PUBLIC NOTICE

City of Berkley, Michigan

ELECTRONIC Meeting of the Zoning Board of Appeals
Monday, May 11, 2020
7:00 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 March 11, 2020
ITEMS FOR THE AGENDA

1. APPLICATION PBA-02-20
   Stephen Pollock is requesting a dimensional variance at 3849 Kipling Rd., Parcel #25-07-430-003, for proposed driveway expansion that exceeds the width of the garage. Sec. 138-222(a)(3)(f) limits the width of a driveway area or parking strip and shall not exceed the width of the garage and shall taper uniformly to a width of 16 feet at the front line. Applicant is proposing to expand the driveway outside the structural footprint of the garage.

2. APPLICATION PBA-03-20
   Ultimate Signs, on behalf of the Berkley American Legion Post 374, is requesting a variance at 2079 W. Twelve Mile Rd., Parcel #25-17-126-001, to replace an existing legal non-conforming sign that encroaches into the required minimum five (5) foot setback. The existing sign is approximately two (2) ft. from the property line.

3. RULES OF PROCEDURE
   Discussion to adopt Zoning Board of Appeals Rules of Procedure.

   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.

If you would like to Join Zoom meeting, please go to https://zoom.us/j/95282784200

Or, you can Dial by Phone: Phone: +1 312 626 6799

Meeting ID: 952 8278 4200

You can also watch the meeting: http://www.berkleymich.org/livestream/zba_livestream.php
THE REGULAR MEETING OF THE BERKLEY CITY ZONING BOARD OF APPEALS WAS CALLED TO ORDER AT 7:00 PM, WEDNESDAY, MARCH 11, 2020 AT CITY HALL BY VICE CHAIR MCArpINE.

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 Krug
          Miles Uhlar
          Ryan Gesund
          Sue McAlpine
          Steve Allen
          Maria Ward - Alternate

ABSENT: Greg Butts
        Paul Evans

ALSO PRESENT: Erin Schlutow, Community Development Director
              Dennis Hennen, City Council Liaison

* * * * * * * * *

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

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

MOTION CARRIED

* * * * * * * * *

APPROVAL OF MINUTES
It was moved by Mr. Allen to approve the amended minutes of February 10, 2020 and supported by Ms. Ward.

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

1. MASTER PLAN

Community Development Director Schlutow provided an update to the Zoning Board of Appeals regarding the community engagement activities that had been completed thus far by planning consultants Carlisle Wortman Associates and city staff. Director Schlutow asked the ZBA to conduct the same activity, in order to ensure all city boards and commissions were able to lead their voices to the development of the Plan.

Director Schlutow asked four (4) questions directed to the ZBA for this activity:

1. What do you like about Berkley?
2. What do you want to see improved in Berkley?
3. What do you want to see changed in Berkley?
4. What do you think is missing?

Responses were logged and sent to Carlisle Wortman and will be included in the analysis that will assist the City in developing the goals and objectives in the Master Plan.

2. ELECTIONS

Vice Chair McAlpine read Chair Paul Evans email, dated March 6, 2020, in which he expressed interest in continuing on as Chair of the Zoning Board of Appeals.

Ms. Ward motioned to nominate Paul Evans for Chair. Motion seconded by Mr. Allen.

Mr. Krug motioned to nominate Sue McAlpine for Vice Chair. Motion seconded by Ms. Ward.

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

3. DISCUSSION

The Board reviewed and discussed the Rules of Procedure, most recently adopted September 2019. Mr. Allen asked Councilmember Hennen to provide details on the ordinance that state a minimum attendance requirement for boards and commissions.
Vice Chair McAlpine suggested adding language related to minimum attendance.

Director Schlutow agreed to incorporate the suggested changes and bring the Rules of Procedure back before the ZBA at the next regularly scheduled meeting.

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OTHER BUSINESS

Mr. Gesund thanked the City staff and City Clerk’s office for a very well run election on March 10, 2020. He thanked the public for voting.

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LIAISON COMMENTS

Councilmember Hennen noted that there had not been a City Council meeting since the previous ZBA meeting. He updated the ZBA and public on the City policies on COVID-19 and provided Oakland County Health Department contact information.

Ms. Ward asked Councilmember Hennen if there is a resource team for COVID-19 that is making recommendations to City Mayor and City Council. Councilmember Hennen responded that City staff is working closely with Oakland County and Council is being kept up to date.

* * * * * * *

BOARD COMMENTS

None

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PUBLIC COMMENTS

None.

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With no further business, Vice Chair McAlpine adjourned the meeting at 7:43 pm
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 7:30 p.m. in the Council Chambers at the City Hall, 3338 Coolidge Highway, Berkley, Michigan 48072.

APPLICANT:
Name: STEPHEN W. POLLACK Phone: 248-210-5632
Address: 3849 KIPLING AVE Steve@spastaff.com

PROPERTY OWNER:
Name: STEPHEN + KATHLEEN POLLACK Phone: 248-210-5632
Property Owner Address: 3849 KIPLING AVE

PROPERTY DESCRIPTION:
Address: 3849 KIPLING AVE
Sidew (Tax I.D. #): ______ Lot & Subdivision: 74, 715, 716
Current Zoning Classification: ______ Current Use of Property: ______

VARIANCE REQUEST:
Description of Request: WIDING @ DRIVeway FROM BASE 6/6, 6/4. FROM 19' TO 26' THEN TAPERING DOWN TO 16' @ SIDEWALK (Code)

From the City of Berkley Code, Chapter ______ Section ______

Has the City refused a permit for the request? Yes - Said I Need Variance

GROUND 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

See A. in Appendix

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

The existing property/development is within code.

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

See B.

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

See C.

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

______________________________________________________________

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

3/10/20
Date

Office Use Only
Date Application Received: 3/11/20 Fee: 200.00 Receipt Number: 000001635
Hearing Date: Case Number: PBA-02-20
Zoning Board of Appeals Decision:

January 2017
Non - Use Variance Addendum:

A. Currently my home sits on 3 lots; 714, 715, & 716 and does not have a backyard driveway. In addition my current garage is a smaller 2 car (19’ wide) garage built in the 1940s. I would like to add additional concrete wider than then current garage extending out to the existing fence line and running towards the sidewalk to the end of the same fence line then tapering down to 16’ at the sidewalk, which is existing code. Due to the current size of the driveway and with no additional parking in the backyard there is very limited room for the parking of a trailer and no more than 2 vehicles. In addition the current area for the proposed additional concrete is currently a mud/dirt pit and has a hard time to grow anything due to the high area of shade and water runoff from the garage and foot traffic from the use of the cars and the trailer. Other options were looked at and discussed with Erin Schlutow and Kim Anderson, such adding a driveway in the backyard behind my current garage or on the north side of the backyard. After further review both options would need a variance and both options could be very cost prohibitive due to the tearing down of trees and bushes along with re-working an existing sprinkler system.

B. As mentioned above currently there is not enough room or access to park a trailer and multiple cars.

C. As mentioned above in A, we looked at multiple options as well as we worked hard to focus on making sure we would taper the concrete drive down to the existing code at the sidewalk of 16’. This option provides the same current flow and design of the current drive however a bit wider for a portion of the driveway. My goal was to limit any and all impact to the area and existing flow of the property and house.

D. The variance will not impact the surrounding properties because of the following:
   i. The new concrete does not come in contact with any existing neighbor’s property or property line.
   ii. It maintains the current flow of the existing drive way in regards to look and feel.
   iii. It will taper down to the existing code of 16’ at the sidewalk.
   iv. The current area would be enhanced as it is complete mud/dirt today.
LEGAL DESCRIPTION: The North 25' of LOT #714, all of LOT #715 & the South 48' of LOT "St. John Woods Sub'n. No. 1", City of Berkley, Oakland County, Michigan. Rec'd L. 4; P. 10 Plats, O.C.R.

3849 Kipling

- PROPOSED ADDITIONAL CONCRETE
To: Berkley Zoning Board of Appeals

From: Erin Schlutow; Community Development Director

Subject: PBA-02-20; 3849 Kipling – Variance request to exceed width of single-family residence driveway beyond the restrictions of the garage

Date: May 4, 2020

APPLICANT: Stephen Pollock

LOCATION: West side of Kipling, North of Twelve Mile Rd.

PARCEL ID: # 25-07-430-003

REQUEST: The applicant is seeking a 7 ft. dimensional variance to expand the existing driveway beyond the width of the attached garage.

REQUIRED: Section 138-222(3)(f) of the Zoning Ordinance restricts the width of a driveway area or parking strip for interior lots with attached garages, wherein the driveway shall not exceed the width of the garage and shall taper uniformly to a width of 16 ft. at the front lot line.

ZONING AND LAND USE

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

Section 138-222(3)(f) states:

*Interior lots with attached garages.* The width of a driveway area or parking strip shall not exceed the width of the garage and shall taper uniformly to a width of 16 ft. at the front lot line.

The proposed driveway expansion will extend seven (7) ft. towards the south property line and will run perpendicular to the property line. The applicant has noted that the expanded driveway area will taper towards the sidewalk.
The applicant is requesting the variance in order to park personal vehicles on the expanded driveway, as opposed to the front lawn or in the street, where parking is prohibited overnight.

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 property at 3849 Kipling is oddly shaped in regards to the frontage on Kipling and Wakefield and not considered a corner lot. The property also narrows to the north, wherein the rear yard is shallow compared to neighboring lots.

Per the Zoning Ordinance, residential lot widths of over 100 ft. are permitted a circular driveway. The subject property is 123 ft. and would be permitted to have a circular driveway which would provide additional parking area for the property owner. However, constructing a circular driveway at 3849 Kipling would require the removal of two large trees in the front yard which provides shade and aesthetic appeal to the property. There is also a fire hydrant on the property, which could pose problems for constructing a circular driveway.

The shallow depth of the parcel and the inability to construct a circular driveway without removing mature trees does constitute unique circumstances or physical conditions of the property.

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 to expand the existing driveway is the result of a need from the property owner to protect personal vehicles and front lawn. The single-family residence was built in 1949 with a two-car garage, 19 ft. wide. The typical two-car garage is 20 ft. wide.

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 ordinance will prevent the property owner from safely storing personal vehicles on the property and may cause damage to the front lawn of the subject property due to the parking of vehicles on the grassy areas.

The property owner will still be able to use to the property for a permitted use, as a single family residence.

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

The requested variance is the minimum variance necessary for the applicant to store personal vehicles. The applicant has noted that the expanded driveway will be restricted to the area closer to the garage and will not affect the maximum 16 ft. at the front lot line.

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

The requested variance will not impact the surrounding properties, as the expanded driveway will maintain distance from the adjacent property and structure.

**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
    steve@sprstaff.com
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: Ultimate Signs Phone: 313-270-4008
Address: 3827 Mark Twain St, Detroit, MI 48228

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

PROPERTY OWNER:
Name: William Isehnour Phone: 248-943-6264
Property Owner Address: ____________________________

PROPERTY DESCRIPTION:
Address: 2079 W. 12 Mile, Berkley, MI 48072
Sidewell (Tax I.D. #): ____________________________ Lot & Subdivision: ____________________________
Current Zoning Classification: __________________ Current Use of Property: Veterans Organization

VARIANCE REQUEST:
Description of Request: Replace current sign with LED sign

From the City of Berkley Code, Chapter Section

Has the City refused a permit for the request? Yes

GROUND 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
The current sign is grandfathered in _____________________________.
The need for the variance is not the result of actions of the property owner or previous property owners because
The ordinances changed that pertained to the proposed sign.
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
Without the variance, the sign will not be affordable.
The requested variance is the minimum variance necessary to do substantial justice to applicant as well as other property owners because
It will bring more business to the City of Berkley to the establishment.
The requested variance will not adversely impact the surrounding properties because:
We are just replacing the current sign with a new led sign.

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: 3-13-20

Office Use Only
Date Application Received: 3-13-20 Fee: $300 Receipt Number:
Hearing Date: 4-13-20 Case Number: PBA-03-20
Zoning Board of Appeals Decision:

January 2017
DISCLAIMER - This drawing is conceptual and was prepared to show approximate location, arrangement, size and color of signage. It is subject to change and not intended to replace the use of construction documents and/or actual field dimensions.

Proposed SF: 32 SF
Existing SF: 23 SF

INSTALL NEW 75" X 37.5" DOUBLESIDED SIGN
INSTALL NEW 75" X 24" DOUBLESIDED SIGNCABINET

PROJECT
Address: AMERICAN LEGION
City: Calexico, CA
State: CA
Date:

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INSTALL NEW 75" X 37.5" DOUBLESIDED SIGN
INSTALL NEW 75" X 24" DOUBLESIDED SIGNCABINET

PROJECT
Address: AMERICAN LEGION
City: Calexico, CA
State: CA
Date:
SIGN SETBACK WILL REMAIN THE SAME AS CURRENT SIGN

25" FROM SIDEWALK
OUTER MOST EDGE OF SIGN
60" FROM SIDEWALK

25" FROM SIDEWALK
60" FROM SIDEWALK

25" FROM SIDEWALK
60" FROM SIDEWALK
To: Berkley Zoning Board of Appeals

From: Erin Schlutow; Community Development Director

Subject: PBA-03-20; 2079 W. Twelve Mile – Variance request to replace an existing non-conforming sign

Date: May 4, 2020

APPLICANT: Ultimate Signs, on behalf of American Legion Post 374

LOCATION: Southeast corner of Twelve Mile Rd and Henley Rd

PARCEL ID: # 25-17-126-001

REQUEST: The applicant is seeking a dimensional variance to replace a non-conforming sign, located within the required minimum five (5) setback from front property line.

REQUIRED: Section 94-7(d) of the Zoning Ordinance requires pole signs to maintain a five (5) ft. setback from the property line.

ZONING AND LAND USE

The subject property is zoned Local Business District.

<table>
<thead>
<tr>
<th>Property</th>
<th>Zoning District</th>
<th>Land Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject Site</td>
<td>Local Business District</td>
<td>American Legion Post 374</td>
</tr>
<tr>
<td>West</td>
<td>Local Business District</td>
<td>Funeral Home</td>
</tr>
<tr>
<td>East</td>
<td>Local Business District</td>
<td>Medical Office Building</td>
</tr>
<tr>
<td>North</td>
<td>Cemetery District</td>
<td>Cemetery</td>
</tr>
<tr>
<td>South</td>
<td>R-1C, Single Family Residential</td>
<td>Single Family Residential</td>
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</tbody>
</table>

Section 94-7(d) states:

Pole signs are required to maintain a five (5) ft. setback.
The setback is measured from the property line to the nearest point of the sign. The pole of the sign is measured 25 inches from the sidewalk/property line. The applicant has noted that the pole of the sign is to remain as is.

BACKGROUND

The existing sign is legally non-conforming. It was constructed in 2005, prior to the adoption of the current sign regulations, which were adopted in 2010. The legal nonconforming sign was permitted to continue so long as no changes to the sign were to be made.

Section 94-12 restricts the continuation of nonconforming signs.

**Sec. 94-12. – Nonconforming signs.**

No nonconforming sign or its support structure:

1. Shall be replaced by another nonconforming sign;
2. Shall have any changes made in the words or symbols used or the message displayed on the sign;
3. Shall be structurally altered so as to prolong the life of the sign or so as to change the shape, size, type, or design of the sign;
4. Shall be reestablished after the activity, business, or usage to which it relates has been discontinued for 90 days or longer;
5. Shall be reestablished after damage or destruction if the estimated expense of reconstruction exceeds 35 percent of the appraised replacement cost.

The proposed change to the size, design, type, and internal illumination of the sign cannot be completed as proposed, as the sign is located within the existing front yard setback.

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 existing pole sign was installed prior to the adoption of the current sign ordinance regulations on the condition that a wall sign was removed. The pole sign was installed in order to bring attention to the building from east and westbound Twelve Mile Rd traffic.
Under the current regulations, the nonconforming pole sign cannot be changed or expanded. Therefore, if the property owner wants to keep a pole sign on the subject site, it would be required to be relocated at least five (5) feet from the property line. This would place the pole sign within the parking lot area and would pose a hazard to vehicles traversing the parking area.

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 due to the change in local sign regulations that requires the five (5) foot setback from the property line while simultaneously not permitting nonconforming signs to change face or type. The need for the variance is not the result of actions of the property owner or previous property owners.

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 ordinance will prohibit the property owner from updating the signage on the property which draws attention to the general public. Conformity to the sign setback regulations would require the property owner to relocate the sign on the subject property where it would pose a safety hazard to those who frequent the American Legion Hall.

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

The requested variance is the minimum variance necessary for the applicant to maintain the existing location of the pole sign while updating the face and type with a modern design.

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

The requested variance will not impact the surrounding properties, as the pole sign has been in existence since 2005 without causing an adverse impact upon the surrounding properties, or Berkley as a whole.

**Summary**

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,

[Signature]

Erin Schlutow  
Community Development Director

Cc: Matthew Baumgarten, City Manager
    Victoria Mitchell, City Clerk
    John Staran, City Attorney
    Linda Kaiser, linda@universalled.net
Hello Erin,

My home is on Rosemont and I received a letter from the city about this sign at the Legion. I have no problem with them putting up a new sign. From a Berkley Business owner I wish them the best, they do a lot for the City of Berkley, they are great neighbors.

Thank You.

Dottie Payne

Application Number PBA-03-20
Ultimate Signs, on behalf of the Berkley American Legion Post 374, is requesting a variance at 2079 W. Twelve Mile Rd., Parcel #25-17-2-126-001, to replace an existing legal non-conforming sign that encroaches into the required minimum five (5) foot setback.

Berkley City Code
Berkley City Code, Chapter 94 Signs, Sec. 94-7; Signs requiring permits.

- (d) In the Local Business Zoning District, the minimum setback is 5 feet.

The setback is the distance from the property line to the nearest part of the applicable building, structure or sign, measured perpendicularly to the property line.

Dottie Payne

"Blamey Stone Pub"
MEMORANDUM

To: Berkley Zoning Board of Appeals
From: Erin Schlutow, Community Development Director
Subject: ZBA Rules of Procedure Discussion
Date: May 4, 2020

At the March 11, 2020 meeting, the ZBA determined that they would like to add language to the Rules of Procedure that would take into account attendance and training ordinances that have since been adopted by the Berkley City Council.

In the first section, I have added a line in Section One that relates to the entirety of the Rules of Procedure for the Zoning Board of Appeals. The addition is shown in red, in relation to Section One. I have also included the entire Rules of Procedure, for your reference.

If this addition is deemed appropriate, it is recommended the ZBA approve and adopt the Rules of Procedure, as amended.

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).

The following rules of procedure shall be in effect, unless overwritten by local ordinance.
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).

The following rules of procedure shall be in effect, unless overwritten by local ordinance.

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.

- Members who

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.