CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL
APPROVAL OF AGENDA
APPROVAL OF MINUTES – Meeting of January 13, 2020
ITEMS FOR THE AGENDA

1. APPLICATION PBA-01-20
Pamela Stasko is requesting a dimensional variance at 2074 Columbia Rd., Parcel 25-17-378-021, to construct a 1,040 square foot single-family residence with basement. The minimum required floor area for single family residence in R-1D District is 1,300 sq. ft. with basement.

2. ELECTIONS: Matter of electing a Chair and Vice Chair to the Zoning Board of Appeals.


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.
THE REGULAR MEETING OF THE BERKLEY CITY ZONING BOARD OF APPEALS
WAS CALLED TO ORDER AT 7:00 PM, MONDAY, JANUARY 13, 2020 AT CITY
HALL BY CHAIR EVANS.

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:
Paul Evans
Ryan Gesund
Steve Allen
Miles Uhlar

Joe Krug
Sue McAlpine
Maria Ward - Alternate

ABSENT:
Greg Butts

ALSO PRESENT:
Erin Schlutow, Community Development Director
Dennis Hennen, City Council Liaison
Mark Adler, Adler Homes
Andrew Giles
Several member of the public

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APPROVAL OF AGENDA
It was moved by Mr. Allen to approve the agenda as presented. Motion was seconded by Ms.
McAlpine.

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

MOTION CARRIED

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APPROVAL OF MINUTES
It was moved by Ms. McAlpine to approve the amended minutes of December 9, 2019 and
supported by Mr. Gesund.

AYES: Krug, McAlpine, Uhlar, Allen, Evans
NAYS: None
ABSENT: Butts
ABSTAIN: Ward

MOTION CARRIED

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REGULAR AGENDA

Community Development Director Schlutow summarized January 6, 2020 review letter related to the variance request at 2371 Stanford Rd. The applicant is requesting a dimensional variance for separation distance between two proposed single-family residential structures. The applicant is proposing to split the subject property at 2371 Stanford Rd in order to construct two single family residential structures.

Mr. Gesund inquired about the grading requirements for new construction. A grading plan would be required for new construction to be reviewed by the City Engineer.

Ms. Ward asked on the current occupancy state of the existing structure on the subject site. It was noted that the structure is currently vacant.

Applicant Mark Adler detailed the nature of the request due to the location of the existing structure on the adjacent property. The proposed new structures would adhere to the current setbacks but the location of the adjacent dwelling is less than the required 15 ft. which requires a variance in order to move forward with construction.

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

John Courtney, 1129 Oxford, noted that need for the variance but is not in favor of granting such a variance. Mr. Courtney was concerned about the green space and stormwater runoff. Also noted was concern about possible asbestos and implications during demolition, future locations of a/c and generators.

Maybelle Fraser, 1317 Oxford, 1142 Oxford, noted opposition to the variance and the need for the open space between dwellings and the requested 11 ft. separation is too close between dwellings.

Shirley Hansen, former resident of Berkley, noted there is sufficient space on the property for green space on the rear of the lot and there is a need for homes in the community. Ms. Hansen voiced support for the requested variance.

Chair Evans closed the Public Hearing at 7:16pm.
Mr. Allen mentioned previous case and variance request that was discussed, noting the 15 ft. separation is a matter of safety. The previous request was denied and the applicant found alternative designs to build within the regulations of the ordinance.

Mr. Uhlar agreed with Mr. Allen and noted several smaller lots with bigger homes and that is why the 15 ft. separation is in place. Mr. Uhlar also noted that the request does not meet with the five standards of review for granting a variance.

Ms. McAlpine stated the role of the Board is to determine if the five (5) criteria for granting a variance have been met and this case all five standards have not been met. Ms. McAlpine also noted that one single home could be constructed on the lot and does not support the requested variance.

Mr. Allen stated two homes could be constructed on the property without a variance, but would need to be reduced or changed in design.

Ms. McAlpine agreed that the two proposed homes could not be constructed, as presented.

Mr. Gesund reviewed criteria #2, as the variance request not being the result of the property owner.

Chair Evans stated that he noted there was a practical difficulty given the close proximity of the house to the south; however, it is unclear if a different configuration would not work for the proposed two homes. Additionally, he stated that one single home could be constructed on the property that would conform to all ordinances.

**Based on the finding of fact, it was moved by Ms. Ward to deny the requested variance, PBA-07-19, to reduce the minimum separation distance between single family residential dwellings for proposed structures at 2371 Stanford Rd, as a practical difficulty does not exist on the property as the Standards for Review A, B, C, D have not been met. Supported by Ms. McAlpine.**

AYES: Krug, McAlpine, Uhlar, Ward, Allen, Gesund, Evans
NAYES: None
ABSENT: Butts

**MOTION CARRIED**

2. **Application PBA-08-19; 3638 Buckingham**
Community Development Director Schlutow summarized the January 6, 2020 review letter related to the variance request at 3638 Buckingham. Andrew Giles, on behalf of Janie DeCormier, is requesting a dimensional variance for proposed second story addition to be located less than 15 ft. from adjacent dwelling, located at 3622 Buckingham.
The subject property is located in the R-1D, Single Family Residential district. Director Schlutow summarized the standards of review and the required criteria for variance approval. Mr. Giles reviewed the second story addition project and the need for the variance. The applicant noted the original intent was to comply with the 15 ft. required separation, but once construction began, it looked out of place.

Chair Evans opened the Public Hearing at 7:30 pm.

John Courtney, 1129 Oxford, noted he was not aware of this case but still felt that the 15 ft. separation distance should be maintained.

Chair Evans closed the Public Hearing at 7:33 pm.

Ms. McAlpine read email correspondence received by the Community Development Department regarding the variance request.

Mr. Allen asked for clarification on the construction of the existing structure and noted the ordinance does require 15 ft. between dwellings. He understood the existing structure does not conform to that standard and the issue with requiring an addition to conform.

Mr. Uhlar noted that there was a similar case in previous years and was concerned about the input of the neighbors. Mr. Uhlar asked for clarification on the second story addition in regards to the existing footprint.

The Board members discussed the applicability of the 15 ft. separation requirement to an existing structure wherein the footprint of the structure will not change.

Based on the finding of fact, it was moved by Ms. McAlpine to approve the dimensional variance, Application PBA-08-19, to allow the construction of the second story addition to be located 12 ft. 6 in. from the adjacent dwelling at 3622 Buckingham as Standards for Review A, B, C, D variance have been met. Second by Ms. Ward.

AYES: McAlpine, Uhlar, Ward, Allen, Gesund, Krug, Evans
NAYES: None
ABSENT: Butts

MOTION CARRIED

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OTHER BUSINESS
Director Schlutow noted Oakland County will be hosting a Zoning Board of Appeals training workshop on January 29, 2020 at the L. Brooks Patterson Building. An email had been distributed to all ZBA members and all expressed interest.

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LIAISON COMMENTS

Councilmember Hennen provided an update on Council activities including the updates to the marihuana merit system, the first readings of the mandatory attendance and training ordinances. Councilmember Hennen also noted his completion of the Master Citizen Planner course and passing the exam. He is required to make a presentation to the ZBA and wanted to gauge reception to the presentation on a regular meeting date.

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BOARD COMMENTS

None.

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PUBLIC COMMENTS

None.

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With no further business, Chair Evans adjourned the meeting at 7:53 pm
CITY OF BERKLEY, MICHIGAN
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 7:00 p.m. in the Council Chambers at the City Hall, 3338 Coolidge Highway, Berkley, Michigan 48072.

APPLICANT:
Name: Pamela Stasko Phone: 313-418-1152
Address: 2074 Columbia Berkeley, MI 48072

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

PROPERTY OWNER:
Name: Pamela Stasko Phone: 313-418-1152
Property Owner Address: 2074 Columbia Berkeley, MI 48072

PROPERTY DESCRIPTION:
Address: 2074 Columbia, Berkley, MI 48072

Sidew (Tax I.D. #): 04-25-17-378-021 Lot & Subdivision: 146 Hannan's West R.O.

Current Zoning Classification: R-1D Current Use of Property: single family residence

VARIANCE REQUEST:
Description of Request: #1 - Reduce min. 1st floor area from requirement in Schedule of Regulations.
#2 - Reduce rear setback distance

From the City of Berkley Code, Chapter 138 Section 526

Has the City refused a permit for the request? no

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 Total buildable area (site size minus setbacks) is less than the min. area listed in Schedule of Regs.
The need for the variance is not the result of actions of the property owner or previous property owners because Neither current nor previous owners created property limits nor setback dimensions.

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

#1 - Strict compliance with setbacks AND minimum first floor area is a mathematical impossibility.
#2 - Balance of mutually exclusive requirements (setbacks and min. area) - Minimizing amount of variance request for first floor area pushes canopy construction (not enclosed building area) into rear setback.

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

#1 - Proposed site plan drawing demonstrates that the variance request to reduce first floor area is the result of filling the area inside setbacks as much as possible while allowing a building consistent with neighboring properties AND maintaining space at the northwest corner of the property to allow the possibility of a future garage.
#2 - Extended front setback per requirement related to adjacent buildings, plus maintaining space for garage and minimal vehicle maneuvering space limits buildable area. Requested extension into rear yard setback to allow construction of patio canopy at east side of property is less than difference between Schedule of Regulations tabular distance and extended distance per adjacent buildings.

The requested variance will not adversely impact the surrounding properties because:

Proposed limits of construction will result in a building consistent with scale and limits of adjacent properties.

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 Date

Office Use Only

Date Application Received: 1-10-20 Fee: 300.00 Receipt Number: PBA-01-20
Hearing Date: Case Number: PBA-01-20

Zoning Board of Appeals Decision:
WOOD FENCE TO REMAIN

OVERHEAD ELECTRIC SERVICE LINE TO BE RELOCATED BY DTE

REPLACE SHRUB

REMOVE CONCRETE SIDEWALK AND PATIO

REMOVE CANOPY

REMOVE CHAIN LINK GATE

REMOVE CONCRETE PORCH AND STAIRS

REMOVE CONCRETE CURB

PROPERTY LINE

REPLACE CONCRETE DRIVEWAY AND SIDEWALK

EXISTING MATURE MAPLE

EXISTING MATURE SPRUCE

PUBLIC SIDEWALK

PUBLIC SIDEWALK
Certified to: HOME EQUITY MORTGAGE
Applicant: PAMELA K. STASKO

Property Description:
The East 40 feet of Lot 146; "HANNAN'S WEST ROYAL OAK
SUBDIVISION", of part of the S.W. 1/4 of Section 17, Royal
Oak Twp. (now City of Berkley), Oakland County, Michigan, as
recorded in Liber 14 of Plats, Page 3 of Oakland County Records.

COLUMBIA RD. 50' WD.

CERTIFICATE: We hereby certify that we have surveyed the above-
described property in accordance with the description furnished for the
purpose of a mortgage loan to be made by the aforementioned applicants,
mortgagor, and that the buildings located thereon do not encroach on the
adjoining property, nor do the buildings on the adjoining property en-
croach upon the property hereafter described, except as shown. This sur-
vey is not to be used for the purpose of establishing property lines, nor for
construction purposes, no stakes having been set at any of the bound-
ary corners.
To: Berkley Zoning Board of Appeals

From: Erin Schlutow; Community Development Director

Subject: PBA-01-20; 2074 Columbia Rd
Dimensional Variance request for minimum floor area requirement in R-1D District

Date: February 2, 2020

APPLICANT: Pamela Stasko

LOCATION: Columbia Rd., east of Henley Ave.

PARCEL ID: # 25-17-378-021

REQUEST: The applicant is seeking a dimensional variance to construct a 1,040 sq. ft. single family home in the R-1D, Single Family Residential District.

REQUIRED: Section 138-526 of the Zoning Ordinance, Schedule of Regulation, requires a minimum 1,300 sq. ft. floor area with basement for dwellings in the R-1D District.

ZONING AND LAND USE

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

The Schedule of Regulations in Section 138-526 requires a minimum floor area per unit in single-family and multiple-family residential districts. The subject property in the R-1D District is required to have 1,300 sq. ft. of minimum floor area, which includes the basement. The existing single-family dwelling on the subject site is a legal nonconforming structure, as the primary structure is 781 sq. ft., according to Oakland County records.
The applicant has noted all other setback requirements, height, lot coverage, and minimum distance from adjacent dwellings will be compliance with the Zoning Ordinance.

VARIANCE REQUEST

The applicant submitted application and plans with the understanding that a rear yard setback variance would be required for construction of the proposed dwelling.

Based on administration review of the project, the required rear yard 35 ft. setback shall be maintained by the principal structure, as proposed. The applicant is proposing to install a rear patio at grade with an above ground canopy, similar to a pergola.

As the pergola will not be enclosed and the patio will be at grade, the rear yard setback shall be maintained in accordance with the Zoning Ordinance and the applicant has withdrawn the rear yard setback variance request. The variance request is exclusively for the reduction of the minimum floor area on the subject property.

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 on Columbia Rd., east of Henley in an established single-family residential neighborhood. The applicant is proposing to demolish the existing single-family dwelling and build a new single-family residence. The existing dwelling is non-conforming in regards to the minimum floor area, as are several neighboring dwellings.

The need for the variance is unique in the sense that the required front yard setbacks prohibit the proposed dwelling from being located closer to the street, which would allow for a larger footprint to meet the minimum floor area requirement. In the R-1D District, the front yard setback shall be 25 ft., or equal to the average setback of the six adjacent buildings on the same block, whichever is greater.

The adjacent dwellings on Columbia Rd. are setback further than the required 25 ft. by Ordinance; therefore, the applicant is unable to construct the proposed dwelling closer to the front property line where it may achieve a larger floor area in compliance with the minimum set forth in Section 138-526.

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

The need for the variance is the result of the existing property owner wanting to construct a new single-family residence with a smaller floor area than is required by the Zoning Ordinance. The existing dwelling is non-conforming and the applicant is proposing to construct a new dwelling that would be similar in size as the existing structure.

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 minimum floor area requirement will prohibit the property owner and applicant from constructing a new single-family residence, as presented. Conformity with the existing regulations would require the applicant to alter the design of the proposed structure to include a second story or would require to build outside the building envelope, which would require a setback variance from the Zoning Board of Appeals.
D. **The requested variance is the minimum variance necessary to do substantial justice to the applicant as well as other property owners.**

The applicant is requesting the minimum variance to construct a new single-family dwelling that will fit the size of the property with existing setbacks and will conform to the surrounding neighborhood.

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

The requested variance will not adversely impact the surrounding properties. Several of the single-family residences within the neighborhood are legal non-conforming and do not meet the minimum floor area requirement. The applicant is proposing to construct the new principal dwelling to be in size and scale with the existing neighborhood.

**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

Cc: Matthew Baumgarten, City Manager
    Victoria Mitchell, City Clerk
    John Staran, City Attorney
    Pamela Stasko, pam.stasko@gmail.com
NEW SINGLE-FAMILY RESIDENCE
2074 COLUMBIA
SINGLE STORY WITH BASEMENT
1,040 sf (enclosed) including projections into front yard and side yard
76 sf covered in rear yard patio
43 sf covered porch in front yard

10.0' SETBACK
25.0' SETBACK
5.0' SETBACK
25.0' SETBACK
25.0' SETBACK
SCHEDULE OF REGULATIONS

PROPERTY LINE
PUBLIC SIDEWALK
PUBLIC SIDEWALK

EXISTING MATURE MAPLE

10' projection into 5 ft side yard
5' projection into 5 ft side yard
MEMORANDUM

To: Berkley Zoning Board of Appeals

From: Erin Schlutow, Community Development Director

Subject: ZBA Election of Officers

Date: February 5, 2020

During the 2019 annual review of the Zoning Board of Appeals Rules of Procedure, it was determined that elections for Chair and Vice-Chair would henceforth take place at the January meeting rather than the July meeting, as was previous practice.

The reason for the change was attributed to when new members were appointed to the Board and the close proximity of voting for a Board officer. As new members are appointed in July, staggering the yearly election of officers would allow any new members the opportunity to get to know the Board members prior to voting.

The above rule of procedure was inadvertently overlooked for the January meeting and is presented at the February meeting.

Currently, Paul Evans serves as the Chair and Sue McAlpine serves as the Vice-Chair.
MEMORANDUM

To: Berkley Zoning Board of Appeals
From: Erin Schlutow, Community Development Director
Subject: ZBA Rules of Procedure – Review Discussion
Date: February 5, 2020

At the September 2019 meeting, the Zoning Board of Appeals reviewed and approved the amended Rules of Procedure that guide the ZBA on membership, duties, meeting procedures, public hearings, etc.

Section Seven – Annual Review was amended during the 2019 annual review, in which it was determined that the rules of procedure shall be reviewed annually at the January meeting, or if there is no January meeting, no later than the February meeting.

The above rule of procedure was inadvertently overlooked for the January meeting and is presented as a discussion item at the February meeting.

The current Rules of Procedure is attached.
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 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 Berkley 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.