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

CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL
CONFIRMATION OF A QUORUM
APPROVAL OF AGENDA
APPROVAL OF MINUTES – Meeting of February 8, 2021

OLD BUSINESS

1. RULES OF PROCEDURE

NEW BUSINESS

2. APPLICATION PBA-02-21; 2650 Ellwood – Variance Request to Install Generator in Side Yard
   Flame Furnace Co, on behalf of John and Sara Giarmarco, 2650 Ellwood, Parcel ID #25-18-152-036, east side of Ellwood Ave, north of Catalpa Dr., is requesting a variance to install a generator in the side yard of the residential property.

3. APPLICATION PBA-03-21; 1919 Robina – Variance Request for Minimum Lot Size
   Troy Faik, 1919 Robina Ave, Parcel ID #25-18-454-028, west side of Robina Ave, north of Eleven Mile Rd, is requesting a variance for minimum lot size in order to split the existing property into two separate parcels. New Parcel 1 is proposed to be 4,377.45 sq. ft. The applicant is requesting a lot size variance of 22.55 sq. ft.

OTHER BUSINESS

STAFF / BOARD MEMBER REPORT
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 7:01 PM, MONDAY, FEBRUARY 8, 2021 VIA ZOOM ELECTRONIC MEETING BY CHAIR PAUL EVANS.

The minutes from this meeting are in summary form capturing the actions taken on each agenda item. To view the meeting discussions in their entirety, this meeting is broadcasted on the city’s government access channel, WBRK, every day at 9AM and 9PM. The video can also be seen on-demand on the city’s YouTube channel: https://www.youtube.com/user/cityofberkley.

PRESENT:  
Steve Allen, Berkley, Michigan  
Michael Hanchett, Berkley Michigan  
Joe Krug, Berkley Michigan  
Sue McAlpine, Berkley Michigan  
Miles Uhlar, Berkley Michigan  
Maria Ward, Berkley Michigan  
Paul Evans, Berkley Michigan

ABSENT:  Ryan Gesund - Excused

ALSO PRESENT:  Kevin Karsama,  
Jose & Sharon Esguerra  
Erin Schlutow, Community Development Director  
Dennis Hennen, City Council Liaison  
Matthew Baumgarten, City Manager

It was moved by Mr. Allen to excuse the absence of Mr. Gesund based on his prior commitment that he explained prior to the meeting. Motion supported by Ms. Ward.

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

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APPROVAL OF AGENDA
It was moved by Ms. McAlpine to modify the agenda to add the tabled item from the November 9, 2020, related to the absence of Ms. Ward. Motion supported by Mr. Allen

AYES:  Hanchett, Krug, McAlpine, Uhlar, Ward, Allen, Evans  
NAYS:  None  
ABSENT:  Gesund
It was moved by Mr. Allen to approve the modified agenda. Motion supported by Ms. Ward.

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

MOTION CARRIED

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APPROVAL OF MINUTES

It was moved by Mr. Allen to approve the minutes of November 9, 2020, as presented. Motion supported by Mr. Krug.

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

MOTION CARRIED

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NEW BUSINESS

1. The matter to excuse the absence of Board Member Maria Ward was tabled at the November 9, 2020 meeting. Ms. Ward sent correspondence related to her absence.

   Ms. McAlpine motioned to excuse the absence of Ms. Ward from the November 9, 2020 ZBA meeting. Motion supported by Mr. Allen.

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

2. 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.

   Board Member Krug asked to be excused from discussions and deliberations of the case, as he knows the applicant personally for many years. Mr. Krug left the meeting.
Community Development Director Schlutow summarized the request and the review letter that was included in the meeting packet. Director Schlutow reviewed the applicant’s request to place the generator in the side yard, as the property owner has future plans to install a deck in the rear yard. The proposed location would be next to the existing air conditioning unit within the fenced yard.

Director Schlutow also provided background on the interpretation of generators as accessory structures and as such, are to be restricted to the rear yard of the property. Director Schlutow also provided an update on the progress the Planning Commission is making on an ordinance amendment to provide clarity to homeowners on the placement of generators, air conditioning units, etc.

Chair Evans discussed splitting the requests and reviewing the interpretation and variance request separately. The Board agreed with that procedure.

Kevin Karsama, 2144 Thomas Ave., summarized his request to place the generator in the side yard.

Chair Evans opened the Public Hearing at 7:15pm and read instructions on how the public can participate.

No comments.

Chair Evans closed the Public Hearing at 7:18pm.

Mr. Allen noted that this has been discussed several times and that generators have been interpreted to be auxiliary structures and should be regulated to the back yard.

Ms. Ward asked if there were considerations to the size of the rear yard.

Mr. Hanchett noted agreement with the Board’s previous interpretations and pointed out some inconsistencies with the existing language.

Motion by Mr. Allen to uphold the interpretation by the zoning officer that generators are to regulated as accessory structures. Motion supported by Mr. Hanchett.

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

The Board has upheld the decision by zoning officer and the Building Department that generators are considered to be accessory structures and are restricted to the rear yard of the property. The applicant has requested a variance to install the generator in the side yard.

Director Schlutow provided a summary of the request for a variance.

Kevin Karsama summarized his request to place the generator in the rear yard in anticipation of installing a rear yard deck in the coming months.

The Board reviewed the request and asked Mr. Karsama about the potential to relocate the generator elsewhere in the rear of the property. The Board went over the standards of review with the applicant and the demonstration of a practical difficulty.

Chair Evans opened the Public Hearing at 7:37pm and read instruction on how the public can
participate.

Jose & Sharon Esguerra, neighbors across the street from Kevin Karsama. They noted that Mr. Karsama is a wonderful community member and they support his request. They also noted the need for a generator because of the above ground power lines and power outages due to extreme weather.

Chair Evans closed the Public Hearing at 7:41pm.

Mr. Allen went over the standards of review and noted that they had not been met, in this case.

Ms. McAlpine agreed with Mr. Allen and that there are no unique circumstances on the property and the use of the property will still continue as a single family dwelling.

Board members note that they are sympathetic with the request but it does not meet the threshold to grant the variance.

Motion by Ms. McAlpine to deny PBA-01-21, variance request at 2144 Thomas Ave to install a whole house generator in the side yard of the residential property, given that it does not meet the five standards of review. Motion supported by Mr. Allen.

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

Mr. Krug returned to the meeting at 7:47pm.

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

Chair Evans and Ms. McAlpine noted that they have enjoyed serving in their elected positions and would welcome the opportunity to continue.

Motion by Ms. McAlpine to nominate Paul Evans to continue to serve as Chair. Motion supported by Ms. Ward. Chair Evans accepts the nomination.

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

Motion by Mr. Uhlar to nominate Sue McAlpine to continue to serve as Vice Chair. Motion supported by Ms. Ward.

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

Chair Evans proposed five-minute recess before beginning discussions on the next agenda item. Meeting
recessed at 7:54pm and returned to session at 8:00pm.

4. RULES OF PROCEDURE

Director Schlutow summarized the memo provided to the Board, as well as the ordinance that was passed in early 2020 that made requirements for attendance, new member training, and continued education.

Board members discussed attendance policies for regular and alternate members, incorporating the standards of review prior to each case being heard, time limits for public comment, new member training, continued education.

Motion by Mr. Allen to postpone the discussion on Rules of Procedure. Motion supported by Ms. McAlpine.

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

OTHER BUSINESS
None

LIAISON COMMENTS
Councilmember Hennen provided an update on the marihuana licensing process. City Council passed the first reading to allow air conditioning units in the side yard and regulating generators to the rear yard. City Council also passed the first reading on projections. Councilmember Hennen also suggested a guiding document to assist applicants with the standards.

BOARD COMMENTS
None
PUBLIC COMMENTS

None.

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With no further business, Vice-Chair adjourned the meeting at 9:05pm.
MEMORANDUM

To: Berkley Zoning Board of Appeals
From: Erin Schlutow, Community Development Director
Subject: ZBA Rules of Procedure Annual Review
Date: March 1, 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 ZBA began discussions at the February 8, 2021 meeting, but was postponed until the March 8, 2021 meeting.

Based on previous discussion, below is a summary of the changes that were incorporated.

1. Section 2.1 – Membership
   The first sentence incorporates the ordinance that was adopted by City Council in 2020 that stipulates requirements for attendance, new member training, and continued education.

2. Section 2.1a – Attendance
   Language was added to note that alternates are encouraged and strongly recommended to attend all meetings. If an alternate is unable to attend, they should watch the recorded meeting and review the meeting minutes prior to the next scheduled meeting. The intent is to ensure that alternates are prepared to deliberate on a case that may have been postponed from the previous meeting.

3. Section 3.6 – Hearings
   The ZBA discussed the desire to have the standards of review read aloud to the public. It was debated when in the meeting this should take place and by whom. I have included it as the second point in the order of a public hearing, immediately after the case has been introduced by staff.

   It is noted that a designee shall read the review standards applicable to each case. It should be included with each case, given that the standards of review for a dimensional variance is different
from a use variance, which differs from an interpretation of the Zoning Ordinance. Therefore, the standards should be read for each case, even if it is repeated a few times in one evening.

The person reading the standards is not assigned. It can be included as part of the introduction by staff, without analysis as to whether the standard has been met. Or, it can be left open to a member of the Board. If so, a back-up should be included, in case that individual is not in attendance or serving as the Chair.

4. Section 3.6 – Hearings
The ZBA also discussed a time limit for each person during public comment. It has been modified to three (3) minutes per person. The ZBA has requested the option to modify the time limit by vote of the ZBA. That is included; as well as a note that the modification to the time limit shall apply to all other persons speaking on the case. This will prevent one person from getting extra time and the next individual is limited to three minutes. While there is the potential for extended public comment during the Hearing, it will also limit the Board’s want to exercise this option.

5. Section 3.13 – Order of Business
It was discussed and decided that the Public Comment section of the Order of Business shall remain at the end of the meeting.

There are other items that are highlighted in red that serve to clarify or provide more context the Rule.

We look forward to continuing the discussion on the Annual Review. 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, and are subject to the attendance, training, and continued education requirements in Section XXXXXXX. The ZBA shall consist of seven regular members and two alternate members 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 minimum 2-3 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 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 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. Alternates are strongly recommended and encouraged to attend all meetings and if unable, should watch the recorded meeting and review the meeting minutes prior to the next scheduled meeting.

b) **Absences.** Regular 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.

b) Members who are unable to attend must contact the Community Development Director prior the meeting and alert them to the cause of the absence.

c) **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.

d) **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

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

**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, 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.

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. The meeting dates for the next calendar year shall be reviewed and approved at the last regular meeting of the current year.
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 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.
- Designee will read the standards of review applicable to the case.
- 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 wishing to speak on a particular case must state his/her name and address for the record and may address the ZBA regarding the case, and shall not exceed three (3) minutes, 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 time limit may be modified by a vote by the ZBA, if deemed appropriate, and shall apply to all persons speaking during the Hearing.
- 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,
- 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 / Board Member 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.

Commented [ESS]: This has already been mentioned. Refer to above section instead of re-stating?
Rules of Procedure
Page 6

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 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.
Sample Motions

Motion to Approve

In the matter of the annual review of the Rules of Procedure, presented on March 8, 2021, I make a motion to APPROVE the Rules of Procedure, as presented.

Motion to Approve with Minor Changes

In the matter of the annual review of the Rules of Procedure, presented on March 8, 2021, I make a motion to APPROVE with MINOR CHANGES, the Rules of Procedure, as presented. The following changes shall be incorporated in the final document:

Motion to Postpone

In the matter of the annual review of the Rules of Procedure, presented on March 8, 2021, I make a motion to POSTPONE the Rules of Procedure, so as to allow staff to incorporate the changes that we have discussed and for the Board to review at the next scheduled meeting.
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 7:30 p.m. in the Council Chambers at the City Hall, 3338 Coolidge Highway, Berkley, Michigan 48072.

APPLICANT:
Name: FLAME FURNACE CO. Phone: 586-582-1700
Address: 2200 E. 11 MILE RD WARREN MI 48091

Relationship to Property (current tenant, representative, future tenant, future owner, owner)
JOHN + SARA GIARMARCO

PROPERTY OWNER:
Name: JOHN + SARA GIARMARCO Phone: 248-840-7350
Property Owner Address: 2650 ELLWOOD AVE BERKLEY MI 48072

PROPERTY DESCRIPTION:
Address: 2650 ELLWOOD AVE BERKLEY MI 48072
Sidwell (Tax I.D. #): Lot & Subdivision: ____________________________
Current Zoning Classification: ____________________________ Current Use of Property: RESIDENTIAL

VARIANCE REQUEST:
Description of Request: INSTALL NEW GENERATOR ON SIDE OF HOME - NEXT TO AIR CONDITIONER LOCATION
From the City of Berkley Code, Chapter Section 138-53
Has the City refused a permit for the request? ____________________________________________________________________________________

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

Due to Driveway, Decking, Width of Lot - A/C is on Side of Home

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

Adding a Natural Gas Generator

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

No Other Location For the Generator

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

The A/C is located in the same Location as Generator Now Located

The requested variance will not adversely impact the surrounding properties because

Is Not Sent From Street or By Neighbor - Privacy Fence

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

Location of Garage, Driveway, Existing Deck

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

Not Visible From the Street - Behind Existing Privacy Fence

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

The Generator is being added to the Home

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: Flame Furnace Rep.

Date: 01/11/2021

Office Use Only
Date Application Received: __________________ Fee: __________ Receipt Number: __________
Hearing Date: __________________ Case Number: __________________
Zoning Board of Appeals Decision: __________________
Briggs & Stratton Electrical Load Calculation:

Electrical load calculation per Section 3: STANDARD METHOD

Sqft of home = 2600 x 3 = 7,800WATT
Add 1500WATT Kitchen Circuits x 2 = 3,000WATT
Add 1500WATT Laundry Circuit x 1 = 1,500WATT
12KW Briggs & Stratton Generator = 10,800WATT

Calculation of Coverage:
3000WATT figured 100% per code = 3000WATT
9300WATT figured 35% per code = 3255WATT

Total Coverage Needed for Code Compliance = 6300WATT (12KW Generator Provides 10800WATT)

*Air Conditioner is Being Powered with a Power Management Module = 0WATT to the Whole House Load

FLAME Heating, Cooling, Plumbing, & Electrical

Troy McLaughlin
586-419-5559
As the owner of 4094 Catalpa Dr., Berkley Michigan, I approve of the location of the Generator at 2650 Ellwood Ave, Berkley Michigan, as proposed on the attached image.

Nate Sonnenberg
Nate Sonnenberg
2650 Ellwood Ave
Berkley, MI 48072

Generator to be located on side of the home next to existing A/C unit. Inside of privacy fence.

FQWX+FG Berkley, Michigan

Photos

https://www.google.com/maps/place/2650+Ellwood+Ave,+Berkley,+MI+48072/@42.4961847,-83.2013275,32m/data=!3m1!1e3!4m13!1m7!3m6!1s...
2650 Ellwood Ave
Berkley, MI 48072

Refer to attached manufacturer generator placement information pg. 11-16

Window

5' Minimum from Window

DISTANCE TBD
MORE THAN 18" TO MATCH
MINIMUM Installation GUIDELINES

12KW GEN.

EXHAUST TOWARDS FRONT OF UNIT
Generator Placement

Before installing the generator, consult with the homeowner and convey the following requirements, which must be satisfied before the installation is complete. There are two equally important safety concerns in regards to carbon monoxide poisoning and fire. There are also several general location guidelines that must all be met before the installation is considered complete.

⚠️ WARNING Running engine gives off carbon monoxide, an odorless, colorless, poison gas. Breathing carbon monoxide could result in death, serious injury, headache, fatigue, dizziness, vomiting, confusion, seizures, nausea or fainting.

- Operate this product ONLY outdoors in an area that will not accumulate deadly exhaust gas.
- Keep exhaust gas away from any windows, doors, ventilation intakes, soffit vents, crawl spaces, open garage doors or other openings that can allow exhaust gas to enter inside or be drawn into a potentially occupied building or structure.
- Carbon monoxide detector(s) MUST be installed and maintained indoors according to the manufacturer's instructions/recommendations. Smoke alarms cannot detect carbon monoxide gas.

Exhaust Side of the Generator

A Exhaust outlet side of weatherproof enclosure.

A Exa...
Placement of Standby Generator to REDUCE THE RISK OF CARBON MONOXIDE POISONING

The arrows in the figure below point to POTENTIAL points of entry for Carbon Monoxide Gas.

All fossil fuel burning equipment, such as standby generators, contains carbon monoxide (CO) gas in the engine exhaust. CO gas is odorless, colorless and tasteless and is unlikely to be noticed until a person is overcome. CO gas can kill you so it is required that the following is included as part of the installation:

- Install generator outdoors in an area that will not accumulate deadly exhaust gas.
- DO NOT install generator where exhaust gas could accumulate and enter inside or be drawn into a potentially occupied building or structure.
- By law it is required in many states to have a Carbon Monoxide (CO) detector in operating condition in your home. Carbon monoxide detector(s) MUST be installed and maintained indoors according to the manufacturer’s instructions/recommendations. A CO monitor is an electronic device that detects hazardous levels of CO. When there is a buildup of CO, the monitor will alert the occupants by flashing visual indicator light and alarm. Smoke alarms cannot detect CO gas.
- Your neighbor(s) home may be exposed to the engine exhaust from your standby generator and must be considered when installing your standby generator.

- Ensure exhaust gas is kept away from:
  - windows
  - doors
  - ventilation intakes
  - soffit vents
  - garage doors
  - crawl spaces or other openings that can allow exhaust gas to enter inside or be drawn into a potentially occupied building or structure.
- Direct the standby generator exhaust away from or parallel to the building or structure. DO NOT direct the generator exhaust towards a potentially occupied building, structure, windows, doors, ventilation intakes, soffit vents, crawl spaces, open garage doors or other openings where exhaust gas could accumulate and enter inside or be drawn into a potentially occupied building or structure.

- DO NOT place standby generator in any area where leaves or debris normally accumulates. Position standby generator in an area where winds will carry the exhaust gas away from any potentially occupied building or structure.
Placement of Standby Generator to REDUCE THE RISK OF FIRE

The National Fire Protection Association (NFPA) standard NFPA 37 establishes criteria for minimizing the hazard of fire during the installation and operation of stationary combustion engines. NFPA 37 limits the spacing of an enclosed generator from openings in walls, structures and combustible materials outside the enclosure.

The placement requirements provided are based on compliance to NFPA 37 2010 section 4.1.4 and a full-scale demonstration fire test. Details of compliance testing can be found in section National Fire Protection Association (NFPA) standard NFPA 37 requirements and testing.

Examples of standby generator locations to reduce the risk of fire:

Legend for Generator Locations to reduce the risk of fire:

A Standby weatherproof enclosure must be at least 5 ft (1.5 m) from windows, doors, any wall opening, shrubs or vegetation over 12 inches (30.5 cm) in height.

B Exhaust outlet side of weatherproof enclosure must have at least 5 ft (1.5 m) minimum clearance from any structure, shrubs, trees or any kind of vegetation.

C Standby weatherproof enclosure must have a minimum of 5 feet (1.5 m) overhead clearance from any structure, overhang or trees.

NOTICE DO NOT place weatherproof enclosure under a deck or other type of covered structure that may confine airflow.

WARNING Exhaust heat/gases could ignite combustibles or structures resulting in death or serious injury.

- Exhaust outlet side of weatherproof enclosure must have at least 5 ft (1.5 m) minimum clearance from any structure, shrubs, trees or any kind of vegetation.
- Standby generator weatherproof enclosure must be at least 5 ft (1.5 m) from windows, doors, any wall opening, shrubs or vegetation over 12 inches (30.5 cm) in height.
- Standby generator weatherproof enclosure must have a minimum of 5 ft (1.5 m) overhead clearance from any structure, overhang or trees.
- DO NOT place weatherproof enclosure under a deck or other type of structure that may confine airflow.
- USE ONLY flexible steel fuel line provided. Connect provided fuel line to generator, DO NOT use with or substitute any other flexible fuel line.
- Smoke detector(s) MUST be installed and maintained indoors according to the manufacturer's instructions/recommendations. Carbon monoxide alarms cannot detect smoke.
- DO NOT place weatherproof enclosure in manner other than shown in illustrations.

Vertical Clearances
Generator Installations

NOTICE The figures below show the minimum installation distances allowed to structures and items listed in legend.

A Standby weatherproof enclosure must be at least 5 ft (1.5 m) from windows, doors, any wall opening, shrubs or vegetation over 12 inches (30.5 cm) in height.

B Exhaust outlet side of weatherproof enclosure must have at least 5 ft (1.5 m) minimum clearance from any structure, shrubs, trees or any kind of vegetation.

C Standby weatherproof enclosure must have a minimum of 5 feet (1.5 m) overhead clearance from any structure, overhang or trees.

NOTICE DO NOT place weatherproof enclosure under a deck or other type of covered structure that may confine airflow.
Other General Location Guidelines

- Place the standby generator in a prepared location that is flat and has provisions for water drainage.
- Install the standby generator in a location where sump pump discharge, rain gutter down spouts, roof run-off, landscape irrigation, or water sprinklers will not flood the unit or spray the enclosure and enter any air inlet or outlet openings.
- Install the standby generator where it will not affect or obstruct any services (including covered, concealed and underground), such as telephone, electric, fuel (natural gas / LPG vapor), irrigation, air conditioning, cable, septic, sewer, well and so forth.
- Install the standby generator where leaves, grass, snow, etc will not obstruct air inlet and outlet openings. If prevailing winds will cause blowing or drifting, you may need to construct a windbreak to protect the unit.

National Fire Protection Association (NFPA) Standard NFPA 37 Requirements and Testing

Requirements:
NFPA 37 2010, section 4.1.4, Engines Located Outdoors. Engines, and their weatherproof housings if provided, that are installed outdoors shall be located at least 1.5m (5 ft) from openings in walls and at least 1.5 m (5 ft) from structures having combustible walls. A minimum separation shall not be required where either of the following conditions exist:

1. The adjacent wall of the structure has a fire resistance rating of at least 1 hour.
2. The weatherproof enclosure is constructed of noncombustible materials and it has been demonstrated that a fire within the enclosure will not ignite combustible materials outside the enclosure.

Annex A Explanatory Material
A.4.1.4 (2) Means of demonstrating compliance are by means of full-scale fire tests or by calculation procedures, such as those given in NFPA 555, Guide on Methods for Evaluating Potential for Room Flashover.
To comply with condition 2, the weatherproof enclosure has been constructed completely of non-combustible materials and full-scale fire tests have been conducted to demonstrate that a fire within the enclosure will not ignite combustible materials outside the enclosure.
MEMORANDUM

To: Berkley Zoning Board of Appeals

From: Erin Schlutow; Community Development Director

Subject: PBA-02-21; 2650 Ellwood Ave – Request for variance to install a generator in the side yard of residential dwelling

Date: February 28, 2021

APPLICANT: John & Sara Giarmarco

LOCATION: East side of Ellwood Ave, north of Catalpa Dr

PARCEL ID: # 25-18-152-036

REQUEST: The applicant is requesting a variance to install a generator in the side yard of the residential property.

REQUIRED: Section 138-73 of the Zoning Ordinance states: *Power generators and other exterior appliances shall be located in the rear yard at least six (6) feet from side property line.*

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 determined that generators are to be regulated as Accessory Structures and are prohibited from being erected in any yard, except a rear yard. In order to provide continuity in regulating the outdoor appliances and means to enforce the restriction, it needed to be codified in the Zoning Ordinance.

The Planning Commission spent several months discussing how generators, air conditioning units and other exterior appliances should be regulated on residential and commercial properties. At the January 26, 2021 meeting, the Planning Commission held the required public hearing and recommended approval of the ordinance to City Council. The City Council had the first reading at the February 1, 2021 meeting and the second reading and adoption at the March 1, 2021 meeting.

The newly adopted ordinance is included in your packet, for your reference.

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 inability to place the generator in the rear yard due to an existing deck and stormwater drainage, as well as the desire of the property owner to place the generator in the same area as the existing air conditioning unit, which is located in the side yard.

According to the owner, the rear yard of the property, behind the deck, is often wet. This is due to stormwater runoff directed to the subject property from adjacent parcels. The home at 2650 Ellwood was constructed in 2016 and the developer preserved the existing stormwater flow along the rear of the properties, in compliance with the existing grading ordinance at that time. The developer installed a yard basin in the rear yard to prevent seasonal flooding.

The 2016 plot plan that was submitted to the Building Department as part of the building permit for new home construction is included in your packet for reference. The arrows on the plan show the runoff from adjacent properties on Ellwood to the yard basin. This also includes the residences facing Catalpa, to the south of the subject property. The stormwater runoff along the rear yard of the Catalpa properties is the side yard for 2650 Ellwood, thus the stormwater from properties on Ellwood and Catalpa are directed towards the yard basin at 2650 Ellwood.

With the stormwater runoff from multiple nearby properties directed towards the yard basin, it is possible that the rear yard is often damp and may be unsuitable for a power generator.
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 lack of rear yard for the placement of the generator, as well as the stormwater runoff directed to the yard basin at the rear of the property. The rear deck was built in 2016, when the house was constructed, limiting space for exterior appliances.

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 prohibit the property owner from installing a generator on the property without having to redesign and reconfigure the entire rear yard.

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 within an enclosed fence and the adjacent properties are aware of the noise level produced by the location. Additionally, the residential neighbors to the south of the subject property are positioned so that the side yard on the subject property where the generator is proposed to be located would face the rear yard of one of the Catalpa residences. This allows for large separation distance for the adjacent neighbors from the generator unit.

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, the following conditions are recommended as part of the approval:

1. Routine testing of the generator may take place between 9:00am and 6:00pm, Monday through Friday.
2. The generator shall be screened from view on at least three sides. The existing fencing will satisfy this condition. The fence shall be maintained or alternate screening must be installed.
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
    saragiarmarco@gmail.com
LEGAL DESCRIPTION:
LOT 352, EXCEPTING THE NORTHERLY 3.50 FEET, AND THE NORTH 1/2 OF VACATED ALLEY ADJACENT TO SAME OF "BERKLEY SCHOOL PARK NO. 1", PART OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 18, TOWNSHIP 11 NORTH, RANGE 11 EAST, ROYAL OAK TOWNSHIP (NOW CITY OF BERKELEY), OAKLAND COUNTY, MICHIGAN, AS RECORDED IN LBR 35 OF PLATS, PAGE 10, OAKLAND COUNTY RECORDS.

NOTE: THE LOCATIONS OF EXISTING UNDERGROUND UTILITIES ARE SHOWN IN AN APPROXIMATE WAY ONLY AS DISCLOSED BY AVAILABLE UTILITY COMPANY RECORDS AND HAVE NOT BEEN INDEPENDENTLY VERIFIED BY THE COMPANY. NO GUARANTEE IS EITHER EXPRESSED OR IMPLIED AS TO THE COMPLETENESS OR ACCURACY THEREOF. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK, AND AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MAY BE OCCASIONED BY THE CONTRACTOR'S FAILURE TO EXACTLY LOCATE AND PROTECT ANY AND ALL UNDERGROUND UTILITIES. THE CONTRACTOR SHALL NOTIFY THE DESIGN ENGINEER IMMEDIATELY IF A CONFlict IS APPARENT.

CLIENT:
AB HOMES, LLC

PLOT PLAN

51111 W. Pontiac Trail
Wixom, MI 48393
Phone: (248) 668-0700
Fax: (248) 668-0701

GReENTech EnGiNeERING INc.
CIVIL ENGINEERS & LAND SURVEYORS

51111 W. Pontiac Trail
Wixom, MI 48393
Phone: (248) 668-0700
Fax: (248) 668-0701
AN ORDINANCE

Of the Council of the City of Berkley, Michigan
Adding Division 1.5 of Article III, General Provisions of Chapter 138, Zoning,
Of the City of Berkley Code of Ordinances
To Define and Regulate Exterior Appliances
And Provide Penalties for Violations

THE CITY OF BERKLEY ORDAINS:

SECTION 1: Add new Division 1.5, Exterior Appliances, to Article III, General Provisions, in Chapter 138 of the Berkley Code of Ordinances, as follows:

Division 1.5. Exterior Appliances

Sec. 138-71. Purpose

The purpose of this division is to promote the public health, safety and welfare by regulating the manner and location of exterior appliances on residential and commercial properties in the city. For purposes of this division, the following definitions shall apply.

Sec. 138-72. - Definitions

Air Conditioning Unit: The central air conditioning system located on the exterior of a building including a compressor, fan, condenser coil, evaporator coil and a refrigerant.

Power Generator: A stationary device, such as a reciprocating internal combustion engine or turbine that serves solely as a secondary source of mechanical or electrical power whenever the primary energy supply is disrupted or discontinued during power outages or natural disasters. A power generator may operate during power interruptions or during regularly scheduled testing.

Exterior Appliance: Mechanical equipment located on the exterior of a residential or commercial building. Such types of equipment shall include air conditioning condenser unit, power generators, and any noise producing mechanical system components located at the exterior of a building. Exterior appliances specific to swimming pools are subject to the regulations in Section 138-59.

Sec. 138-73. - Location

Exterior appliances are prohibited from being located in the front yard or within a recorded easement or right-of-way that would prohibit, hinder or disrupt utilities, drainage, access, etc.

(a) Residential.

1. Power Generators and other exterior appliances shall be located in the rear yard at least six (6) feet from side property line.

2. Air Conditioning Units may be permitted in the side yard under the following conditions:
   a. The unit must be at least 18 inches from side property line;
b. The unit must be at least 12 feet from adjacent dwelling;
c. The unit must be screened on at least three (3) sides by opaque fencing or landscaping, measuring at least four (4) feet in height from grade.
   1. The principal structure may be considered one side of screening.
   2. Screening must be provided from street view and facing the closest adjacent property.
   3. Chain link fencing is not permissible as a screening material for exterior appliances.

(b) Nonresidential.
   1. At Grade.
      a. Exterior appliances shall be at least five (5) feet from a property line.
      b. Power Generators shall be enclosed in a sound-attenuating enclosure, if located adjacent to residential property.
      c. Exterior appliances shall be screened on at least three (3) sides with opaque fencing or landscaping, measured at least four (4) feet in height from grade.
         1. The principal structure may be considered one side of screening.
         2. Screening must be provided from street view and facing the closest adjacent property.
         3. Chain link fencing is not permissible as a screening material for exterior appliances.

   2. Rooftop.
      a. Exterior appliances located on the rooftop of commercial buildings shall be screened so as not to be visible from street level. Screening materials shall be consistent with the color, materials, design and aesthetic of the building.

   3. The Planning Commission may modify location of the exterior appliances on non-residential properties during site plan review, if the applicant can demonstrate an alternative location does not negatively impact adjacent properties, pedestrian or vehicular traffic.

Sec. 138-74. – Restrictions.

Generator testing shall be permitted Monday – Friday, 9:00am – 6:00pm.

Sec. 138-75. – Non-Conforming Exterior Appliances.

Non-conforming exterior appliances include appliances that were lawfully installed but are no longer in compliance with the provisions of this chapter.

Non-conforming exterior appliances may be continued, maintained and replaced provided there is no increase or enlargement of the area occupied or devoted to such use.

If the structure that is served by a non-conforming exterior appliance is damaged or partially destroyed by less than 50 percent of its market value, the exterior appliance may be restored and its previous use continued. If the structure that is served by a non-conforming exterior appliance is damaged or partially destroyed by 50 percent or more than 50 percent of its market value, then any restoration or new construction must comply with all current building and zoning codes.
Sec. 138-76. – Permits required.

Permits are required for the installation of exterior appliances.

SECTION 2: Severability Clause

Should any word, phrase, sentence, paragraph, or section of this Ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 3: Penalty

All violations of this ordinance shall be municipal civil infractions and upon a determination of responsibility therefore shall be punishable by a civil find or not more than $500, and/or such other sanctions and remedies as prescribed in Article IX of Chapter 82 of the Code of Ordinances.

SECTION 4: Effective Date

This Ordinance shall become effective 30 days following the date of adoption.

SECTION 5: Publication

The City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1992, as amended, and Section 6.5 of the Berkley City Charter.

Daniel J. Terbrack
Mayor

Attest:

Victoria Mitchell
City Clerk
Sample Motions

Motion to Approve

In the matter of PBA-02-21, the request for a variance to install a house generator in the side yard of residential property, located at 2650 Ellwood Ave, parcel #25-18-152-036, 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 previous 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-02-21, the request for a variance to install a house generator in the side yard of residential property, located at 2650 Ellwood Ave, parcel #25-18-152-036, 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-02-21, the request for a variance to install a house generator in the side yard of residential property, located at 2650 Ellwood Ave, parcel #25-18-152-036, 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-02-21, the request for a variance to install a whole house generator in the side yard of residential property, located at 2650 Ellwood Ave, parcel #25-18-152-036, zoned Single Family Residential, to be DENIED due to the following findings of fact that the five standards of review have not been met:
ZONING BOARD OF APPEALS APPLICATION

The Zoning Board of Appeals (ZBA) meets the second Monday of the month. The meetings are held in the Council Chambers at City Hall, 3338 Coolidge Highway, Berkley, Michigan 48072. Fee: $300.

The ZBA shall hear requests for use and dimensional variances, appeals of administrative decisions, interpretation of zoning map and text, and interpretations of commercial message for proposed murals.

**Please be advised:** The ZBA may grant a variance where undue hardship or practical difficulties for the property exist. A greater return (bigger structure, more profit, etc.) is not sufficient grounds for a variance. The ZBA does not have the power to legislate or create new regulations. The Board's purpose is to provide some relief from the Zoning Ordinance depending on the unique circumstances of the property.

APPLICANT INFORMATION

Name: Troy Faik  Phone: 248-961-5594

Address: 1919 Robina Avenue, Berkley, MI 48072

Email: troyfaik@icloud.com

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

Current Owner

PROPERTY OWNER INFORMATION (if different from Applicant)

Name: Phone:

Address:

Email:

PROPERTY DESCRIPTION

Address: 1919 Robina Avenue, Berkley, MI 48072

Parcel #: 25-18-454-028  Zoning Classification: R-1D

Current Use of Property: Residential
NATURE OF REQUEST

Check which applies:

☑ Variance from Zoning Ordinance
☐ Interpretation of Zoning Ordinance
☐ Administrative Review / Appeal of Decision
☐ Determination of Commercial Message of Mural / Work of Art

Description of Request: Splitting of existing parcel

Has the City denied a permit for the proposed work? N/A

Please fill out ONLY the section below that applies to your request.

I. VARIANCE FROM ZONING ORDINANCE

Please provide a written response to each question below that relates to the variance that is being requested. DO NOT COMPLETE BOTH SECTIONS.

A. Use Variance

The Zoning Board of Appeals may grant a use variance (i.e. use of the land not permitted in a particular district) upon finding that an undue hardship exists.

Current Use of Property:

Requested Use of Property:

1. Explain how the building or land cannot be reasonably used for any of the uses permitted by right or by special land use permit in the current zoning district.
2. Explain how the need for the variance is due to unique circumstances or physical conditions of the property.

3. Explain how the proposed use will not alter the essential character of the neighborhood.

4. Explain how the need for the variance is not the result of actions of the property owner or previous property owners.

B. Dimensional Variance (Non-Use Variance)
The Zoning Board of Appeals may grant a dimensional variance (i.e. height, setback, lot coverage, etc) upon finding that undue hardship or practical difficulty exists.

1. Explain how the need for the variance is due to unique circumstances of physical conditions of the property.

   The needed variance is for parcel 2, with the existing home. Parcel 2 will be 4,384 Sq. Ft., 16 Sq. Ft. less of the 4,400 Sq. Ft. minimum lot requirement. 16 Sq.Ft would be equivalent to a 1-3/4" strip between the proposed split line.

2. Explain how 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 because the property line in the back is at an angle going inward towards the south property line cutting it short of 110' and making it 109.6'.

3. Explain how 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 would prevent the property owner from splitting the existing parcel into 2 parcels. This will prevent the current owner from building a residence on the empty parcel for their new future home.

4. Explain how the requested variance is the minimum variance necessary to do substantial justice to applicant as well as other property owners.

The requested variance of lot size is what is needed to split the existing parcel into 2 parcels. The land meets all other criteria.

5. Explain how the requested variance will not adversely impact the surrounding properties.

The requested variance will not impact the surrounding properties because the neighborhood as it exists has a home/structure per lot. This would not change the nature of the neighborhood and in fact would make it consistent in format with development of the immediate and distant neighboring 40' wide lots/homes.

II. INTERPRETATION OF ZONING ORDINANCE

Provide Section numbers of Zoning Ordinance to be interpreted: 138-526
Please describe the request and what needs to be clarified or interpreted by the ZBA.

III. ADMINISTRATIVE REVIEW / APPEAL OF DECISION

Describe the circumstances of each case and provide the minutes of the public meeting noting the denial to be appealed.

IV. DETERMINATION OF COMMERCIAL MESSAGE (MURAL/WORK OF ART)
Describe the proposed mural/work of art. Applicant should include renderings of the proposed design. The ZBA shall determine if the proposed work contains a commercial message.

** Applicant and artist must provide signed Mural Installation and Maintenance Agreement prior to the public meeting.

V. ADDITIONAL REQUIRED DOCUMENTS

Include 15 copies of a survey, plot plan or site plan with this application that shows the subject property complete with boundary lines and dimensions, existing building locations, all proposed buildings, easements, utilities, and any site improvements/changes. Setbacks, height of structures, lot coverage, etc. should also be included, if applicable.

A PDF file of the application and supporting documents must also be submitted at the time of application.

VI. PUBLIC HEARING NOTICE SIGNS

As part of the public hearing notification requirement, the City of Berkley shall require the placement of temporary Public Hearing signs to be installed on the subject property that is seeking a request from the Zoning Board of Appeals. A temporary sign shall be installed facing the roadway. If located on a corner lot, a temporary Public Hearing sign shall be placed on each street frontage

The temporary Public Hearing sign(s) shall be installed by city staff at least seven (7) days prior to the public meeting and shall be removed the day following the meeting.

The property owner and applicant are not responsible for the maintenance or upkeep of the sign(s).
The property owner and applicant shall alert City staff if the sign(s) is/are damaged to schedule a replacement.

VII. APPLICANT AND PROPERTY OWNER ENDORSEMENT (Please initial each section below)

TF All information contained herein and attached is true and accurate to the best of my knowledge. I acknowledge that the Zoning Board of Appeals will not consider my application or request unless all the information in this application and the Zoning Ordinance have been submitted. I further acknowledge that the City of Berkley and its employees shall not be held liable for any claims that may arise as a result of acceptance, processing, or approval of this application.

TF Additionally, I understand and give permission for the City of Berkley to place temporary public hearing signs on the property, as noted above.

TF Further, I understand and give permission for members of the Zoning Board of Appeals or City staff to go on the property for which the above referenced Zoning Board of Appeals application is proposed for purpose of verifying information provided on the submitted application.

Troy Faik
Applicant Name (print)  Applicant Signature  2/12/21  Date

Applicant Name (print)  Applicant Signature  Date

Troy Faik
Property Owner Name (print)  Property Owner Signature  2/12/21  Date
CERTIFICATE OF SURVEY

I HEREBY CERTIFY THAT I HAVE SURVEYED THE PROPERTY HEREBIN DESCRIBED AND THAT I HAVE PLACED MARKER IRONS AT THE CORNERS OF THE PARCEL OR AS INDICATED IN THE ABOVE SKETCH AND THAT I HAVE COMPLIED WITH THE SURVEY REQUIREMENTS OF PUBLIC ACT 132 OF 1970, AS AMENDED.

[Signature]

MARK A. OWENS, PLS
LAND SURVEYING LLC
33732 SEBASTIAN LN, DR.
STERLING HEIGHTS, MI 48312
Tel. (586) 795-8676

DRAWN: 05/26/2020
JOB No.: 1118-05262020
SHEET: 1 of 2

SCALE: 1" = 30'
LEGAL DESCRIPTION

PARENT PARCEL
LOT 225 "ASSESOR'S REPLAT OF MEADOW FARMS" BEING A SUBDIVISION OF PART OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 18, TOWN 1 NORTH, RANGE 11 EAST, CITY OF BERKLEY, OAKLAND COUNTY, MICHIGAN, AS RECORDED IN LIBER 49 OF PLATS, ON PAGE 18, OAKLAND COUNTY RECORDS.
CONTAINING 8,776.38 SQUARE FEET OR 0.20 ACRES OF LAND.

PARCEL 1
BEGINNING AT THE NORTH EAST CORNER OF LOT 225 OF "ASSESOR'S REPLAT OF MEADOW FARMS" BEING A SUBDIVISION OF PART OF THE W 1/2 OF THE SOUTHEAST 1/4 OF SECTION 18, TOWN 1 NORTH, RANGE 11 EAST, CITY OF BERKLEY, OAKLAND COUNTY, MICHIGAN, AS RECORDED IN LIBER 49 OF PLATS, PAGE 18, OAKLAND COUNTY RECORDS;
THEN CE S01°06'00"E ALONG THE WESTERLY LINE OF ROBINA AVENUE (50 FEET WIDE), 40.00';
THEN CE N88°54'42"W, 83.20 FEET;
THEN CE N00°36'36"E, 0.77 FEET;
THEN CE N89°30'25"W, 26.60 FEET;
THEN CE N01°23'03"W, 39.52 FEET;
THEN CE S88°53'45"E, 110.00 FEET TO THE POINT OF BEGINNING.
CONTAINING 4,377.45 SQ. FT. OR 0.10 ACRE OF LAND AND SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

PARCEL 2
BEGINNING AT A POINT S01°06'00"E 40.00 FEET FROM THE NORTH EAST CORNER OF LOT 225 OF "ASSESOR'S REPLAT OF MEADOW FARMS" BEING A SUBDIVISION OF PART OF THE W 1/2 OF THE SOUTHEAST 1/4 OF SECTION 18, TOWN 1 NORTH, RANGE 11 EAST, CITY OF BERKLEY, OAKLAND COUNTY, MICHIGAN, AS RECORDED IN LIBER 49 OF PLATS, PAGE 18, OAKLAND COUNTY RECORDS;
THEN CE S01°06'00"E ALONG THE WESTERLY LINE OF ROBINA AVENUE (50 FEET WIDE), 40.00';
THEN CE N88°53'45"W, 109.60 FEET;
THEN CE N01°23'03"W, 40.48 FEET;
THEN CE S89°30'25"E, 26.60 FEET;
THEN CE N00°36'36"W, 0.77 FEET;
THEN CE S88°54'42"E, 83.20 FEET TO THE POINT OF BEGINNING.
CONTAINING 4,400.00 SQ. FT. OR 0.10 ACRE OF LAND AND SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.
MEMORANDUM

To: Berkley Zoning Board of Appeals

From: Erin Schlutow; Community Development Director

Subject: PBA-03-21; 1919 Robina – Request for variance of minimum lot size of residential property in the R-1D, Single Family Residential District

Date: February 28, 2021

APPLICANT: Troy Faik

LOCATION: West side of Robina, north of 11 Mile Rd.

PARCEL ID: # 25-18-454-028

REQUEST: The applicant is requesting a 22.55 sq. ft. variance for the minimum lot size for proposed parcel, subject to lot split.

REQUIRED: The Schedule of Regulations in Section 138-526 of the Zoning Ordinance includes regulations for minimum lot size for properties located in the R-1D District. The minimum lot size is 4,400 sq. ft.

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

Oakland County records show that the property was previously two separate parcels that were combined in 2000. The proposed lot split will again create two separate parcels, Parcel 1 and Parcel 2, as shown on the supporting documents provided.

Proposed Parcel 2 (with the house and garage) will meet the minimum lot size for the R-1D District (4,400 sq. ft.) and the existing house and garage will conform to all setbacks. Proposed Parcel 1 will require a 22.55 sq. ft. minimum lot size variance in order to be split, as it does not meet the minimum lot size for the district. Proposed Parcel 1 is 4,377.45 sq. ft.

The applicant worked with City staff to modify the request in order to split the properties and minimize the requested variances and prohibit the creation of non-conformities.

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 split the property in hopes to sell the split parcel and continue residing in the existing single-family dwelling.

The intersection of rear and side lot lines of the existing parcel is not at a 90-degree angle, but is angled slightly. While it is not enough to notice while walking the property, the angle does reduce the overall lot area so that a property split cannot be done wherein both parcels would conform to the Zoning Ordinance.

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 owner’s desire to split the parcel. However, it was not the action of the property owner to combine the lot, as that was the actions of previous property owners several years back.

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 not prevent the property owner from utilizing the existing property as single family residential, as that is the current use of the property. Compliance with the ordinance will prevent the owner from splitting the property and allowing a new development on the new parcel.
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 property owner worked with city staff prior to the public hearing to ensure that the least number of variances were requested, by ensuring that one parcel meets the minimum lot size and the existing dwelling and accessory structure meets the setback requirements of the District.

The applicant is not requesting any additional variances for the potential new dwelling at the proposed Parcel 1, and has been informed that any new dwelling shall meet all requirements for setbacks, height, lot coverage, etc. It is the responsibility of the applicant to disclose that to the future buyer of the property, so as to prohibit a return to the ZBA.

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

The requested variance will allow the opportunity for a new single-family dwelling on the new parcel. This will impact the adjacent properties for a short period of time while construction is being done on the site.

Many of the lots on the west side of Robina are 80-ft wide lots, same as the current width of the subject property. However, there are several parcels across Robina that are 43-ft. wide lots. The proposed lot split with a potential new dwelling would not be out of character for the neighborhood.

**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 me.

Thank you.

Cc: Matthew Baumgarten, City Manager  
    Victoria Mitchell, City Clerk  
    John Staran, City Attorney  
    Kim Anderson, Building Clerk  
    troyfaik@icloud.com
Sample Motions

Motion to Approve

In the matter of PBA-03-21, the request for a variance of minimum lot size due to a proposed lot split, located at 1919 Robina, parcel #25-18-454-028, 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-03-21, the request for a variance of minimum lot size due to a proposed lot split, located at 1919 Robina, parcel #25-18-454-028, 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-03-21, the request for a variance of minimum lot size due to a proposed lot split, located at 1919 Robina, parcel #25-18-454-028, 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-03-21, the request for a variance of minimum lot size due to a proposed lot split, located at 1919 Robina, parcel #25-18-454-028, zoned Single Family Residential, to be DENIED due to the following findings of fact that the five standards of review have not been met: