance to allow a pool to remain within six feet of a fence and accessory structures.

1
Baumgarten noted that this item was postponed following the November Regular meeting of the Zoning Board of Appeals and gave review of the facts of the case.

Steve Allen asked Baumgarten if a representative of the City or its Building Department had reached out to the vendor or the installer concerning the lack of permits pulled for the installation of Mr. Chapman’s pool. Baumgarten noted he was not aware if anyone had yet made contact with the vendor or the installer.

Chair Evans invited Tim Chapman to offer additional details and reasoning for pursing a variance.

Chair Evans opened the public hearing at 7:40 PM and hearing no comments, closed the hearing at 7:40pm.

D. Smith explained that he had visited the site in his role as a Board member and saw no other viable option given the layout of the rear property. He noted that safety is an issue given the location of the garage. He did not want someone to attempt to leap from garage into pool. He also noted that the A/C unit would need to be grounded if pool was allowed to remain.

S. Allen noted his dismay with the vendor and installer for selling and installing a pool without oversight and proper permits. Noted that this would have been avoidable.

Chair Evans invited the applicant to address questions about insurance and garage. The applicant noted that he was able to gain insurance with a specific rider on the policy and that he had built the garage on site in 2015. It was noted that the aerial photo in the staff report shows only a shed in the rear yard and was taken before the construction of the garage.

D. Smith noted that the installation of the larger garage shifts the onus onto the applicant who created his own issue with the lack of space in the rear yard.

Chair Evans agreed and noted there are simply too many structures and accessory structures existing in the rear yard too allow for addition of a pool as requested and that he was not inclined to support the variance.

S. Allen noted the potential for flood damage to these structures if the pool were to rupture.

It was moved by Mr. Gesund and seconded by Mr. Allen to deny BA-08-17 citing that a practical difficulty had not been proven due to the fact that the applicant had caused the need for the variance through his own actions.

AYES: Evans, Smith, Gesund, Allen, and Kerby Emmons, and Butts
NAYS: None
ABSENT: McAlpine, Uhlar

Motion Carried.
OTHER BUSINESS

R. Gesund wished everyone a happy holiday season and thanked those that attended this meeting. Many other members joined him in this sentiment.

S. Allen requested that proof of ownership be added to the informational packet moving forward.

LIAISON REPORTS

Councilmember Kideckel indicated that he will remain in his role as City Council liaison to ZBA. He outlined that upcoming steps to fill the City Council vacancy left when Dan Terbrack was sworn in as the Mayor of Berkley.

PUBLIC COMMENTS

W. Zabramski thanked the Board for their decision and requested some follow up with the vendor and installer to prevent similar situations and to make sure they are aware of the permit requirement.

There being no further business, Chair Evans adjourned the meeting at 7:59 PM.
MEMORANDUM

TO: City of Berkley Zoning Board of Appeals
FROM: Timothy McLean
       Community Development Director
DATE: March 7, 2018
RE: Report for PBA-01-18

<table>
<thead>
<tr>
<th>APPLICANT:</th>
<th>Don Swanson—Creative Land Development Inc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>REQUEST:</td>
<td>The applicant is seeking a dimensional variance for the construction of a residential home less than 15 feet from the adjacent dwelling.</td>
</tr>
<tr>
<td>REQUIRED:</td>
<td>Berkeley 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.</td>
</tr>
<tr>
<td>EXISTING ZONING / LAND USE:</td>
<td>Single Family Residential District (R-1D) / Improved with a single family detached house and detached garage</td>
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<tr>
<td>SURROUNDING ZONING / LAND USE:</td>
<td></td>
</tr>
<tr>
<td>NORTH</td>
<td>Single Family Residential District (R-1D) / Improved with a single family detached house</td>
</tr>
<tr>
<td>WEST</td>
<td>Single Family Residential District (R-1D) / Improved with a single family detached house</td>
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<tr>
<td>EAST</td>
<td>Single Family Residential District (R-1D) / Improved with a single family detached house</td>
</tr>
<tr>
<td>SOUTH</td>
<td>Single Family Residential District (R-1D) / Improved with a single family detached house</td>
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</tbody>
</table>
DISCUSSION:
The applicant is planning to demolish the existing home and detached garage at 3179 Kipling Ave. The existing home is non-conforming to existing zoning under Chapter 138 Zoning, Article V, Division 17, Sec.138-527(d): *There shall be a distance of at least 15 feet between dwellings.* The existing home is 8.9 feet from the adjacent dwelling to the south. There is an additional non-conformity as the side yard setback is 3.8 feet from the property line. Sec.138-526 requires a minimum side yard setback of 5 feet in at least one side yard.

The applicant is proposing to demolish the existing home and garage and construct a new residence with an attached garage. The applicant is seeking relief from Sec.138-527(d) for the proposed residence. The applicant would need a dimensional variance to lessen the requirement of 15 feet between dwellings to 10.5 feet.

Based on the requirements of the Berkley City Code, an applicant must demonstrate a practical difficulty in order to obtain a variance. The test to determine practical difficulty is listed below.

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

The minimum lot size in the R-1D district is 4,400 square feet with a width of 40 feet. The size of the lot at 3179 Kipling Ave is 114 feet long with a width of 40 feet, totaling 4,560 square feet.

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

The proposed construction would be consistent with setback requirements in the R-1D district and it would eliminate a non-conforming side yard setback from the original residence. The existing residence is only 8.9 feet from the adjacent dwelling. If the variance is approved, there would be a distance of 10.6 feet between dwelling units. While the demolition of the existing residence eliminates non-conformity, the new construction would create a new non-conformity. While the new construction creates a new non-conformity, it is worth noting that it improves upon the previous one.

- **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.**

While the proposed new construction would be a significant improvement over the existing structures, the developer could choose to construct a new residence that meets the requirement of 15 feet between dwelling units. However, an argument could be made that size limitations of the home resulting from compliance with the standard of 15 feet between dwellings is unnecessarily burdensome.

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

The requested variance, while short of the 15 foot standard, would increase the distance between dwellings. This is an improvement over the existing non-conformity.
➢ The requested variance will not adversely impact the surrounding properties.

Many residences on Kipling Ave from Beverly Blvd to Wiltshire Rd do not meet the minimum standard of 15 feet between dwellings. Lessening an existing non-conformity would not adversely impact surrounding properties.

FINDINGS
A practical difficulty has not been proven:
1. The size of the lot at 3179 Kipling Ave meets the minimum size requirements in the R-1D district. Based on this standard, there are not unique circumstances or physical conditions on the property that create the need for a variance.
2. The proposed development eliminates non-conformity with the side yard setback, but it re-creates the non-conformity of the required distance between dwellings.
3. Standards 3-5 have been met.
Berkley Zoning Board of Appeals
Dimensional (non-use variance) Request

Case No. BA____-____ Date: ______________________

Has the applicant met his/her burden in demonstrating that the request meets ALL of the standards as follows? (circle YES or NO)

YES NO 1. The need for the variance is due to unique circumstances or physical conditions of the property.

   YES NO Are the physical dimensions substantially different from other properties in the district? (size, shape...)

   YES NO Are there any physical anomalies associated with the property? (a river, a mountain...)

   YES NO -

   The standard has been met because

_________________________________________________________________

_________________________________________________________________

YES NO 2. The need for the variance is not the result of actions of the property owner or previous property owners.

   YES NO Did the property satisfy the ordinance prior to action by the applicant?

   YES NO Did the owner or previous owner create the unique conditions presented in support of the variance?

   YES NO -

   The standard has been met because

_________________________________________________________________

_________________________________________________________________

YES NO 3. 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.

   YES NO Requirements create an unbuildable lot or prevent the use

   YES NO Requirements prevent a fully compliant building/structure (unnecessary burden)

   YES NO -

   The standard has been met because

_________________________________________________________________

_________________________________________________________________
Berkley Zoning Board of Appeals
Dimensional (non-use variance) Request

Case No. BA____ - ______  Date: ____________________________

YES NO  4. The requested variance is the minimum variance necessary to do substantial just to applicant as well as other property owners.

   YES NO  Granting a variance is fair to both applicant and neighbors
   YES NO  Allows applicant to do something others are typically allowed
   YES NO  If relief is warranted, minimize number and extent of variances within reason – don’t grant 10” if 5” is reasonable.

   YES NO  -
   The standard has been met because


YES NO  5. The requested variance will not adversely impact the surrounding properties.

   YES NO  Disrupt access to light and air
   YES NO  Interfere with development or continued use
   YES NO  Public safety concerns
   YES NO  -
   The standard has been met because


Other considerations:

- Conditions may be attached to any affirmative decision
- Situation likely to often encounter?
- Not compromise intent & purpose of Zoning Ordinance
CITY OF BERKLEY
Zoning Board of Appeals – Application Form

A complete application, a check payable to the 'City of Berkeley', and 15 copies of a survey, folded plans, and other applicable data must be submitted to the City of Berkeley 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: DON SWANSON Phone: [Redacted]
Address: 3703 DOXLEY, ROCHESTER HILLS, MI 48309

Relationship to Property (current tenant, representative, future tenant, future owner, owner)

PROPERTY OWNER:
Name: CREATIVE LAND DEVELOPMENT, INC Phone: [Redacted]
Property Owner Address: 3703 DOXLEY, ROCHESTER HILLS, MI 48309

PROPERTY DESCRIPTION:
Address: 3179 KIRLING
Sidewall (Tax I.D. #): 25-18- 830- 020 Lot & Subdivision: L 504, BROOKLINE HILLS

VARIANCE REQUEST:
Description of Request: CHANGE DISTANCE FROM 15′ TO 10.5′ FROM HOUSE DIRECTLY SOUTH

From the City of Berkley Code, Chapter Section 138-527 (d)
Has the City refused a permit for the request? YES

GROUNDS 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

_It's a corner lot only 40' wide._

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

_It's extremely small building envelope._

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

_New house would be extremely narrow and odd looking._

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

_It will allow a larger, more conforming house to be built._

The requested variance will not adversely impact the surrounding properties because

_There will still be 10.5' remaining between homes. The new house would be more conforming to zoning than the old one._

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_ 2-5-18

Date

Office Use Only
Date Application Received: 2-5-18 Fee: $300.00 Receipt Number: B2A-01-18
Hearing Date: Case Number:
Zoning Board of Appeals Decision:
THE CITY OF BERKLEY
Building Department
3338 Coolidge, Berkley, Michigan 48072
(248) 658-3320

Notice
Meeting of the Berkley
Zoning Board of Appeals

Notice is hereby given, that there will be a meeting of the Zoning Board of Appeals to be held at the City of Berkley in the Council Chambers, 3338 Coolidge, Berkley, Michigan on Monday, March 12, 2018 at 7:30PM or as near thereto as the matter may be reached.

Application Number PBA-01-18

Creative Land Development Inc., 3179 Kipling Ave, Lot 584 of Brookline Hills Subdivision, Parcel Id: 04-25-18-230-020 is requesting a dimensional variance to construct a residential home less than fifteen (15) feet from the adjacent dwelling.

Berkley City Code
Berkley City Code, Chapter 138 Zoning, Article V, Division 17, Sec.138-527(d) There shall be a distance of at least 15 feet between dwellings.

Comments on the granting of the above variance may be made in person on the night of the meeting or in writing. All written comments must be in the hands of the Berkley Building Department before 7:30 p.m. on the date of the Public Hearing.

TIMOTHY MCLEAN
COMMUNITY DEVELOPMENT DIRECTOR

Publish Once:
The Daily Tribune
Sunday, (INSERT DATE HERE)
| Occupant | 3233 KIPLING AVE  
BERKLEY MI 48072 1639 | Occupant | 3221 CUMBERLAND RD  
BERKLEY MI 48072 1615 | Occupant | 3179 CUMBERLAND RD  
BERKLEY MI 48072 1665 |
|----------|-----------------|----------|-----------------|----------|
| Occupant | 3116 WAKEFIELD RD  
BERKLEY MI 48072 1616 | Occupant | 3169 KIPLING AVE  
BERKLEY MI 48072 3514 | Occupant | 3147 KIPLING AVE  
BERKLEY MI 48072 3514 |
| Occupant | 3270 KIPLING AVE  
BERKLEY MI 48072 1640 | Occupant | 3159 CUMBERLAND RD  
BERKLEY MI 48072 1665 | Occupant | 3138 WAKEFIELD RD  
BERKLEY MI 48072 3518 |
| Occupant | 3282 WAKEFIELD RD  
BERKLEY MI 48072 1644 | Occupant | 3169 WAKEFIELD RD  
BERKLEY MI 48072 3520 | Occupant | 3137 KIPLING AVE  
BERKLEY MI 48072 3514 |
| Occupant | 3269 WAKEFIELD RD  
BERKLEY MI 48072 1643 | Occupant | 3180 KIPLING AVE  
BERKLEY MI 48072 3512 | Occupant | 3170 KIPLING AVE  
BERKLEY MI 48072 3512 |
| Occupant | 3249 CUMBERLAND RD  
BERKLEY MI 48072 1615 | Occupant | 3100 KIPLING AVE  
BERKLEY MI 48072 3512 | Occupant | 3234 WAKEFIELD RD  
BERKLEY MI 48072 |
| Occupant | 3289 KIPLING AVE  
BERKLEY MI 48072 1639 | Occupant | 3115 CUMBERLAND RD  
BERKLEY MI 48072 1665 | Occupant | 3281 KIPLING AVE  
BERKLEY MI 48072 1639 |
| Occupant | 3270 WAKEFIELD RD  
BERKLEY MI 48072 1644 | Occupant | 3115 KIPLING AVE  
BERKLEY MI 48072 3514 | Occupant | 3234 KIPLING AVE  
BERKLEY MI 48072 1640 |
| Occupant | 3213 WAKEFIELD RD  
BERKLEY MI 48072 1643 | Occupant | 3099 KIPLING AVE  
BERKLEY MI 48072 3513 | Occupant | 3253 CUMBERLAND RD  
BERKLEY MI 48072 1615 |
| Occupant | 3250 KIPLING AVE  
BERKLEY MI 48072 1640 | Occupant | 3179 WAKEFIELD RD  
BERKLEY MI 48072 3520 | Occupant | 3249 WAKEFIELD RD  
BERKLEY MI 48072 1643 |
| Occupant | 3221 WAKEFIELD RD  
| BERKLEY MI 48072 1643 | Occupant | 3084 WAKEFIELD RD  
| BERKLEY MI 48072 3517 | Occupant | 3235 WAKEFIELD RD  
| BERKLEY MI 48072 1643 |
| Occupant | 3214 KIPLING AVE  
| BERKLEY MI 48072 1640 | Occupant | 3141 CUMBERLAND RD  
| BERKLEY MI 48072 1655 | Occupant | 3136 KIPLING AVE  
| BERKLEY MI 48072 3512 |
| Occupant | 3250 WAKEFIELD RD  
| BERKLEY MI 48072 1644 | Occupant | 3214 WAKEFIELD RD  
| BERKLEY MI 48072 | Occupant | 3144 WAKEFIELD RD  
| BERKLEY MI 48072 3518 |
| Occupant | 3170 KIPLING AVE  
| BERKLEY MI 48072 3514 | Occupant | 3100 WAKEFIELD RD  
| BERKLEY MI 48072 3518 | Occupant | 3125 WAKEFIELD RD  
| BERKLEY MI 48072 3520 |
| Occupant | 3159 WAKEFIELD RD  
| BERKLEY MI 48072 3520 | Occupant | 3249 KIPLING AVE  
| BERKLEY MI 48072 1639 | Occupant | 3083 KIPLING AVE  
| BERKLEY MI 48072 3513 |
| Occupant | 3137 CUMBERLAND RD  
| BERKLEY MI 48072 1665 | Occupant | 3222 KIPLING AVE  
| BERKLEY MI 48072 1640 | Occupant | 3115 WAKEFIELD RD  
| BERKLEY MI 48072 |
| Occupant | 3170 WAKEFIELD RD  
| BERKLEY MI 48072 3501 | Occupant | 3213 CUMBERLAND RD  
| BERKLEY MI 48072 1615 | Occupant | 3160 WAKEFIELD RD  
| BERKLEY MI 48072 3518 |
| Occupant | 3147 WAKEFIELD RD  
| BERKLEY MI 48072 3520 | Occupant | 3159 KIPLING AVE  
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| Occupant | 3146 KIPLING AVE  
| BERKLEY MI 48072 3512 | Occupant | 3180 WAKEFIELD RD  
| BERKLEY MI 48072 3501 | Occupant | 3213 KIPLING AVE  
| BERKLEY MI 48072 1639 |
| Occupant | 3096 WAKEFIELD RD  
| BERKLEY MI 48072 3519 | Occupant | 3160 KIPLING AVE  
| BERKLEY MI 48072 3512 |