PUBLIC NOTICE

City of Berkley, Michigan
Regular Meeting of the Zoning Board of Appeals
Monday, January 13, 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 December 9, 2019
ITEMS FOR THE AGENDA

1. APPLICATION PBA-07-19
   Mark Adler Homes, LLC is requesting a dimensional variance at 2371 Stanford Rd., Parcel # 25-17-430-026, for construction of two single-family residential homes to be located less than the required 15 ft. apart.

2. APPLICATION PBA-08-19
   Andrew Giles, on behalf of Janice Decormier, 3638 Buckingham, is requesting a dimensional variance at 3638 Buckingham Ave., Parcel # 25-07-451-005, for proposed second story addition to be located less than 15 ft. from adjacent dwelling, located at 3622 Buckingham.

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 7:00 PM, MONDAY, DECEMBER 9, 2019 BY CHAIR EVANS.

PRESENT: 
Board Members 
Paul Evans Greg Butts 
Ryan Gesund Joe Krug 
Steve Allen Sue McAlpine 
Miles Uhlar 

ABSENT: None 

ALSO PRESENT: Erin Schlutow, Community Development Director 
Dennis Hennen, City Council Liaison 
Maria Ward, Alternate Board Member 
Conor Draves 
Elizabeth Shaw-Draves 
Justin Dunaskiss 
Omar Elias 
Other members of public 

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

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

Motion Carried.

APPROVAL OF MINUTES 
It was moved by Mr. Allen to approve the minutes of November 12, 2019 and supported by Mr. Gesund. 

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

Motion Carried.

REGULAR AGENDA 
1. Application PBA-05-19; 2287 Franklin 
Community Development Director Schlutow summarized December 2, 2019 review letter related to the variance request for side yard setback at 2287 Franklin. Applicant is requesting dimensional variance to encroach 8 ft. into 10 ft. required side yard setback on Berkley Ave. The subject property is in the R-1D, Single Family Residential District. Director Schlutow summarized the standards of review and the required criteria for variance approval.
Applicants and homeowners Conor and Elizabeth Draves explain the need for the addition to the principal structure for the purpose of storing personal items, such as coats and boots, outside of the communal living space. They explained they would be installing a fence along the sidewalk which would provide screening for the proposed addition.

**Chair Evans opened the Public Hearing at 7:13pm.**

None.

**Chair Evans closed the Public Hearing at 7:13pm.**

Mr. Allen noted that the encroachment into the sideyard setback towards the public sidewalk is difficult, as it is close to pedestrians, bicyclists.

Mr. Krug agreed and discussed the fencing along the side of the property for screening.

Mr. Uhlar noted that it would be difficult to approve the variance without setting a precedent.

Mr. Gesund stated that the need for the variance makes sense but the Board has to follow the requirements to approve the variance and does not see that it meets that criteria.

Chair Evans noted he did not see the unique circumstances of the property that is required to grant a variance.

Ms. McAlpine gave sympathy to the homeowners and understood the request; however, the Board is bound by the five (5) standards for approval.

Based on the finding of fact, it was moved by Ms. McAlpine to deny the requested side yard setback variance, PBA-05-19, as Standards for Review A, B, C, D have not been met. Second by Mr. Krug.

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

Motion Carried

2. **Application PBA-06-19; 2571 Coolidge**

   Community Development Director Schlutow summarized the December 3, 2019 review letter related to three variance requests at 2571 Coolidge Hwy. The applicant is requesting to install a trailer-mounted accessory structure within the parking area at the subject property for purposes of medical testing (MRI). Additionally, the subject property does not have sufficient parking (with or without the trailer-mounted accessory structure) to be in compliance with the parking requirements for medical office use. The subject property is located in the Coolidge district. Director Schlutow summarized the standards of review and the required criteria for variance approval.

   Mr. Allen inquired about bicycle racks to be installed for parking space credits. Director Schlutow noted that installing bicycle racks would reduce the parking requirement for the medical office use.
Applicants Justin Dunaskiss and Omar Elias addressed the Zoning Board of Appeals, noting the existing medical business would be relocating from Royal Oak, where they have had success without complaint from neighbors. The initial request would be for the structure to be on-site for one day per week, but is looking to expand to multiple days per week, depending on interest and frequency of appointments.

Mr. Allen commented that the machines are extremely noisy and that is concerning to neighbors and adjacent properties.

Mr. Uhlar inquired why the applicant is moving the business from Royal Oak. The applicant responded that he is interested in expanding the business.

Mr. Gesund asked if there were other activity proposed to be conducted within the trailer-mounted accessory structure, and if it would be possible to put the machine inside the principal structure. Omar Elias responded that the MRI testing would be the only activity within the accessory structure. He expanded on the state regulated point system that would permit an MRI machine to be located within a building. Mr. Elias stated that the state gave point with mobile units, but it was extremely difficult to accumulate sufficient points for a machine to be located within a building.

Ms. McAlpine inquired about hours of operation. Mr. Elias responded the facility would be operating 9am – 6pm; with 1 -2 patients per hour.

**Chair Evans opened the Public Hearing at 7:42 pm.**

Julie Forte, Forte Family Dentistry, voiced her opposition to the requested variances. Ms. Forte noted that the parking area that supports her business has existing problems, as the lot is used by Berkley High School parents waiting for their students to be released from school, and this causes inconvenience to her patients.

Jason Haas, represents the owner of the subject property, noted that Family Video would be vacating the building and the owner was supportive of the medical office use on the property. Mr. Haas stated that another medical use would be beneficial to the community and the owner is supportive of the accessory structure.

Wendy Zabramski, Berkley resident, commented that the subject property on Coolidge Hwy is not the location for the use or trailer. Ms. Zabramski noted that the medical office buildings on Twelve Mile Rd have large parking areas where this would be better suited.

Georgia Dixon, Berkley resident, commented on the overflow parking from the Progressive medical office frequently use Kenmore for staff and patrons. Ms. Dixon stated that granting the requested variances for parking would only make that problem worse and the issue has been going on for several years. Ms. Dixon stated that she was not supportive of the variance requests.

**Chair Evans closed the Public Hearing at 7:49 pm.**

City staff received two letters from the public. One from Ms. Dixon with similar comments as provided during the public hearing. The second letter from Kimrey Campbell and William Fox noted the trailer-mounted accessory structure is unattractive, would negatively contribute to a high traffic corner and would exacerbate the existing parking issues in the area.
Mr. Allen stated that the requests do not meet the five (5) required criteria for granting of variances.

Mr. Krug agreed with Mr. Allen and noted concerns about the noise level for adjacent properties.

Ms. McAlpine agreed that there are traffic problems in the area and understood that parents regularly park in the lot waiting for Berkley High students. Ms. McAlpine noted that the variance would make a bad problem worse.

Mr. Gesund inquired about a shared parking agreement with the medical office across Catalpa. Mr. Haas, representative for the property owner, noted that the agreement had been cancelled. Director Schlutow stated that a shared parking agreement across Catalpa would not be permitted under the current zoning ordinance.

Chair Evans stated that the there does not appear to be a unique circumstance to the property and the variance request is a result of the actions of the applicant.

**Based on the finding of fact, it was moved by Mr. Allen to deny the three (3) requested variances for trailer-mounted accessory structure to occupy existing parking spaces, and to reduce parking requirement for medical office use, Application PBA-06-19, as Standards for Review A, B, C, D for each requested variance have not been met. Second by Mr. Krug.**

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

Motion Carried

**OTHER BUSINESS**

Mr. Butts noted that the application forms need to be revised. Director Schlutow agreed and that revisions on all applications are in process.

Ms. McAlpine stated that the monthly report of planning and zoning activities has been helpful.

Mr. Allen agreed that the monthly report is helpful and appreciates the meeting packets being delivered earlier for review.

Mr. Gesund agreed that the monthly reports are appreciated and wished everyone a Happy Holiday and prosperous 2020.

**LIAISON COMMENTS**

Councilmember Hennen provided a summary of City Council activities. The marihuana licensing ordinance will be having a third reading to finalize a few lingering details and the zoning ordinance will be having the first reading. Additionally, attendance and training ordinances will be reviewed by Council in the coming months.
BOARD COMMENTS

Ms. Ward, alternate Board member, stated that regulations for side yard setbacks in residential districts may need to be reviewed and revised as there have been two recent cases with similar requests. Ms. Ward inquired if this was a coincidence or if there have been many inquiries of similar nature.

Councilmember Hennen agreed that staff should review reasoning for the side yard setback and if such regulation is still valid.

Chair Evans noted that such regulations of residential and commercial properties would be reviewed during Master Plan process. Chair Evans agreed that if variance requests come before the Board repeatedly it may be an indicator to look at the ordinance language to determine if changes or amendments need to be made.

Chair Evans also noted that after the November ZBA meeting a comment was directed to the Board from a disgruntled resident. Chair Evans understood that the requests are personal and often bring up emotional feelings but that does not justify negativity. The Board is comprised of volunteers and it is not easy, as the Board is doing a job under the rules of the Ordinance. Chair Evans further noted that if anyone is interested in City government or has been disappointed by a decision, to stop by City Hall and apply or volunteer for a Board or Commission.

PUBLIC COMMENTS

None.

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With no further business, Chair Evans adjourned the meeting at 8:19 pm
CITY OF BERKLEY
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: MARK A. MATHIS, FOR
Address: 2371 STANFORD RD

PROPERTY OWNER:
Name: MARK A. MATHIS, FOR
Address: 2371 STANFORD RD

PROPERTY DESCRIPTION:
Address: 2371 STANFORD RD
Sidwell (Tax I.D. #): 25-17-430-020
Lot & Subdivision: 230/231 LARKWOOD & RIVER 346
Current Zoning Classification: R-10
Current Use of Property

VARIANCE REQUEST:
Description of Request: SEE ATTACHED

From the City of Berkley Code, Chapter __________________ Section ____________________________
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

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

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

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

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

Office Use Only
Date Application Received: 12/5/19 Fee: $300
Hearing Date: 11/26/2019 Receipt Number: PBA-07-19
Zoning Board of Appeals Decision: PBA-07-19 Case Number: PBA-07-19
Description of Non-Use Variance Request: 2371 Stanford Rd Berkley

- **Variance Request:** The request is to allow a variance of 4' (for a total of 11' in lieu of 15') between the proposed homes on Lot A and Lot B (See Attached). The all other setback requirements will adhere to the zoning requirements.

- The need for the variance is due to the unique circumstances or physical conditions of the property because the existing property to the south (ID# 25-17-430-012) was built to close to the side property line causing a unique and direct hardship to the property (see attached site plan).

- The need for the variance is not the result of actions of the property owner or previous owners because the circumstances are per-existing and not the results of any actions by the applicant.

- 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 complying with the ordinance would not allow for a structure to be built that would meet the current building widths.

- The requested variance is the minimum variance necessary to do substantial justice to the applicant as well as the other property owners because if the variance is approved it will allow the construction of two 24’ wide homes that will provide a workable floor plan and amenities that has been proven to meet the needs of today’s families wanting to live in the city of Berkley (see attached). The newly constructed homes will add overall value to the surrounding neighborhood both aesthetically and monetarily. The proposed new home will blend well with the surrounding properties as well as provide additional living space that some of the smaller homes in the area do not offer. Mark Adler Homes, LLC goal is to provide quality homes with the size and amenities the market has required and blends in with the neighborhood.

- The requested variance will not adversely impact the surrounding properties because it will allow for two new homes to be built that will adhere to the side yard setbacks with in the property lines and enhance the value of the neighborhood as well as bring additional revenue to the city, schools and area businesses.
Disclaimer: The information provided herewith has been compiled from recorded deeds, plats, tax maps, surveys and other public records. It is not a legally recorded map or survey and is not intended to be used as one. Users should consult the information sources mentioned above when questions arise. The FEMA Floodplain data may not always be present on the map.
DESCRIPTION (BY OTHERS):
TiN, R11E, SEC 17 LARKMOOR BLVD SUB LOTS 330 & 331, ALSO PT OF LOT 346 LYING E OF E LINE EXT OF LOT 126 OF 'HAMPTON MANOR' & SLY OF S LINE EATON RD. ALSO OF 'HAMPTON MANOR' ALL OF LOT 125

NOTES:
- TITLEWORK NOT PROVIDED. EXISTING EASEMENTS, IF ANY, NOT SHOWN.
- BEARINGS BASED ON LARKMOOR BLVD. SUBDIVISION, L.9 OF PLATS ON P.B. OAKLAND COUNTY RECORDS.
To: Berkley Zoning Board of Appeals

From: Erin Schlutow; Community Development Director

Subject: PBA-07-19; 2371 Stanford – Variance for required separation distance between single family residential structures

Date: January 6, 2020

APPLICANT: Mark Adler Homes, LLC, on behalf of Waneda A. Mathis Rev Living Trust

LOCATION: Southwest corner of Stanford Rd and Eaton Rd

PARCEL ID: # 25-17-430-026

REQUEST: The applicant is seeking a dimensional variance to construct two single family residential homes, with an 11-ft. separation distance between dwellings.

REQUIRED: Section 138-527(d) of the Zoning Ordinance requires a minimum 15 ft. between dwellings in single family and two-family residential districts.

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.

Section 138-527(d) states in the single family and two-family residential districts, there shall be a distance of at least 15 feet between dwellings. The applicant is proposing to demolish the existing multiple family structure at 2371 Stanford Rd and split the lot in order to construct two new single family homes. In order to satisfy
all setback requirements, include the required 10 ft. side yard setback on a corner lot, the applicant is requesting to construct the dwellings 11 ft. apart.

The applicant has noted all other setback requirements, height, lot coverage, and minimum distance from existing adjacent dwelling at 2361 Stanford Rd will be compliance with the Zoning Ordinance.

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 at the southwest corner of Stanford Rd and Eaton Rd. Per Section 138-527(d), there shall be a minimum distance of at least 15 feet between dwellings.

The existing dwelling at adjacent property, 2361 Stanford Rd, was built prior to 1963 and is located four (4) ft. from the north property line. In order to satisfy the required 15 feet between the existing structure at 2361 Stanford Rd and the proposed structure on the south of the property, the setback would be required to be larger than the current maximum setback of 10 ft. As a result, the placement of the two proposed homes would be required to shift north, thereby encroaching into the required 10 ft. side yard setback of the proposed north structure.

In order to maintain neighborhood character of the corner side yard setback and separation between the existing and proposed structures, the applicant is requesting to reduce the minimum distance between the proposed structures. The need for such variance is the result of the placement of the existing structure on the adjacent property at 2361 Stanford Rd.

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 applicant’s intention to construct two single family homes on a property with one existing home. The subject site does meet the minimum required area and lot frontage in order to be developed as two separate properties; however, the location of the dwelling on the adjacent property, 2361 Stanford Rd, prohibits the construction of the two homes in full compliance of all zoning requirements.
If the applicant splits the subject parcel, a variance of setback or minimum separation distance would be required. Otherwise, the applicant would be limited to constructing one single family residential structure on the subject property.

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 separation distance of 15 ft. prevents the applicant from splitting the property to construct two single family residences. The applicant would be able to construct one single family residence on the subject property in full compliance with all zoning ordinances.

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 in order to construct two single family residential structures in compliance with all other applicable zoning requirements. The applicant has noted that the proposed development will be in compliance with height, area, lot coverage, and all other setbacks.

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

The requested variance would permit two single family residences to be constructed 11 ft. apart. The minimum distance from the adjacent property at 2361 Stanford Rd and all other applicable setbacks would be maintained, per the submitted documents. The future homebuyers would be made aware of the approved variance prior to purchase as it would be disclosed on the site plan and during inspection of the property.

**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
    mark@markadlerhomes.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: Andrew Giles
Phone: 248 568 4318
Address: 6909 Highland Rd
Waterford, MI 48327

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

PROPERTY OWNER:
Name: Janice Decormier
Phone: (586) 214 2594
Property Owner Address: 3638 Buckingham, Berkley, MI 48072

PROPERTY DESCRIPTION:
Address: 3638 Buckingham

Sidwell (Tax I.D. #): Lot & Subdivision:
Current Zoning Classification: Current Use of Property:

VARIANCE REQUEST:
Description of Request: South Side Set Back: 15' to 12.6'

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:

- Adding 2nd floor to original existing rear bump out.

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

- Side setbacks for new 2nd floor over existing 1st floor not 15’, existing 12’-6’.

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:

- Not practical to move 2nd floor addition over 2’-6” will cause practical difficulty.

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

- Original side setback should be grandfathered in.

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

- South side neighbors home is a 2 story not to current variance either.

**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: 12-12-19  
Fee: 300  
Receipt Number:  
Hearing Date:  
Case Number: PBA-08-19  
Zoning Board of Appeals Decision:  

January 2017
Request South side variance to add 2nd floor to existing 1st floor current 12'-0" foundation to foundation need 9'-0" variance from 15' current code

House 1st floor 8' eave

Drive

#3638

Buckingham Rd.

2-story Home

Existing side variance 10'-0"
To

AL

ac

af

BUCKINGHAM

RD.

66' WD.

DATE: 8-3-78

PURCHASER: Joseph L. Janascewski & Rose Marie

DESCRIPTION: South 40' of Lot #155, Cottage Homes Subdivision, a part of the S

tion 7, T. 1 N., R. 11 E., Royal Oak Township, City of Berkley, Oakland County.


CERTIFY that we have surveyed the property herein described; buildings and improvements are located entirely thereon as shown. The lines were taken and prints attached hereto.

METROPOLITAN SURVEY INC.

EDWARD J. JOHNSTON
Existing 1st floor rear bumpout
neighbors 12'-6" new 2nd floor closet
new 2nd floor closet
To: Berkley Zoning Board of Appeals
From: Erin Schlutow; Community Development Director
Subject: PBA-08-19; 3638 Buckingham – Variance for required separation distance between single family residential dwellings
Date: January 6, 2020

APPLICANT: Andrew Giles, on behalf of Janice DeCormier
LOCATION: East side of Buckingham Ave, between Twelve Mile Rd and Edwards Ave
PARCEL ID: # 25-07-451-005
REQUEST: The applicant is seeking a 2 ft. 6 in. dimensional variance to construct a second story addition to be located 12 ft. 6 in. from the adjacent dwelling at 3622 Buckingham.
REQUIRED: Section 138-527(d) of the Zoning Ordinance requires a minimum 15 ft. between dwellings in single family and two-family residential districts.

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.

Section 138-527(d) states in the single family and two-family residential districts, there shall be a distance of at least 15 feet between dwellings. The applicant is proposing to construct an addition to the rear of the existing principal structure.

The proposed addition will not exceed the existing footprint of the dwelling, nor will it encroach further into the side yard setback than the existing dwelling.
Per Section 138-52(a), where an accessory building or structure is attached to a main building it shall conform to, all regulations of the chapter applicable to the main building.

BACKGROUND

The principal structure at 3638 Buckingham was built between 1940 and 1963 and the adjacent principal structure at 3622 Buckingham was built between 1963 and 1974, according to Oakland County. While each structure conforms to the minimum required side yard setback, it does not conform to the minimum 15 ft. separation distance between dwellings.

Per Section 138-154, the non-conforming structure at the subject property, 3638 Buckingham, may be maintained which includes necessary repairs and alterations. “A (nonconforming) building may be added to or enlarged if such addition conforms to the regulations of the applicable zoning district. Such addition or enlargement shall be treated as a separate building in determining conformity to all of the requirements of this chapter.” Based on the ordinance detailed above, an addition to the nonconforming structure would be permitted, as long as it was built to conform to side yard setback, height, lot coverage, and minimum separation distance between dwellings.

The applicant submitted plans for a building permit in October 2019 and it was approved November 2019, with the note that the addition would conform to the required minimum 15 ft. separation between dwellings. During the framing inspection, the Building Official noted that the addition was being constructed outside the scope of work of the building permit. Specifically, the addition was being built where it would encroach into the required 15 ft. separation distance between the adjacent dwelling. A Stop Work Order was issued to the contractor and was informed that the addition would be required to be constructed in accordance with the approved building permit, or the property owner could request a variance from the minimum distance requirement if an undue hardship or practical difficulty could be demonstrated.

Based upon the submitted plans, all other applicable height, setback and lot coverage requirements will comply with the Zoning Ordinance.

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 principal structure at 3638 Buckingham is located 12 ft. 6 in. from the principal structure at 3622 Buckingham. The subject property is similar in size and character as other properties in the neighborhood and conforms with the minimum lot area and frontage width in the R-1D district. The subject property is not unique to the neighborhood or the City of Berkely, as a whole.

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 construct an addition on the property in line with the existing structure is the result of the principal structure at 3622 Buckingham being located closer than 15 ft. to the adjacent dwelling. This is not the result of actions by the current or previous property owner, but the contractor who built the dwellings. At that time, there was not an ordinance that required a minimum separation distance between dwellings.

During the initial plan review for the building permit, the applicant provided plans wherein the addition would be constructed in compliance with all requirements of the Zoning Ordinance. Therefore, the need for a variance to complete the work as desired is the result of actions of the applicant constructing the addition outside the approved scope of work.

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 constructing an addition to the existing structure in the desired manner. The property owner would be able to construct a second story addition to the structure in compliance with the regulations of the Zoning Ordinance.

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 will allow for the second floor addition to be in line with the footprint of the principal structure. The applicant is not proposing to extend beyond the foundation of the dwelling. The applicant is requesting the minimum variance that will benefit the homeowner and will not exceed the existing footprint of the structure.

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

The requested variance will not impact the surrounding properties, but may have an impact upon the adjacent property owner at 3622 Buckingham. The character of the neighborhood will be preserved. Surrounding property owners may not be aware of any such construction project, as the addition is proposed on the rear of the existing dwelling and will not extend beyond the footprint of the existing 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
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