PUBLIC NOTICE

City of Berkley, Michigan
ELECTRONIC Meeting of the Zoning Board of Appeals
Monday, February 8, 2021
7:00 PM
Information: (248) 658-3320

CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL
APPROVAL OF AGENDA
APPROVAL OF MINUTES – Meeting of November 9, 2020
ITEMS FOR THE AGENDA

NEW BUSINESS

1. APPLICATION PBA-01-21; 2144 Thomas Ave. – Appeal of Interpretation; Variance Request
   Kevin & Nancy Karsama, 2144 Thomas Ave, Lot 244 of Thomas Park, Parcel ID #25-18-307-008, east side
   of Thomas Ave between Oxford Rd and Cambridge Rd, is requesting an appeal of interpretation by the
   zoning officer classifying a generator as an accessory structure. If appeal is denied, applicant is seeking a
   variance to place the generator in the side yard.

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

3. 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: https://berkleymich.zoom.us/j/99706528278
Meeting ID: 997 0652 8278
Phone: +1 312 626 6799 US (Chicago)
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 7:02 PM, MONDAY, NOVEMBER 9, 2020 VIA ZOOM ELECTRONIC MEETING BY VICE CHAIR SUE MCALPINE.

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: Ryan Gesund
           Joe Krug
           Erick McDonald - Alternate
           Miles Uhlar
           Sue McAlpine
           Steve Allen

ABSENT: Paul Evans
        Maria Ward

ALSO PRESENT: Nas Gulli, Mr Kabob, 3372 Coolidge Hwy
               Jennifer Glover, Aver Sign Company
               Erin Schlutow, Community Development Director
               Dennis Hennen, City Council Liaison
               Torri Mathes, Community Engagement Officer
               Dan Hill, Public Policy Assistant

It was moved by Mr. Gesund to excuse the absence of Chair Evans and Ms. Ward. Motion supported by Mr. Krug. Mr. Allen asked if both members had made contact prior to the meeting to explain the absence.

Mr. Gesund moved to amend his motion to excuse the absence of Chair Paul Evans due to prior commitments. Motion supported by Mr. Krug.

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

Mr. Gesund moved to excuse the absence of Ms. Ward. Motion supported by Mr. Uhlar.

AYES: Uhlar, Gesund, McAlpine
NAYS: Krug, McDonald, Allen
ABSENT: Ward, Evans

Mr. Gesund moved to modify his motion to table the absence of Ms. Ward. Motion supported by Mr. Krug.

AYES: McDonald, Uhlar, Gesund, Krug, McAlpine
NAYS: Allen
ABSENT: Ward, Evans
**APPROVAL OF AGENDA**

It was moved by Mr. Allen to approve the agenda as presented. Motion was seconded by Mr. Gesund.

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

**MOTION CARRIED**

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**APPROVAL OF MINUTES**

It was moved by Mr. Allen to approve the minutes of October 12, 2020. Motion supported by Mr. Gesund.

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

**MOTION CARRIED**

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**NEW BUSINESS**

1. **APPLICATION PBA-09-20; 3372 Coolidge Hwy – Variance for Canopy Signs**

   Aver Sign Company, on behalf of Sunoco Gas Station, is requesting three (3) dimensional variances at 3372 Coolidge Hwy, Parcel #25-17-101-001, to install three (3) signs on the existing canopy. The proposed illuminated canopy signs will face south, west, and north and decorative design will face east.

   Community Development Director Schlutow summarized the November 3, 2020 review letter and went through the standards of review for granting a variance. Ms. Schlutow also provided information on the site plan for the installation of the canopy that was approved by the Berkley Planning Commission, SP-04-01. The conditions of approval noted that Signage is prohibited from being installed on the canopy and the canopy color and materials shall be neutral in nature and not primary colors.

   Jennifer Glover, Aver Sign Company, addressed the Board and provided reasoning for Sunoco’s request for additional signage on the canopy. The reason for the request is that it is part of the brand standard for Sunoco. Not installing the additional signage is against the contract that the station owner will have with Sunoco. It also provides a cleaner appearance and more visibility.
Mr. Nas Gulli, owner of Mr. Kabob and the gas station, noted that the request is in normal operation for Sunoco businesses. The size, location of the canopy is not changing and the request is to make the canopy look nicer.

Vice-Chair McAlpine opened the Public Hearing at 7:21pm and provided instructions to the public.

No public comment.

Vice Chair McAlpine closed the Public Hearing at 7:23pm.

The Board discussed the nature of the request.

Mr. Allen noted that the location has a lot of signage already and the Planning Commission acted to limit the number of signs on the property.

Mr. Gesund inquired about reducing the number of existing signs on the building and the area of signage allowed under the Ordinance.

Mr. Allen understood the need for signage to fulfill the contract, however, that it should not trump city laws.

Vice-Chair McAlpine noted the specific standards for approval. The business is currently operating and will continue to operate, even if the variances are denied.

Mr. Uhlar asked the applicant to provide details on the nature of the change that requires additional signage.
Mr. Nas Gulli noted that the new contract has new branding requirements, including signage and promotion of the business. He also noted that the Marathon gas station on Twelve Mile Road has wall and canopy signage and he would like to remain competitive with other businesses in the area.

Mr. Allen inquired on the additional signage on the Marathon gas station.

Vice-Chair McAlpine asked the owner about the timeline to be in compliance with Sunoco.

Mr. Allen walked through the standards of review.

Mr. Allen motioned to deny variance application PBA-09-20; 3372 Coolidge Hwy to install canopy signs based on the fact that the standards of review have not been met. Motion supported by Mr. Krug.

AYES: Krug, McDonald, Uhlar, Allen, McAlpine
NAYS: Gesund
ABSENT: Ward, Evans

Motion Carried. Variance has been Denied.

2. Meeting Dates
Matter of reviewing meeting dates for 2021 calendar year.
Community Development Director Schlutow presented the 2021 calendar meeting dates for the Zoning Board of Appeals. She drew attention to the August 2021 meeting, due to the scheduling of the City Council meeting.

Mr. Krug motioned to approve the 2021 meeting dates, as presented. Motion supported by Mr. Allen.

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

3. PRESENTATION BY COUNCILMEMBER DENNIS HENNEN
Presentation by Councilmember Dennis Hennen to fulfill requirements for the Master Citizen Planner course.

Councilmember Hennen presented his capstone presentation, Making Legally Defensible Zoning and Planning Decisions, to fulfill the requirements for the Master Citizen Planner credentials.

Board members expressed appreciation for the presentation.

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OTHER BUSINESS
None.

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LIAISON COMMENTS
Councilmember Hennen noted the Community Development Report, provided by Director Schlutow has a lot of planning and zoning updates. Also, he updated the Board on the marihuana appeals process

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BOARD COMMENTS
None

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PUBLIC COMMENTS
None.

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With no further business, Vice-Chair adjourned the meeting at 8:10pm.
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 7:30 p.m. in the Council Chambers at the City Hall, 3338 Coolidge Highway, Berkley, Michigan 48072.

APPLICANT:  toivolives@comcast.net
Name: KEVIN J. KARSAHA Phone: 248-703-2218
Address: 214-4 THOMAS AVE., BERKLEY MI. 48072

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

PROPERTY OWNER:
Name: KEVIN J. & NANCY M. KARSAHA Phone: SAME AS ABOVE
Property Owner Address: SAME AS ABOVE

PROPERTY DESCRIPTION:
Address: 214-4 THOMAS AVE.
Sidwell (Tax I.D. #): 04-25-18-307-008 Lot & Subdivision: T1n R1t 18 TC 18 Thomas Part Lot 244
Current Zoning Classification: 401 (401REIMP) Current Use of Property: OUR HOME

VARIANCE REQUEST:
Description of Request: ALLOW A WHOLE HOUSE GENERATOR TO BE LOCATED ON THE SIDE OF OUR HOUSE. OAK ELECTRIC SERVICE INC. IS DOING THE INSTALLATION

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 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:

EARLIE CONSTRUCTION, LLC IS BUILDING A DECK BEHIND OUR HOUSE IN THE SPRING.
THEY DID THE RECONSTRUCTION OF OUR HOME IN 2005

Proposed use will not alter the essential character of the neighborhood because:

THE GENERATOR WILL BE LOCATED NEXT TO OUR AC UNITS WHICH ARE BEHIND A PRIVACY FENCE & NOT VISIBLE FROM THE STREET OR THE NEIGHBORS

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: 1-08-21 Fee: $300.00 Receipt Number:

Hearing Date: Case Number: PBA-01-21

Zoning Board of Appeals Decision:

January 2017
WE ARE HAVING A DECK BUILT IN THIS AREA IN THE SPRING.

THIS IS A STAMPED CONCRETE PATIO W/ A PORCH WALL GOING INTO OUR FAMILY ROOM.
MEMORANDUM

To: Berkley Zoning Board of Appeals

From: Erin Schlutow; Community Development Director

Subject: PBA-01-21; 2144 Thomas Ave – Request to install a whole house generator in the side yard

Date: February 2, 2021

APPLICANT: Kevin & Nancy Karsama

LOCATION: East side of Thomas Ave, between Oxford Rd and Cambridge Rd

PARCEL ID: # 25-18-307-008

REQUEST: The applicant is requesting an interpretation of the Ordinance which has been to regulate generators as accessory structures, and is seeking a variance to install a whole house generator in the side yard.

REQUIRED: Section 138-53 of the Zoning Ordinance states: Accessory buildings or structures shall not be erected in any yard, except a rear yard.

ZONING AND LAND USE

The subject property is zoned R-1D, Single Family Residential.

<table>
<thead>
<tr>
<th>Property</th>
<th>Zoning District</th>
<th>Land Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject Site</td>
<td>R-1D, Single Family Residential</td>
<td>Single family detached dwelling</td>
</tr>
<tr>
<td>West</td>
<td>R-1D, Single Family Residential</td>
<td>Single family detached dwelling</td>
</tr>
<tr>
<td>East</td>
<td>R-1D, Single Family Residential</td>
<td>Single family detached dwelling</td>
</tr>
<tr>
<td>North</td>
<td>R-1D, Single Family Residential</td>
<td>Single family detached dwelling</td>
</tr>
<tr>
<td>South</td>
<td>R-1D, Single Family Residential</td>
<td>Single family detached dwelling</td>
</tr>
</tbody>
</table>
BACKGROUND

Previous interpretations by the Zoning Board of Appeals has determined that generators are to be regulated as Accessory Structures and are prohibited from being erected in any yard, except a rear yard. The applicant has requested the placement of the whole house generator to be located in the side yard. Without specific language related to the placement of generators, we have continued with the ZBA’s interpretation that a generator is considered to be an accessory structure. Therefore, the applicant has requested a variance to install the generator in the side yard.

The Planning Commission has been hard at work for the past few months drafting an ordinance that would clearly and plainly regulate generators and air conditioning units. The proposed ordinance classifies generators and air conditioning units as “exterior appliances”. As such, they are not regulated as accessory structures. However, under the new ordinance, generators are restricted to the rear yard and air conditioning units are permitted to be located in the side yard.

The PC held the required public hearing at the January 26, 2021 and recommended approval of the draft ordinance to City Council. The Berkley City Council had the first reading at the February 1, 2021 meeting and was unanimously approved.

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 request for a variance is due to the desire of the property owner to place the whole house generator in the side yard in the same area as the existing air conditioning unit. The property owner has provided details noting that they are planning on constructing a deck in the rear yard, attached to the main house. If the generator is restricted to the rear yard, the unit would be required to be located on the other side of the deck, a considerable distance from the main house.

   The only other area to install a generator in the rear yard is on the stamped concrete patio adjacent to the doorwall entry to the residence. This alternative location is directly in front of the entry/exit from the dwelling and could be problematic in an emergency situation.

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

   The need for a variance is the result of the property owners desire to locate the generator adjacent to the house with future plans to construct a rear yard deck. If the deck was not to be installed, the rear yard would have sufficient area to install a generator.
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.**

The location of the generator will not prevent the property owner for using the property for residential purposes. Conformity with the regulations will require the property owner to reassess future plans related to the exterior deck or placement near the doorwall.

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 to do justice to the property owner. 
The owner is not asking for additional variances or considerations with this request.

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

The requested variance will not impact the surrounding properties, as the air conditioning unit is existing in the side yard and the adjacent properties are aware of the noise level produced by the location.

**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 the ZBA determines to grant the requested variance, it is recommended to condition the hours of the generator testing between 9:00am and 6:00pm, Monday through Friday.

If you have any questions regarding this case, please do not hesitate to contact me.

Cc: Matthew Baumgarten, City Manager  
Victoria Mitchell, City Clerk  
John Staran, City Attorney  
Kim Anderson, Building Clerk  
toivolives@comcast.net
Sample Motions

Motion to Approve

In the matter of PBA-01-21, the request for a variance to install a whole house generator in the side yard of residential property, located at 2144 Thomas Ave, parcel #25-18-307-008, zoned Single Family Residential, to be APPROVED due to the following findings of fact that the five standards of review have been met:

1. The need for the variance is due to unique circumstances or physical conditions of the property.
2. The need for the variance is not the result of actions of the property owner or pervious property owners.
3. Strict compliance with the ordinance will unreasonably prevent the property owner from using the property for a permitted purpose or will render conformity with those regulations unnecessarily burdensome.
4. The requested variance is the minimum variance necessary to do substantial justice to the applicant as well as other property owners.
5. The requested variance will not adversely impact the surrounding properties.

Motion to Approve with Conditions

In the matter of PBA-01-21, the request for a variance to install a whole house generator in the side yard of residential property, located at 2144 Thomas Ave, parcel #25-18-307-008, zoned Single Family Residential, to be APPROVED with CONDITIONS due to the following findings of fact that the five standards of review have been met, and can be installed subject to the following conditions:

Motion to Table

In the matter of PBA-01-21, the request for a variance to install a whole house generator in the side yard of residential property, located at 2144 Thomas Ave, parcel #25-18-307-008, zoned Single Family Residential, to be TABLED in order for the applicant, property owner, and city staff to address the following outstanding issues:

Motion to Deny

In the matter of PBA-01-21, the request for a variance to install a whole house generator in the side yard of residential property, located at 2144 Thomas Ave, parcel #25-18-307-008, zoned Single Family Residential, to be DENIED due to the following findings of fact that the five standards of review have not been met:
MEMORANDUM

To: Berkley Zoning Board of Appeals
From: Erin Schlutow, Community Development Director
Subject: ZBA Election of Officers
Date: February 1, 2021

The City of Berkley Zoning Board of Appeals Rules of Procedure states the election of Chair and Vice-Chair to the ZBA is to be done annually at the January or February meeting. The duties of elected officers are detailed in Section Four of the Rules of Procedure and are provided below, as follows:

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.

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

Thank you.
MEMORANDUM

To: Berkley Zoning Board of Appeals
From: Erin Schlutow, Community Development Director
Subject: ZBA Rules of Procedure Annual Review
Date: February 2, 2021

Per Section Seven of the Berkley Zoning Board of Appeals Rules of Procedures, an annual review of the procedures shall take place no later than the February meeting.

The Rules of Procedure were last updated May 2020, with one minor change that noted the rules of procedure would be in effect, unless overwritten by local ordinance. This minor change was incorporated in order to account for the recently adopted O-05-20, which stipulated the attendance, training, and continuing education requirement for ZBA members.

The 2021 Annual Review has gone a step further and has incorporated the requirements for attendance, training and continued education, as well as amended other sections to update with current practices.

The proposed changes have been highlighted in red. There are a few items for discussions that we would appreciate guidance from the ZBA. We would like the Board to consider the following:

1. **Attendance policy for regular and alternate Board members.** Should alternates be required to attend every meeting, regardless of need? Should their absences be recorded as excused or unexcused?

2. **Standards of Review.** A Board Member suggested a revision to the Hearings procedure, as outlined in Section Three, in which the five Standards of Review are specifically read aloud and discussed. It was suggested that a designated member should review each of the standards to ensure they are met. Does the Board want to designate a member to take this responsibility? What would the process be if that member is absent or is no longer on the Board?

3. **Time Limit for Public Comment.** Section Three does not specify a time limit for public comment during the public hearing. The Chair is tasked with setting a time limit. It is the determination of the ZBA if they would like to specify a time limit in the Rules of Procedure or to allow the Chair to continue to set the limit as is appropriate.

4. **Order of Business.** The public meeting order of business includes a Public Comment at the conclusion of the meeting. This is not in line with City Council or Planning Commission agendas,
which place Public Comment (for items not on the agenda) at the beginning of the meeting. Does the ZBA want to relocate the Public Comment section to the beginning of the meeting?

The public meeting order of business also notes that a Staff Report is to be provided or discussed. We would like some clarification from the ZBA as to what information is to be provided on the Staff Report and how they would like that information to be presented.

We look forward to the Annual Review as well as clarification on the above noted questions. If there are other suggestions to the Rules of Procedure, please do not hesitate to contact me to discuss.

Thank you.
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. New members appointed to serve on the ZBA shall complete a training program within six (6) months after appointment date. The training program shall be approved by the Community Development Director or City Manager to ensure the program provides information and training on roles, responsibilities and best practices for planning and zoning. 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) Continued Education. Each board member shall commit to 5-6 hours of continued education within each fiscal year. New appointees to ZBA shall not be required to complete the hours of continued education within the first fiscal year of appointment.

b) Reference Materials. Upon taking office for the first time, each member shall have access to the ZBA Orientation Guidebook stored on Google Drive. Hard copies of the materials shall be provided upon request. The ZBA Orientation Guidebook shall consist of reference materials, such as:

• A copy of the Updated Zoning Board of Appeals - Rules of Procedure.
• Berkley Zoning Map
• 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 Michigan Planning Enabling Act.
• The Michigan Zoning Enabling Act.
• 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.
b) **Absences.** Members who are unable to attend a regularly scheduled meeting must contact the Community Development Director prior to the meeting to alert them to the cause of absence. The ZBA shall determine if the absence is to be excused and approve the excused absence to be recorded in the meeting minutes. The ZBA may table to excuse the absence of a member until the next scheduled meeting.

a) A vacancy shall occur when a member has missed four (4) consecutive regular meetings or twenty-five percent (25%) of regular meetings held during the fiscal year, unless such absences have been excused by the ZBA.

- 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) **Preparation.** Members shall 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. Questions or concerns shall be directed to the Community Development Director.

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.

- 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.

- 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. All necessary materials shall be uploaded to the Google Drive. Hard copies of meeting materials may be provided upon request.

(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.

- If there are no appeals, requests for variances or requests for interpretation of the zoning ordinance to consider, the Community Development Director shall contact the Chair to determine if the regular meeting is to be held. Cancellation notices shall be provided to all members and posted on the City website and at City Hall prior to the meeting date. 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.

- 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. The meeting dates for the next calendar year shall be reviewed and approved at the last regular meeting of the current year.

- 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 City Manager, 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 four (4) voting members of the ZBA must be present, unless a use variance is under consideration, in which case, a quorum shall be five (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 time limit for public comment shall be stated prior to the opening of the Public Hearing. 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.

- 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, or designee, 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 Commented [ES8]: What is this?
Commented [ES9]: Public comment for items not on the agenda before action items? In line with CC and PC.
Commented [ES10]: And if that is the only action item?
Commented [ES11]: This has already been mentioned. Refer to above section instead of re-stating?
Commented [ES12]: Position has been mentioned several times without explanation. Is this needed?
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. Approved minutes shall be recorded with the City Clerk and posted on the City website.

SECTION SIX – OPEN MEETINGS AND FREEDOM OF INFORMATION PROVISIONS

(1) All meetings of the ZBA shall be open 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.