PUBLIC NOTICE
City of Berkley, Michigan
Regular Meeting of the Zoning Board of Appeals
Monday, February 14, 2022
7:00 PM – City Hall
Council Chambers
Information: (248) 658-3320

CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL
CONFIRMATION OF A QUORUM
APPROVAL OF AGENDA
APPROVAL OF MINUTES – Meeting Minutes of January 11, 2022

OLD BUSINESS

1. APPLICATION PBA-11-21; 1490 Franklin – Appeal, interpretation and/or use variance as to whether the definition of a home occupation includes a Federally Licensed Firearms Dealer.

Steven Nowak is requesting an appeal, interpretation and/or use variance at 1490 Franklin Rd, Parcel # 04-25-17-257-009, in regard as to whether the definition of a home occupation includes a Federally Licensed Firearms Dealer.

NEW BUSINESS

2. APPLICATION PBA-01-22; 2740 Gardner – Dimensional variance requests to construct an addition on a non-conforming structure that encroaches into the required minimum 15 ft. separation distance and encroaches into the required 35 ft. rear yard setback.

Michael Ely, on behalf of Sam Dabish, 2740 Gardner Ave, Parcel #25-18-253-099, east side of Gardner Avenue, between Catalpa Drive and Wiltshire Road, is requesting two (2) dimensional variances: 1) to construct an addition on a non-conforming structure that encroaches into the required minimum 15 ft. separation distance; and, 2) to construct an addition that will encroach into the required 35 ft. rear yard setback.

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.

You can watch the meeting on Channel 10 for both Comcast and WOW, at http://www.youtube.com/CityofBerkley or http://www.berkleymich.org/livestream.
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 J. Gesund
Sue McAlpine
Joseph V. Krug
Erick McDonald

ABSENT:

ALSO, PRESENT:
Steven Nowak, 1490 Franklin
Evan Bouren, 13691 Winchester St, Oak Park
Rocky Huddleston, 3651 Royal
Megan Masson-Minock, Interim Community Development Director

Motion by Mr. Wilner to excuse the absences of Board Member Ward, and Board Member McDonald for the December 13, 2021 meeting. Motion supported by Mr. Krug.

AYES: Gesund, Krug, McAlpine, McDonald, Uhlar, Ward, Wilner
NAYS: NONE
ABSENT: NONE

MOTION CARRIED

APPROVAL OF AGENDA
Motioned to approve the agenda by Mr. Gesund and supported by Ms. Ward with the amendments of:
1. Changing the date to 2022
2. Item #2 under old business on the last meeting’s agenda and was a mistake and was not removed from the last meeting agenda.
3. Changing the spelling on Absences on the item Excuse of Absences

AYES: Gesund, Krug, McAlpine, McDonald, Uhlar, Ward, Wilner
NAYS: NONE
ABSENT: NONE

MOTION CARRIED

APPROVAL OF MINUTES
Motion to approve the minutes of December 13, 2021 by Mr. Gesund and supported by Mr. Krug with the revision of:
1. In the minutes, Sue McAlpine is referred to as Chair and officially she is Vice-Chair.

AYES: Gesund, Krug, McAlpine, McDonald, Uhlar, Wilner
NAYES: NONE
ABSTAINED: Ward
ABSENT: NONE

MOTIONED CARRIED
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OLD BUSINESS

1. **ELECTIONS**

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

   Vice-Chair McAlpine officially resigned to allow nominations and election of officers.

   *Nominations:*
   Motioned by Mr. Gesund with support by Ms. Ward.
   Chair: Sue McAlpine
   Vice-Chair: Miles Uhlar

   **Chair**
   
   AYES: Gesund, Krug, McDonald, Uhlar, Ward, Wilner
   NAYS: NONE
   ABSENT: NONE

   **MOTION CARRIED**

   **Vice-Chair**
   
   AYES: Gesund, Krug, McAlpine, McDonald, Ward, Wilner
   NAYS: NONE
   ABSENT: NONE

   **MOTION CARRIED**

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NEW BUSINESS

1. **APPLICATION PBA-10-21: 3679 Royal** - Dimensional variance request for a five (5) foot, six (6) inch variance from the required fifteen (15) feet between dwellings.

   **Petitioner:**
   Patrick Raye
   555 Old Woodward
   Birmingham, MI 48009

   Interim Community Development Director Masson-Minock summarized the history of the address and lot split. She also summarized the building permit history on this lot. Interim Community Development Director Masson-Minock summarized the review letter and read the five standards of review by which the ZBA would discuss the dimensional variance request.
Mr. Raye stated that to build a house 20 feet in width on the property, which is what strict adherence to the ordinance would require, is unreasonable. He summarizes what has been changed on this lot to conform to the Zoning Ordinance as much as possible. He reiterated that the City has allowed houses of this size and setback before. Regarding the concerns expressed from the Fire Marshall, he stated that the walls of the new house would have fire rated drywall installed.

**Homeowner:**
Kevin Peree
319 West Marshall
Ferndale MI

Landowner Kevin Peree stated that they would be willing to do anything to make this work. He stated that working with Hillan Homes has been a great experience, and summarized that a 25-foot wide house in Berkley would be a perfect fit for his wife and himself as first-time homebuyers.

Chair McAlpine opened the floor for the Board to ask questions.

Board members asked about the previously submitted plans that were withdrawn, where no variance had been needed. Board Members also expressed concern that granting this variance would create a precedent for future houses.

Petitioner Mr. Raye stated other options that were considered for this specific lot.

The Board mentioned correspondence with a property dispute that could impact the voting on this until the dispute is resolved. The Board discussed that the house next door may or may not have a fire rated wall, which is an issue to surrounding neighborhoods.

Co-Chair Uhlar reiterated that the lot split was legal, but the Board should not grant the variance when the circumstances presented not meeting the criteria.

Chair McAlpine read correspondence on this particular matter:

- Letter from Julia and Bruce Wilhoff who are residents at 3713 Oakshire who wrote in opposition to the variance.

- Letter from Alan Cowie who is a resident at 3678 Royal who wrote in opposition to the variance.

**Correspondence from Pete Kelley Fire Inspector:**

From a position of a life and property safety standpoint is to absolutely maintain the required separation. Allowing any reduction in the separation requirement increases the likelihood of a structure fire involving multiple buildings. As is not uncommon in some nearby municipalities, it is very rare here in significant part due to the distance between structures. The present case you indicate here a three-inch non-conformity involving a lot split from the past. This is consequential compared to us allowing a new hazard to be created. If alternatives such as non-combustible construction or fire suppression were offered, I might be inclined to reconsider, but to create a hazard when none exists would be negligent and unconscionable.

The Petitioner, Mr. Raye, formally asked for this to be tabled by the Board.
Chair McAlpine opened the floor for public hearing at 7:25pm

Janice Zelay, 3675 Royal: Stated that she is the resident owner of 3675 Royal since 1993. The properties for this building construction plan are 3679 Royal and 3689 Royal. 3689 Royal is adjacent to her property to the north and 3679 is immediately adjacent to her property. She stated that she has been protesting this lot split since it was first requested. She requested the Board to stay this proceeding until her adverse possession claim is resolved in Oakland County Circuit Court.

Rocky Huddleston, 3651 Royal: Stated that he agrees with the Fire Inspector. It would be a shame if something happened and had a disastrous fire. He was against this proposal.

Chair McAlpine closed the floor for public hearing at 7:40pm

Chair McAlpine asked the board to entertain the petitioner’s request to table this motion.

Motion by Mr. Krug to table APPLICATION PBA-10-21; 3679 Royal - Dimensional variance request for a five (5) foot, six (6) inch variance from the required fifteen (15) feet between dwellings.

Motion supported by Mr. Gesund.

AYES: Gesund, Krug, McAlpine, McDonald, Ward, Wilner
NAYS: Uhlar
ABSENT: NONE

MOTION CARRIED

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2. APPLICATION PBA-11-21; 1490 Franklin - Appeal, interpretation and/or use variance as to whether the definition of a home occupation includes a Federally Firearms Dealer.

Interim Community Development Director Masson-Minock gave an explanation and summarization of the appeal letter. She then reviewed the history of this site in city records. She stated that the board’s first order of business is to decide on the appeal of the decision made upon by the City Manager on November 10th, stating that since the business includes in-person purchase and transfer of ownership that the Wolverine State Armory (WSA) is not permitted as a home occupation. She stated that the Zoning Board of Appeals can affirm, reverse, or modify the decision of the City Manager, who was acting as the zoning officer.

Chair McAlpine wanted to clarify that they will determine if the appeal should be granted based upon the interpretation of what a home business as currently defined in the Zoning Ordinance.

Co-Chair Uhlar questioned the lack of clarity in terms of standards used by the City Manager in making his decision in the letter dated November 10.

**Petitioner:**
Steve Nowak
1490 Franklin
Mr. Nowak gave a history of the business at 1490 Franklin. He has included in the application for appeal his initial Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) application. He summarized how he felt that his home-based business complies with the Zoning Ordinance. He reiterated that his first application was denied by the City for a manufacturing Type 7 license, but was granted approval with a change to Type 1.

Co-Chair Uhlar asked for clarification on how this business works, an explanation of a Third-Party Purchase and how the initial application was denied.

Petitioner, Mr. Nowak, described the process of how guns are stored and kept while waiting for paperwork to clear. He gets paid for the paperwork, not the actual item itself.

Mr. Wilner asked more questions pertaining to the stock and commodity on the premises, and discussed if trade was present on the premises.

Ms. Ward asked questions pertaining to the application for the Federal Firearms License.

Mr. Gesund asked about the chain of custody when the items are shipped in and out of the premises. Mr. Nowak stated that someone has to be a licensee and age over 21 to receive a package with a firearm.

Mr. McDonald asked about the nature of business, with paperwork working, compliance with federal law, and working with the person who has purchased the firearm. He also asked for clarification on whether manufacturing of ammunition was allowed under the current Type 1 license.

Mr. Nowak said they were considering manufacturing of actual firearms, prior to their Type 1 approval which does not allow manufacturing of ammunition.

Co-Chair Uhlar stated an anonymous complaint that was sent from ATF, about heavy foot traffic on the premises. Mr. Nowak addressed it as a false accusation, and at most there is maybe one car a day in his driveway. He also stated that the firearms enter and leave the premise boxed and unmarked.

Chair McAlpine stated that she looked up the business on social media and asked questions pertaining to the facts present on the pages.

Business/Co-Owner
Evan Bouren
13691 Winchester St
Oak Park, MI 48237

Mr. Bouren addressed Chair McAlpine concerns when building the website and the limitations that were presented.

Ms. Ward asked about more clarification on a specific raffle advertised on the social media page of Wolverine State Armory. She also expressed her concern about a gun shop in the neighborhood.
Mr. Nowak stated that it is done in the industry to create followers. Mr. Nowak clarified that they are licensed dealers and are not a gun shop.

Mr. McDonald asked if this permit can be transferred to the business partners house in Oak Park. Mr. Bouren stated that their type of business is expressly forbidden as a home-based business in Oak Park.

Chair Alpine opened the floor up for public comment.

Mary Glynn, 1350 Franklin: Stated that the homeowners seeking this variance are stellar neighbors. They are utterly innocuous, have never observed any disruptive behavior, or visitors or noises. She is fully in favor in overturning the City Manager’s decision and, in a broader context, asked the Board to think long and hard about granting the variance, before taking a course of action possible leading with downstream ripple effects, which could impact any other Berkley residents with home-based businesses.

Ryan Cocciolone, 1474 Franklin: Stated that his house is immediately east to 1490 Franklin. He agreed with the prior statement on how great the neighbors are. He is aware of the business and the nature of the business. He has been reassured and has no reason to disbelieve anything that Mr. Nowak told him previously about the nature of the business. His biggest concern is the Amazon deliveries that go up and down the street. He has never had an issue with cars going in and out of the drive. He also touched on some implications that are far-reaching when talking about the definition of what a home-based business is, so to be careful about precedent.

Michael Day, 1692 Wiltshire: He affirmed the same thing as the last two people giving public comments. In living there for 11 years, he had not noticed an issue with traffic. He stated he has used his service and outlined the process.

Chair McAlpine read correspondence on this particular matter:

Letter from Michael and Megan Kennedy 1406 Franklin who wrote in support of the City’s decision and opposition to the use variance.

Letter from Tom Rolewicz 1350 Franklin who wrote that he did not have any objections to the city granting Mr. Nowak’s variance for his home business.

Letter from Brian Eggers 1335 Franklin who wrote in support of the City’s decision.

Letter from Rosalynn Newberg 1455 Franklin who wrote in opposition to the use variance.

Senior officers at the Sons of American Legion Post 374 - Dale Hagland Senior Vice Commander, Sean VanWormer Financial Officer Judge Advocate – who wrote in support for Mr. Nowak’s appeal.

Letter from James and Angela Tiura 1490 Dorothea who wrote in support of the city’s decision and opposition to the use variance.

Letter from Jim and Nancy McChesney 1491 Wiltshire who wrote in opposition to the use variance.

Unknown, 1440 Franklin wrote in opposition to the use variance.
Chair Alpine closed the floor up for public comment.

Chair McAlpine opened discussion for ZBA members.

Chair McAlpine stated that the Board is affirming, reversing or modifying Mr. Baumgarten’s decision. The Board is being asked to interpret something that has already been decided.

Mr. Wilner wanted clarification if the applicant was a renter or owner of the residence. Mr. Nowak stated that he is the owner of the house. The first year he was leased the home, and then purchased the house.

Mr. Gesund stated that he does not see this as a retail outlet. They are doing the paperwork. They are more mostly a licensing and storage facility for somebody else’s sale. He was not sure how that violates the ordinance.

Mr. Wilner stated that they are not acting as a retail business. The part that stands out is that the Zoning Ordinance states that no stock or commodities sold should be kept on the premises, but, in this case, they are on the premises.

Mr. Krug asked for clarification on the principles of Wolverine State Armory owning or not owning the guns being transported there, holding until the paperwork is processed properly. He stated what he thinks holding stock is, which in his opinion is not happening here.

Co-Chair Uhlar stated that he finds the applicant very credible, with his statements to the Board. He also discussed the false anonymous complaint, when Berkley has approved this before. He discussed that this seems like somebody had a problem with guns and not the actual applicant. He does not think Mr. Baumgarten’s letter provides us a sufficient factual basis to support his decision, especially when the letter states that the decision based on conversations between the City Manager and the applicant, which that applicant has stated did not take place.

Mr. McDonald agreed that this is a commodity that is just being transferred and the paperwork is being handled. When it comes to the anonymous letter about foot traffic, again, there is nothing in the Zoning Ordinance pertaining to that either. He recommended to Mr. Nowak to clean up the website, making it specific for transferring guns.

Chair McAlpine read the description on the Wolverine State Armory website. She clarified that it does say transfer service. She also read from the website that “we can also special order almost any firearm or NFA item on the market for direct sale.”

The Board discussed how the decision can be modified, suggestions on the modification and whether and how they would keep up with the monitoring of social media. Also, the Board discussed where information would be kept and how it would be used.

Chair McAlpine questioned whether the home occupation of the particular business of Wolverine State Armory is retail use and specific verbiage on the ATF and their requirements. She clarified that the Board must make a decision within 90 days of tonight's public hearing.

Interim Community Development Director Masson-Minock stated that the Board would has the ability to further winnow down what the uses are, setting a precedent for future FFL licenses.
The Board asked the applicant for an explanation of the length of the license and amount of time of operation and when it would expire, while waiting on the decision and discussion of the Board.

Co-Chair Uhlar asks Mr. Nowak to explain this particular sentence pertaining to direct sales aside from transfers. Mr. Nowak states that is from the initial application in which their business platform has changed since then.

Co-Chair Uhlar asked Mr Nowak if he has ever done a direct sale, and Mr. Nowak confirmed that in the past he has done one, but it has been years since that has happened.

Chair McAlpine asked for clarification on the website creation, and if they are responsive to people who ask about buying particular items such ammunition or guns.

The Board communicated to Mr Nowak about possibilities of changing the verbiage on the website to reflect the business.

The Board discussed that tabling would provide for any questions and clarification points to be addressed. It would also allow for more clarification from Mr Baumgarten on the letter. The Board listed specific questions and information they would like staff to obtain for the next meeting.

Mr. McDonald, respectfully disagreed and stated that he thinks there is enough information here to vote on a modification.

The Board discussed possible alternatives on writing a rough draft of the modification and who it would be submitted and shared to.

Chair McAlpine closed discussion for ZBA members.

Ms. Ward motions to table application PBA-11-21; 1490 Franklin - Appeal, interpretation and/or use variance as to whether the definition of a home occupation includes a Federally Firearms Dealer. The motion included a request to staff to consult with the City Manager about the information used to draft the November 10th letter; to draft a motion for a modification that allowed transfers only with no direct sales based on a finding that the transfers are not a sale of goods, to be reviewed by corporation counsel; and to obtain written information from the applicant about direct sales by Wolverine State Armory since 2017.

Motion supported by Mr. Gesund

AYES: Gesund, Krug, McAlpine, McDonald, Uhlar, Ward, Wilner
NAYS:
ABSENT: NONE

MOTION CARRIED

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OTHER BUSINESS

Ms. Ward had a request to Staff: it would be nice to have a list of the board members, the alternates and
contact information.

Ms. Ward stated that she was at the Post Office and met a young lady named Michelle who works at the
Clawson Post office, but was shifted to the Berkley for extra help. She watches ZBA whenever they are
on TV. Ms. Ward thanked her and others for their viewership.

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STAFF/ BOARD MEMBER REPORT

In the packet is the community development report from November and December.

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LIAISON REPORT

NONE

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PUBLIC COMMENTS

NONE

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With no further business, the meeting was adjourned at 9:42 p.m.
MEMORANDUM

To: Berkley Zoning Board of Appeals

From: Megan A. Masson-Minock; Interim Community Development Director

Subject: PBA-11-21; 1490 Franklin – Request for appeal, interpretation and/or use variance as to whether the definition of a home occupation includes a Federally Licensed Firearms Dealer

Date: February 11, 2022

APPLICANT: Steven Nowak, property owner

LOCATION: Northeast corner of Franklin Road and Cass Boulevard

PARCEL ID: # 25-17-257-009

REQUEST: The applicant is appealing the decision by the City Manager that the definition of a home occupation in the Zoning Ordinance does not include a Federally Licensed Firearms Dealer, requesting an interpretation of the definition of a home occupation and/or a use variance to allow a Federally Licensed Firearms Dealer.

REQUIRED: The R-1D Single-Family Residential District allows the following uses:

1. Principal uses permitted:
   a. Single-family detached dwellings.
   b. Publicly owned and operated libraries, parks, parkways and recreational facilities.
   c. Municipal buildings and uses.
   d. Accessory buildings and uses.
   e. Temporary buildings and uses for construction purposes as permitted by the board of appeals for a period not to exceed one (1) year.

2. Special uses permitted:
   a. Churches and other facilities normally incidental thereto.
   b. Public, parochial and private elementary, intermediate, and/or high schools offering courses in general education, not operated for profit.
   c. Nursery schools, day nurseries and child care centers.
d. Public utility buildings, telephone exchange stations, electric transformer stations and substations and gas regulator stations.

e. Individual mobile homes located on a single parcel of land or lot in accordance with Zoning Ordinance Section 138-298, pertaining to mobile homes in single-family residential districts.

Home occupations are allowed as an accessory uses to single-family detached dwellings. In Article 2 of the City of Berkley Zoning Ordinance, home occupation is defined as "An occupation or profession customarily carried on by an occupant of a dwelling unit as a secondary use which is clearly incidental to the use of the dwelling unit for residential purposes. There shall be no exterior display other than 1 nonilluminated name plate, which is not more than 2 square feet in area which may be attached to the building. No stock in trade or commodity sold shall be kept on the premises. Nursing homes, tea rooms, tourist homes, beauty parlors, retail business or trade shall not be considered home occupations."

**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-1B, 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>

**Aerial Photograph**

Source: Oakland County Parcels Plus
BACKGROUND

City records for 1490 Franklin show that it was built as bungalow in 1955. The applicant states in his application that City staff in 2014 signed off on the of Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) license for Wolverine Armory, as well as the renewal in 2017. No record of either approval has been found in City records. ATF licenses of this nature are renewed once every three (3) years.

In 2018, then Community Development Director Tim McLean restricted a business permit for a similar home occupation at 2588 Sunnyknoll. In that determination, the City clearly articulated that for a firearms business to be considered compliant with local zoning as a lawful home occupation in a single-family zoning district, there can be no on-site sales of firearms, no manufacturing, no firearms display or showroom on-site, no clients on-site and the home occupation must be strictly incidental to the primary use of the residence as a home. At that time, the City received verification that Federal Firearms licenses had been issued in the City of Berkley for Wolverine State Armory, LLC at 1490 Franklin Road and for Paragon Arms at 1406 Catalpa Drive. No documentation of City approval of the home occupation at 1406 Catalpa was found in City records. All license sign offs by the City were before this 2018 decision.

In December of 2020, the City Building Department received an e-mail from the ATF Field Division regarding a potential zoning violation in regard to Wolverine State Armory. In April of 2021, the ATF informed the City that they were in a position to renew Wolverine State Armory’s license, but that would depend on whether the City approved of the business being conducted. On November 10, 2021, City Manager Matt Baumgarten sent a letter stating that since the business includes the in-person purchase and transfer ownership of materials that Wolverine State Armory is not permitted as a home occupation.

JANUARY 11, 2022 ZBA MEETING

The appeal was presented at the January 11, 2022 ZBA meeting. The Board made inquiries as to the nature of the business, whether direct sales took place, how the complaint was investigated and the impact on the neighborhood. The Board voted to table the application until its meeting on February 14, 2022, with a request to staff to consult with the City Manager about the process of the drafting of the letter, and instructions to staff to draft a motion for a modification based on the fact that the business is a transfer of goods rather than a sale of goods, have that motion reviewed by corporation counsel, and to research if any direct sales by Wolverine State Armory have occurred since 2017.

ACTIONS BY STAFF

Per the request of the Board, I discussed with the City Manager the investigation and composition of the letter signed by him, which is the subject of this appeal. Mr. Baumgarten said that the letter was drafted by Community Development Director Schlutow, but signed by him since Ms. Schlutow was leaving her position at the City of Berkley. He said that the phrase “conversations with me” should have been “conversations with staff”.

In addition, I spoke to Jon Cassens of Bureau of the ATF on the telephone, who is the agent in charge of renewing Wolverine State Armory’s license. He stated that their records do not distinguish between direct sales and transfers, so he could not tell the City whether a direct sale by the applicant had occurred in the past. Per our request, the local ATF office submitted a written response to questions, which is included in your packet.

The applicant has submitted paperwork in response to the Board’s request, which are included in our packet.
Finally, a draft motion for a modification was sent to the City Attorney. The motion, as amended by counsel, is in the Summary section of this review.

**SUMMARY OF REQUESTS**

The applicant is requesting to continue the Federally Licensed Firearms Dealer by asking for:

- An appeal of the decision by the Zoning Administrator that Wolverine State Armory does not meet the definition of a home occupation in the Zoning Ordinance; and
- An interpretation of the definition of a home occupation; or
- A use variance to allow a Federally Licensed Firearms Dealer at 1490 Franklin

**STANDARDS FOR REVIEW**

The standards for review for an appeal and interpretation are different from those for a use variance as described below:

**Appeal and Interpretation**

Section 138-621 of the Zoning Ordinance states that an appeal may be taken to the Zoning Board of Appeals by any person or by any office, department, board or bureau aggrieved by a decision of the Zoning Officer or Planning Commission. In this case, the applicant, Steven Nowak, is appealing the decision of the City Manager, who was acting as the Zoning Officer.

Per Section 138-626 of the Zoning Ordinance, the Board of Zoning Appeals may affirm or reverse, wholly or in part, or modify the order, requirement, decision or determination of the Zoning Officer. After a public hearing, the Board must reach a decision within ninety days (90) days of the date of the public hearing.

The Zoning Ordinance defines a home occupation as:

"An occupation or profession customarily carried on by an occupant of a dwelling unit as a secondary use which is clearly incidental to the use of the dwelling unit for residential purposes. There shall be no exterior display other than 1 nonilluminated name plate, which is not more than 2 square feet in area which may be attached to the building. No stock in trade or commodity sold shall be kept on the premises. Nursing homes, tea rooms, tourist homes, beauty parlors, retail business or trade shall not be considered home occupations."

The key question is whether the home occupation of the particular business - Wolverine State Armory - is a retail use. In his application, the applicant states that no items are purchased or traded on the premises. However, in correspondence with the ATF, an officer described the general nature of the license as one that allows customers to come to the home to fill out required federal paperwork, including a background check, and then to pick up the firearms at the home, since federal law prohibits the licensee from shipping firearms directly to non-licensed customers. During the public hearing on January 11, 2022, the applicant stated that customers do come to the site to fill out paper work and to pick up fire arms. He characterized the business as transfers only, not direct sales. Board members noted that the company's website and Facebook page advertised direct sales. The ATF has verified that the license that the applicant has held and wants to renew allows both direct sales and transfers.
Use Variance

Per Section 138-606 of the Zoning Ordinance, the Zoning Board of Appeals shall not vary the regulations of Section 138-606, unless it makes findings based upon the evidence presented to it in each specific case for a use variance that:

A. 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.

The building can be reasonably used as a single-family home.

B. The need for the variance is due to unique circumstances or physical conditions of the property.

The need for the variance is not due unique circumstances or physical conditions of the property.

C. The proposed use will not alter the essential character of the neighborhood.

The proposed use will not alter the essential character of the neighborhood. Wolverine State Armory has been operating since 2014, without altering the character of the neighborhood.

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

The need for variance is the result of desire of the owner of the property to continue to operate a Federally Licensed Firearms Dealer as a home occupation.

Summary

For an appeal, the Zoning Board of Appeals will need to affirm or reverse, wholly or in part, or modify the order, requirement, decision or determination of the Zoning Officer.

The Board indicated at its January 11, 2022 that they were inclined to approve a modification. The following motion has been reviewed by the City Attorney:

The City of Berkley Board of Zoning Appeals finds that a modification of the administrative decision by City Manager Baumgarten to deny Wolverine State Armory as a home occupation based upon the definition of home occupation in Section 138-32 of the City’s Ordinances is warranted based on the following findings:

1. At the public hearing held on January 11, 2022, additional information was provided by the applicant, his business partner, residents of the adjacent neighborhood and the general public.

2. Based on the testimony by the business owner at the public hearing, Wolverine State Armory is paid for facilitating paperwork for transfer of ownership of firearms between his customers and a third party.

3. The Type 1 Federally Licensed Firearms Dealer allows both direct sales of firearms and the transfer of ownership.
4. The City of Berkley can restrict to a home-based business of this nature to transfers only for compliance with the definition of a home-based business.

5. Residents from neighboring properties testified at the public hearing that Wolverine State Armory does not generate more vehicular or foot traffic than single-family homes in the neighborhood.

6. While the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) cannot restrict direct sales for this type of license, the ATF, if made aware of municipal restrictions on licenses, will look for compliance with those restrictions as part of its inspections and license renewal processes.

7. The City may require the following for Wolverine State Armory or any Type 1 Federally Licensed Firearms Dealer operating in the City as a home occupation:
   a. Advertising of any nature may not include direct sales.
   b. Annual submittal of paperwork noting the number and type of transactions.

The City Attorney is comfortable with the above motion, but questioned what would be the purpose of annual submittal of paperwork, how it would be monitored and is that really the role of the City in regards to zoning enforcement.

For a use 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. Also, if granted, the use variance would run with the land and give the same use options to any future owners.

We recommend that the Board rule on the appeal and interpretation first. If the Board decides to affirm the decision, then the Board should rule on the use variance.

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
    John Lipchik, Building Official
    Steven Nowak, steeze138@gmail.com, wolverinestatearmory@gmail.com
MEMORANDUM

To: Jon Cassens, Industry Operations Investigator, Detroit Field Office, Bureau of Alcohol, Tobacco, Firearms and Explosives

From: Megan A. Masson-Minock, Interim Community Development Director

Subject: Wolverine State Armory – Information Request regarding home occupation appeal

Date: February 7, 2022

Per our telephone call, this memorandum is a request for information from the ATF in regard to Wolverine State Armory’s appeal to the Berkley Zoning Board of Appeals (ZBA) of their denial as a home occupation.

Please be aware that our intent is to include this correspondence in the ZBA’s packet, which is a public document placed on the City’s website with personal information such as email addresses redacted and subject to FOIA requests. The packet will be sent to ZBA members on Wednesday, February 9th but they can receive correspondence on the case up until 6 p.m. the day of their next meeting on Monday, February 14, 2022.

The following information would be helpful to the ZBA as they decide this appeal:

- What transactions are allowed under the federal firearms license that Wolverine State Armory has held?
- Does the ATF track the type of transaction (i.e., direct sale or transfer)?
- If the municipality limits the types of transactions (i.e. no direct sales), can the ATF place that limitation on the federal license or help with tracking or enforcement of a limitation in any way?
- How often does the license need to be renewed and will the municipality be contacted?
- If Wolverine State Armory moves location, will the license follow the business or will they need to apply for a new license?
- How many visits by customers to 1490 Franklin have occurred in the last year?
- When gathering background information on an application, are police records checked? If so, were they any police reports for this address or business?

Cc: John Staran, City Attorney
    Matthew Baumgarten, City Manager
February 9, 2022

ATTN: Community Development Director
City of Berkley - Zoning Board of Appeals
3338 Coolidge Hwy.
Berkley, MI 48072

To whom it may concern:

This is in response to your memorandum dated February 7, 2022, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) with the subject of “Wolverine State Armory – Information Request Regarding home occupation appeal.” You requested answers to a series of questions related to a Federal Firearms Licensee that is being reviewed by the city’s Zoning Board of Appeals for zoning compliance. We are providing responses to the questions from the Zoning Board of Appeals below.

Question 1: What transactions are allowed under the federal firearms license that Wolverine State Armory has held?

Answer 1: It is a matter of public record that Wolverine State Armory holds a Type 01 FFL. Under the type 01 Dealer Federal Firearms License (FFL), transactions can be completed for firearms including: rifles, shotguns, pistols, revolvers, NFA firearms (with additional requirements) and these sales can be special orders, retail sales, consignment, sales where a firearm is transferred to the premises for the transaction to be completed or transferred from the premises to another FFL licensed premises where the transaction can be completed to the customer. The license is primarily attached to the business premises where the transactions to customers are required to occur (with very few exceptions, for example at gunshows). Gunsmithing for firearms is another activity permitted under the type 01 FFL.

Question 2: Does the ATF track the type of transaction (i.e., direct sale or transfer)?

Answer 2: No.

Question 3: If the municipality limits the types of transactions (i.e. no direct sales), can the ATF place that limitation on the federal license or help with tracking or enforcement of a limitation in any way?
Answer 3: No. Prior to granting an applicant an FFL, ATF consults with the jurisdiction where the FFL is physically located to confirm that the prospective licensee’s business is in compliance with all local zoning laws.

Question 4: How often does the license need to be renewed and will the municipality be contacted?
Answer 4: The license is renewed every 3 years. Municipalities are not typically contacted for renewals unless we are notified about potential issues.

Question 5: If Wolverine State Armory moves location, will the license follow the business or will they need to apply for a new license?
Answer 5: There is a process for the FFL to file for an amendment to the federal firearms license, where a request to make a change of address can be made. If approved for the new location (which includes checking local zoning laws), the licensee can change the current licensed premises to a new address.

Question 6: How many visits by customers to 1490 Franklin have occurred in the last year?
Answer 6: ATF does not have information sufficient to answer this inquiry and suggests that Wolverine State Armory be in a better position to respond.

Question 7: When gathering background information on an application, are police records checked? If so, were they any police reports for this address or business?
Answer 7: Yes, a background check was performed prior to the issuance of the license and is re-checked prior to each renewal. See https://www.atf.gov/firearms/apply-license for more information on the background check process for FFL applicants. ATF cannot legally disclose what information was obtained in the course of granting this particular FFL, however such information should already be in the possession of the City of Berkley.

We hope the information has been responsive to your request. If you have any additional questions, please feel free to contact Industry Operations Investigator Jon Cassens at (313) 378-8482

Sincerely,

for Kris D. Howard
Area Supervisor
Confirmation Number: 300024191635

This form cannot be used as an amended return; see the 2022 Sales, Use and Withholding Taxes Amended Annual Return (Form 5082).

File this return by February 28, 2023. Do not use this form to replace a monthly/quarterly return.

<table>
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<tr>
<th>Taxpayer's Business Name</th>
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<tbody>
<tr>
<td>WOLVERINE STATE ARMORY LLC</td>
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**Street Address**
1490 Franklin Rd

**City**
Berkley

**State**
MI

**ZIP Code**
48072

**PART 1: SALES AND USE TAX**

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1. Total gross sales for tax year being reported ............................................. 1.
2. Rentals of tangible property and accommodations .................................... 2.
3. Telecommunications services.................................................................... 3.
4. Add lines 1, 2 and 3 ................................................................................... 4. 0 00

**5. ALLOWABLE DEDUCTIONS**

| a. Resale, sublease or subrent .............................................................. 5a. |
| b. Industrial processing exemption ....................................................... 5b. |
| c. Agricultural production exemption ................................................... 5c. |
| d. Interstate commerce........................................................................... 5d. |
| e. Nontaxable services billed separately ............................................... 5e. |
| f. Bad debts ......................................................................................... 5f. |
| g. Food for human/home consumption ................................................... 5g. |
| h. Government exemption ....................................................................... 5h. |
| i. Michigan motor fuel tax ................................................................. 5i. |
| j. Direct payment deduction .................................................................. 5j. |
| k. Other exemptions and/or deductions (see instructions) ...................... 5k. |
| l. Tax included in gross sales............................................................... 5l. |
| m. Total allowable deductions. Add lines 5a - 5l ................................... 5m. |

5. Taxable balance. Subtract line 5m from line 4 ......................................... 6. 0 00

6. Gross tax due. Multiply line 6 by 6% (0.06). ........................................... 7. 0 00

7. Tax collected in excess of line 7 ................................................................ 8.

8. Tax due before discount allowed. Add lines 7 and 8............................... 9. 0 00

9. Total discount allowed (see instructions)................................................ 10.

COPY ONLY DO NOT FILE
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<tr>
<td>11. Total tax due. Subtract line 10 from line 9</td>
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<td></td>
</tr>
<tr>
<td>12. Tax payments and credits in current year (after discounts)</td>
<td></td>
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</tr>
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**PART 2: USE TAX ON ITEMS PURCHASED FOR BUSINESS OR PERSONAL USE**

13. Purchases for which no tax was paid or inventory purchased or withdrawn for business or personal use.

14. Total use tax on purchases due. Multiply line 13 by 6% (0.06).

15. Use tax paid on purchases and withdrawals in current year.

**PART 3: WITHHOLDING TAX**


17. Total number of W-2 and 1099 forms.

18. Total Michigan income tax withheld per W-2 and 1099 forms.

19. Total Michigan income tax withholding paid during current tax year.

**PART 4: SUMMARY**


22. If line 21 is greater than line 20, enter the difference here. If not, skip to line 25.

23. Amount of line 22 to be credited forward to a future period.

24. REFUND. Subtract line 23 from line 22.

25. If line 21 is less than 20, enter balance due.

26. Penalty for late filing or late payment (see instructions).

27. Interest for late payment (see instructions).

28. TOTAL PAYMENT DUE. Add lines 25, 26 and 27.

**PART 5: SIGNATURE (All information below is required.)**

**Taxpayer Certification.** I declare under penalty of perjury that the information in this return and attachments is true and complete to the best of my knowledge.

**Preparer Certification.** I declare under penalty of perjury that this return is based on all information of which I have any knowledge.

By checking this box, I authorize Treasury to discuss my return with my preparer.

Signature of Taxpayer or Official Representative (must be Owner, Officer, Member, Manager, or Partner)

Print Taxpayer or Official Representative's Name

Steven Nowak

Date

02/09/2022

Title

Partner

Telephone Number

Preparer's Identification Number

Preparer's Telephone Number

File and pay this return for free on Michigan Treasury Online at mto.treasury.michigan.gov. Alternatively, make check payable to "State of Michigan." Write the account number, "SUW Annual" and tax year on the check.

Send the return and payment due to: Michigan Department of Treasury, P.O. Box 30401, Lansing, MI 48909-7901
Michigan Department of Treasury
5081 (Rev. 04-20), Page 1 of 2

Confirmation Number: 300021598410

This form cannot be used as an amended return; see the 2021 Sales, Use and Withholding Taxes Amended Annual Return (Form 5082).

File this return by February 28, 2022.

Do not use this form to replace a monthly/quarterly return.

Taxpayer’s Business Name
WOLVERINE STATE ARMORY LLC

Business Account Number (FEIN or TR Number)
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Street Address
1490 Franklin Rd

City
Berkley

State
MI

ZIP Code
48072

PART 1: SALES AND USE TAX

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<td>0.00</td>
</tr>
<tr>
<td>4. Add lines 1, 2 and 3</td>
<td>0.00</td>
</tr>
</tbody>
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<th>ALLOWABLE DEDUCTIONS</th>
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<tr>
<td>l. Tax included in gross sales</td>
</tr>
<tr>
<td>m. Total allowable deductions. Add lines 5a - 5l</td>
</tr>
</tbody>
</table>

| Taxable balance. Subtract line 5m from line 4 | 6.00 |
| Gross tax due. Multiply line 6 by 6% (0.06) | 7.00 |
| Tax collected in excess of line 7 | 8.00 |
| Tax due before discount allowed. Add lines 7 and 8 | 9.00 |
| Total discount allowed (see instructions) | 10.00 |

+ 0000 2021 68 01 27 4

Continue on page 2.
A. Sales Tax | B. Use Tax
--- | ---
11. Total tax due. Subtract line 10 from line 9 | 0.00
12. Tax payments and credits in current year (after discounts) | 

**PART 2: USE TAX ON ITEMS PURCHASED FOR BUSINESS OR PERSONAL USE**
13. Purchases for which no tax was paid or inventory purchased or withdrawn for business or personal use | 
14. Total use tax on purchases due. Multiply line 13 by 6% (0.06) | 
15. Use tax paid on purchases and withdrawals in current year | 

**PART 3: WITHHOLDING TAX**
16. Gross Michigan payroll, pension and other taxable compensation | 
17. Total number of W-2 and 1099 forms | 
18. Total Michigan income tax withheld per W-2 and 1099 forms | 
19. Total Michigan income tax withholding paid during current tax year | 

**PART 4: SUMMARY**
20. Total sales, use and withholding tax due. Add lines 11A, 11B, 14 and 18 | 0.00
21. Total sales, use and withholding tax paid. Add lines 12A, 12B, 15 and 19 | 
22. If line 21 is greater than line 20, enter the difference here. If not, skip to line 25 | 0.00
23. Amount of line 22 to be credited forward to a future period | 
24. REFUND. Subtract line 23 from line 22 | 0.00
25. If line 21 is less than 20, enter balance due | 0.00
26. Penalty for late filing or late payment (see instructions) | 
27. Interest for late payment (see instructions) | 
28. TOTAL PAYMENT DUE. Add lines 25, 26 and 27 | 0.00

**PART 5: SIGNATURE**

**Taxpayer Certification.** I declare under penalty of perjury that the information in this return and attachments is true and complete to the best of my knowledge.

**Preparer Certification.** I declare under penalty of perjury that this return is based on all information of which I have any knowledge.

By checking this box, I authorize Treasury to discuss my return with my preparer.

Preparer's signature

Signature of Taxpayer or Official Representative (must be Owner, Officer, Member, Manager, or Partner)

Preparer's Business Address

Print Taxpayer or Official Representative's Name
Evan Bouren

Date
05/23/2021

Title
Partner

Telephone Number

Preparer's Identification Number

Preparer's Telephone Number

File and pay this return for free on Michigan Treasury Online at mto.treasury.michigan.gov.
Alternatively, make check payable to "State of Michigan." Write the account number, "SUW Annual" and tax year on the check.

Send the return and payment due to: Michigan Department of Treasury, P.O. Box 30401, Lansing, MI 48909-7901
### 2020 Sales, Use and Withholding Taxes Annual Return

Issued under authority of Public Acts 167 of 1933, 94 of 1937, and 281 of 1967, all as amended.

File this return by February 28, 2021.

**Taxpayer's Business Name**

WOLVERINE STATE ARMORY LLC

**Street Address**

1490 Franklin Rd

**City**

Berkley

**State**

MI

**ZIP Code**

48072

**Confirmation Number**

300021598422

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<td>Agricultural production exemption</td>
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<td>d.</td>
<td>Interstate commerce</td>
<td>5d.</td>
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<td>e.</td>
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<td>Gross tax due. Multiply line 6 by 6% (0.06)</td>
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Continue on page 2.
11. Total tax due. Subtract line 10 from line 9 ............................................... 11. $0.00

PART 2: USE TAX ON ITEMS PURCHASED FOR BUSINESS OR PERSONAL USE
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PART 4: SUMMARY
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23. Amount of line 22 to be credited forward to a future period .............................................................. 23.
24. REFUND. Subtract line 23 from line 22 .............................................................................................. 24. $0.00
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Preparer Certification. I declare under penalty of perjury that this return is based on all information of which I have any knowledge.

Preparer’s Signature
Preparer’s Business Address
Preparer’s Identification Number
Preparer’s Telephone Number

Evan Bouren 05/23/2021

File and pay this return for free on Michigan Treasury Online at mto.treasury.michigan.gov.
Alternatively, make check payable to “State of Michigan.” Write the account number, “SUW Annual” and tax year on the check.
Send the return and payment due to: Michigan Department of Treasury, P.O. Box 30401, Lansing, MI 48909-7901

++ 0000 2020 68 02 27 4
**Confirmation Number:** 300017568920

**2019 Sales, Use and Withholding Taxes Annual Return**


File this return by February 28, 2020.

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**Taxpayer's Business Name:** WOLVERINE STATE ARMORY LLC  
**Business Account Number (FEIN or TR Number):** 4316

**Street Address:** 1490 Franklin Rd  
**City:** Berkley  
**State:** MI  
**ZIP Code:** 48072

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This form cannot be used as an amended return; see the 2019 Sales, Use and Withholding Taxes Amended Annual Return (Form 5082).
### Part 2: Use Tax on Items Purchased for Business or Personal Use

13. Purchases for which no tax was paid or inventory purchased or withdrawn for business or personal use.

14. Total use tax on purchases due. Multiply line 13 by 6% (0.06).

15. Use tax paid on purchases and withdrawals in current year.

### Part 3: Withholding Tax


17. Total number of W-2 and 1099 forms.

18. Total Michigan income tax withheld per W-2 and 1099 forms.

19. Total Michigan income tax withholding paid during current tax year.

### Part 4: Summary

20. Total sales, use and withholding tax due. Add lines 11a, 11b, 14 and 18.

21. Total sales, use and withholding tax paid. Add lines 12a, 12b, 15 and 19.

22. If line 21 is greater than line 20, enter the difference here. If not, skip to line 25.

23. Amount of line 22 to be credited forward. Treasury will send notification when the credit forward is verified and available.


25. If line 21 is less than 20, enter balance due.

26. Penalty for late filing or late payment (see instructions).

27. Interest for late payment (see instructions).

28. Total Payment Due. Add lines 25, 26 and 27.

### Part 5: Signature (All Information Below is Required.)

**Taxpayer Certification.** I declare under penalty of perjury that the information in this return and attachments is true and complete to the best of my knowledge.

**Preparer Certification.** I declare under penalty of perjury that this return is based on all information of which I have any knowledge.

---

**File and pay this return for free on Michigan Treasury Online at mto.treasury.michigan.gov. Alternatively, make check payable to "State of Michigan." Write the account number, "SUW Annual" and tax year on the check. Send the return and payment due to: Michigan Department of Treasury, P.O. Box 30401, Lansing, MI 48908-7901**

+ 0000 2019 68 02 27 7
5. ALLOWABLE DEDUCTIONS

<table>
<thead>
<tr>
<th>Description</th>
<th>Sales Tax</th>
<th>Use Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Resale, sublease or subrent</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>b. Industrial processing exemption</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>c. Agricultural production exemption</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>d. Interstate commerce</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>e. Nontaxable services billed separately</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>f. Bad debts</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>g. Food for human/home consumption</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>h. Government exemption</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>i. Michigan motor fuel tax</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>j. Direct payment deduction</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>k. Other exemptions and/or deductions (see instructions)</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>l. Tax included in gross sales</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>m. Total allowable deductions. Add lines 5a - 5l</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>6. Taxable balance. Subtract line 5m from line 4</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>7. Gross tax due. Multiply line 6 by 6% (0.06).</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>8. Tax collected in excess of line 7</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>9. Tax due before discount allowed. Add lines 7 and 8</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>10. Total discount allowed (see instructions)</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
Taxpayer's Business Name: WOLVERINE STATE ARMORY LLC

<table>
<thead>
<tr>
<th>A. Sales Tax</th>
<th>B. Use Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0 00</td>
</tr>
</tbody>
</table>

11. Total tax due. Subtract line 10 from line 9 ............................................... 11. 0 00

12. Tax payments and credits in current year (after discounts) ..................... 12.

PART 2: USE TAX ON ITEMS PURCHASED FOR BUSINESS OR PERSONAL USE

13. Purchases for which no tax was paid or inventory purchased or withdrawn for business or personal use..... 13.

14. Total use tax on purchases due. Multiply line 13 by 6% (0.06)..................................................... 14.

15. Use tax paid on purchases and withdrawals in current year................................. 15.

PART 3: WITHHOLDING TAX


17. Total number of W-2 and 1099 forms ................................................................. 17.

18. Total Michigan income tax withheld per W-2 and 1099 forms ........................................ 18.


PART 4: SUMMARY

20. Total sales, use and withholding tax due. Add lines 11A, 11B, 14 and 18.......................... 20. 0 00

21. Total sales, use and withholding tax paid. Add lines 12A, 12B, 15 and 19......................... 21. 0 00

22. If line 21 is greater than line 20, enter the difference here. If not, skip to line 25 ...................... 22. 0 00

23. Amount of line 22 to be credited forward. Treasury will send notification when the credit forward is verified and available ................................................................. 23.

24. REFUND. Subtract line 23 from line 22 ........................................................................ 24. 0 00

25. If line 21 is less than 20, enter balance due ..................................................................... 25. 0 00

26. Penalty for late filing or late payment (see instructions) ...................................................... 26.

27. Interest for late payment (see instructions) ........................................................................ 27.

28. TOTAL PAYMENT DUE. Add lines 25, 26 and 27 ................................................................ 28. 0 00

PART 5: SIGNATURE (All information below is required.)

Taxpayer Certification. I declare under penalty of perjury that the information in this return and attachments is true and complete to the best of my knowledge.

Preparer Certification. I declare under penalty of perjury that this return is based on all information of which I have any knowledge.

By checking this box, I authorize Treasury to discuss my return with my preparer.

Preparer's Signature

Preparer's Business Address

Signature of Taxpayer or Official Representative (must be Owner, Officer, Member, Manager, or Partner)

Print Taxpayer or Official Representative's Name

Evan Bouren

Date 08/07/2019

Title Partner

Telephone Number

Preparer's Identification Number

Preparer's Telephone Number

File and pay this return for free on Michigan Treasury Online at mto.treasury.michigan.gov.
Alternatively, make check payable to "State of Michigan." Write the account number, "SUW Annual" and tax year on the check.
Send the return and payment due to: Michigan Department of Treasury, P.O. Box 30401, Lansing, MI 48909-7901
Primary category

FFL Transfer

We didn't understand your category. Please select from the suggestions that appear when typing.

Additional categories

Sporting goods

We didn't understand your category. Please select from the suggestions that appear when typing.

Firearms

We didn't understand your category. Please select from the suggestions that appear when typing.

Add another category
Additional categories

Sporting goods

Sporting goods store
Help customers find your business by industry.

Primary category

Gun club

Gun club

Gun shop

Ground self defense force

Gluten-free restaurant

Gyudon restaurant

Figurine shop
From the business

Describe your business to customers on Google.

Learn more

We are a licensed FFL holder specializing in FFL and NFA transfers.

Edits may be reviewed. It can take up to 3 days before your edit is visible on Search, Maps, and other Google services. Learn more
Switch into Wolverine State Armory's Page

Build Your Page Audience
Grow your reach by inviting friends to follow Wolverine State Armory

Invite Friends

Intro
FFL Transfers. By appointment only.
Wolverine State Armory is a veteran owned small business operating out of Berkley, Michigan. We specialize in online transfers from 3rd party sellers, and FFL transfers. If you have any questions regarding our services, please reach out via our contact page, or email us directly at WolverineStateArmory@gmail.com

Transfer Rates:

$30 per item transferred

$40 per NFA item transferred

Wolverine State Armory operates by appointment only. Appointment times are generally available on weekdays from 6pm to 8pm. Please contact us for more information.
MEMORANDUM

To: Berkley Zoning Board of Appeals
From: Megan Masson-Minock, AICP; Interim Community Development Director
Subject: PBA-01-22; 2740 Gardner – Request for two (2) dimensional variances: 1) to construct an addition that will encroach into the required 35 ft. rear yard setback; and 2) to construct an addition on a non-conforming structure that encroaches into the required minimum 15 ft. separation distance.
Date: February 10, 2022

APPLICANT: Michael Ely, on behalf of Sam Dabish
LOCATION: East side of Gardner Ave, south of Wiltshire Road
PARCEL ID: # 25-18-253-009

REQUEST: The applicant is requesting two (2) dimensional variances:

1. Variance to construct an addition to the single-family dwelling that is proposed to be 27 ft. 6 in. from the rear lot line.
2. Variance to construct an addition to the non-conforming single-family dwelling that is proposed to be 12 ft. 6 in. from adjacent dwelling to the north.

REQUIRED: 1. The Schedule of Regulations table in Section 138-526 of the Zoning Ordinance states the minimum rear yard setback in the R-1D District is 35 ft.
2. The Schedule of Regulations in Section 138-527(d) of the Zoning Ordinance requires minimum separation distance of at least 15 feet between dwellings.

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

City records for 2740 Gardner show that a single-family dwelling has been on this property since 1959. The footprint of the building was expanded in 1990, when a barrier-free ramp was installed at the front of the home. The plot plan with the building permit for the ramp shows a northern side yard setback of 7 ft., 11 in.

The nonconforming distance between the house at 2740 Gardner and the house adjacent to the north at 2758 Gardner was created when a new house was built at 2758 Gardner in 1995/1996. City records for 2758 Gardner document a demolition of a house in October 1995 and the construction of new house, which received a certificate of occupancy in 1996. The approved plans for the new construction 2758...
were approved conditionally with the adjustments shown in red ink in the photo of the approved plans below:

The adjustment calls for the proposed residence to be 8 feet from the property line with 2740 Gardner. However, based on the survey submitted by the applicant which shows 12 ft. 6 in. between the two structures, we believe the house at 2758 Gardner was built according to the original blueprint, not the required adjustment.

**SCOPE OF PROJECT**

In January 2022, the applicant, on behalf of the homeowner, applied for a building permit to build a one-story addition on the rear of the existing house at 2740 Gardner Avenue. The proposed addition is for a first-floor bedroom and bath for a member of the family who is a quadriplegic. Currently, the two bedrooms in the home are located on the second floor.

The building permit was denied due to noncompliance with the rear yard setback. Upon application for a variance, staff discovered the need for additional variances for the distance between buildings and for the separation between the addition and the existing garage. Staff encouraged the applicant to decrease the distances requested and/or to eliminate one of the variances entirely. The applicant revised their application to ask for the two (2) variances before the Board.
The existing principal structure does not conform to requirements for separation distances between the adjacent dwellings. The proposed addition is intended to follow the building line to the east, which will increase the non-conformity of the structure.

Per Section 138-154, a nonconforming building may be added to or enlarged if such addition conforms to the regulations of the applicable zoning district. Such addition or enlargement shall be treated as a separate building in determining conformity to all of the requirements.

SUMMARY OF REQUESTS

The applicant and homeowner are proposing to construct a single-story addition on the rear of the existing house that does not conform to the Zoning Ordinance. Below is a summary of each request in detail and each will be analyzed separately below under the Standards of Review.

1. **Minimum Rear Yard Setback is 35 ft.**
   - The proposed addition has a proposed 27 ft., 6 in., setback where 35 ft. is required.
   - Therefore, the applicant is requesting a 7 ft., 6 in. rear yard setback variance in order to construct the addition, as proposed.

2. **Separation Distance Between Dwellings**
   - The Zoning Ordinance requires a minimum separation distance of at least 15 feet between dwellings.
   - As currently configured, the existing house does not conform to the minimum separation distance requirement to the property to the north. The proposed addition will follow the existing building line, which will encroach into the required minimum separation distance.
   - Therefore, the applicant is requesting a 2 ft. 6 in. separation distance for the proposed addition to adjacent dwelling to the north.

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:

1. **Rear Yard Setback Variance**
   - **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 homeowner's desire to build a first floor bedroom and bath meeting universal design requirements. The house currently has bedrooms on the second floor only.
   - **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 build a first floor bedroom and bath meeting universal design requirements.

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 homeowner from expanding the footprint of the dwelling. However, due to the location of the house and detached garage on the site, strict compliance prevents an addition for to build a first floor bedroom and bath meeting universal design requirements. The house, as currently configured, does not accommodate the needs of the quadriplegic family member. The applicant has stated in their application that installation of lifts to allow access to the second floor is unnecessarily burdensome.

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 for a first floor bedroom and bath meeting universal design requirements. However, a smaller addition, not meeting universal design requirement, is possible.

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

The City has not received any correspondence from neighbors related to the requested variances.

2. Separation Distance Between Dwellings

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 construct an addition on the rear of the dwelling that will not meet the minimum separation distance between the house and the dwelling to the north. The proposed addition has been designed to follow the existing building line of the structure and will not encroach closer to the dwellings to the north of the subject property.

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 not the result of actions of the property owner or previous property owners. The dwelling to the north (2758 Gardner) was built in 1995, less than fifteen (15) feet from the dwelling on the subject site.
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 be unnecessarily burdensome to the property owner, as they are looking to expand the dwelling in line with the existing structure. There will be an increase in the non-conformity, as it will continue along the property line, but it will not encroach closer to the adjacent dwellings.

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 is not asking to encroach closer to the adjacent dwellings than the existing dwelling is already situated.

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

The requested variance will not encroach closer to the adjacent dwellings than the house is currently situated. The City has not received any correspondence from neighbors related to the requested variances.

**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  
John Lipchick, Building Official  
Michael Ely, mike@lifeconstruction.us  
Sam Dabish, jdabish@me.com
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.

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 difficulty for the property exist. A want or desire (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

<table>
<thead>
<tr>
<th>Name</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michael Ely</td>
<td></td>
</tr>
<tr>
<td>6865 Galloway Dr.</td>
<td></td>
</tr>
<tr>
<td>Mike @ Life Construction, G5</td>
<td></td>
</tr>
</tbody>
</table>

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

CONTRACTOR

### Property Owner Information (If different from Applicant)

<table>
<thead>
<tr>
<th>Name</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sam Dabisy</td>
<td></td>
</tr>
<tr>
<td>2740 Gardner, Berkley</td>
<td></td>
</tr>
</tbody>
</table>

### Property Description

<table>
<thead>
<tr>
<th>Address</th>
<th>Zoning Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>2740 Gardner</td>
<td>Residential</td>
</tr>
</tbody>
</table>

Current Use of Property:

SINGLE FAMILY
NATURE OF REQUEST

Check which applies:

- □ Variance from Zoning Ordinance (Section I)
- □ Interpretation of Zoning Ordinance (Section II)
- □ Administrative Review / Appeal of Decision (Section III)
- □ Determination of Commercial Message of Mural / Work of Art (Section IV)

Description of Request: TO CREATE ADDITIONAL BEDROOM ON BACK OF HOUSE SLIGHTLY LARGER THAN MIN. SET—BACK ALLOW

Has the City denied a permit related to the proposed work? ✔ Yes □ No

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.

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.

[Blank space for explanation]
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.

5. **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.

   "QUADRIPEGIC LIVING IN HOME W/ ONLY 2 BEDROOM + 4 SINGLE ADULTS (MOTHER + 3 ADULT CHILDREN)
   WE CAN'T BUILD UP DUE TO STAIRS USE"

City of Berkley - ZBA Application
Updated 07.01.2021
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 ONLY THE RESULT OF THE ADA SITUATION IN THE HOME

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.

IT'S ONLY A 2 BEDROOM HOUSE & FOUR SINGLE APARTS. ONE IS QUADRIPLEGIC AND ONE IS ELDERLY SO WE CAN'T BUILD UP WITHOUT EXORBITANT COST OF AN ADA LIFT SYSTEM AND CODE COMPLIANCE

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

IF WE CANNOT COME OUT A COUPLE MORE FEET OF THE BACK THE BEDROOM ADDITION WOULD BE TOO SMALL.

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

BECAUSE IT'S ON THE BACK OF THE HOME AND OTHER PROPERTIES HAVE ADDITIONS, IT WILL LOOK NORMAL.
II. INTERPRETATION OF ZONING ORDINANCE

Provide Section numbers of Zoning Ordinance to be interpreted:

Please describe the request and what needs to be clarified or interpreted by the ZBA.

ONLY THE SETBACK ORDINANCE FROM BACK OF THE PROPERTY. WE ARE ASKING WE CAN LOCATE THAT ORDINACE FOR THE BEDROOM TO BE A REASONABLE SIZE.

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.

SUBMIT THE FOLLOWING:

Provide 15 copies of 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.

PLEASE NOTE: The applicant, or a designated representative, MUST BE PRESENT at the meeting in which the case is being reviewed or the request may be postponed due to lack of representation.

We encourage applicants to make a presentation of the proposed request to the Zoning Board of Appeals, if applicable. To assist this effort, we have available for your use a projector, laptop computer and screen. ZBA meetings are recorded and televised.
PROPERTY OWNER'S APPROVAL (Initial each line)

[ ] I hereby authorize and give permission for the City of Berkley to install one or more temporary signs on my property, in order to notify the public of the required public hearing related to the above request(s) before the ZBA.

[ ] I hereby authorize the employees and representatives of the City of Berkley to enter upon and conduct an inspection and investigation of the above referenced property in relation to the above request.

APPLICANT'S ENDORSEMENT: (Initial each line)

[ ] All information contained herein is true and accurate to the best of my knowledge.

[ ] I acknowledge that the ZBA will not review my request unless all information in the application has been submitted to the satisfaction of the Community Development Director.

[ ] I acknowledge that the City and its employees shall not be held liable for any claims that may arise as a result of acceptance, processing or review of this application.

If an application is withdrawn more than three (3) weeks prior to the meeting date, 90% of the fee will be refunded. If the application is withdrawn less than three (3) weeks prior to the meeting, no refund will be given.

MICHAEL ELIZA
Applicant Name (print)  D:\Michael\zba\01-15-2022
Applicant Signature  Date

[ ] Jiehan Alonso
Applicant Name (print)  1/14/22
Applicant Signature  Date

[ ] Sam Dabish
Property Owner Name (print)  1/14/22
Property Owner Signature  Date
Received 1-18-22 Receipt #1234567890 Meeting Date Case # PBA-01-22

Fee:
- Residential $400
- Commercial $600
- Mural $300
NEW ADDITION SC 2:1
240 SQFT

PERCENTAGE OF LOT COVERAGE
TOTAL OF CURRENT % 22.7
LOT SIZE: 5750 SQFT
EX. HOUSE: 986 SQFT
GARAGE: 320 SQFT
NEW ADDITION: 240 SQFT
TOTAL WITH PROPOSED ADDITION % 26.89

GENERAL FLOOR PLAN
1. ALL EXTERIOR DIMENSIONS ARE FIGURED TO EXTERIOR FACE OF MASONRY OR TO EXTERIOR SHEATHING, UNLESS NOTED OTHERWISE.
2. ALL INTERIOR DIMENSIONS ARE FIGURED TO FACE OF ROUGH STUD UNLESS NOTED OTHERWISE.
3. THE GENERAL CONTRACTOR SHALL COORDINATE ALL APPLICABLE TRADES TO ENSURE PROPER ROUTING, DROPS, ETC. FOR HVAC, ELECTRICAL, PLUMBING, ETC. DURING FRAMING.
4. GLAZING
   - GLAZING IN DOORS AND ADJACENT TO DOORS WITHIN 24" OF EITHER SIDE OF THE DOOR OR PERPENDICULAR TO DOOR.
   - GLAZING WINDOWS WHERE THE EXPOSED GLASS IS LARGER THAN 9 SF, THE BOTTOM EDGE IS LESS THAN 1/2" ABOVE THE FLOOR.
   - GLAZING IN GUARDS AND RAILINGS
   - GLAZING ADJACENT TO WET SURFACES INCLUDING BATHTUBS, SHOWERS WITHIN 60".
5. GLAZING ADJACENT TO STAIRS AND RAMPS
6. ALL GLASS SHALL MEET OR EXCEED THE REQUIREMENTS SET FORTH IN MICHIGAN RESIDENTIAL CODE SECTION R308.
7. PROVIDE PIPE INSULATION FOR ALL PLUMBING LINES IN UN-TEMERBED CAVITIES.
8. COMBINATION SMOKE / CARBON MONOXIDE DETECTORS IN HOUSE SHALL MEET THE REQUIREMENTS OF SECTION R314 AND R315.
9. FIRE BLOCKING SHALL BE PROVIDED TO CUT OFF BOTH VERTICAL AND HORIZONTAL CONCEALED DRAFT OPENINGS AND FORM AN EFFECTIVE FIRE BARRIER BETWEEN STORIES AND BETWEEN TOP STORY AND THE ROOF SPACE. PER R302.11 MRBC.
10. ALL WORK SHALL COMPLY WITH THE 2013 MICHIGAN RESIDENTIAL CODE.
Notice Meeting of the Berkley Zoning Board of Appeals

Notice is hereby given, that there will be a meeting of the Zoning Board of Appeals to be held at the City of Berkley in the Council Chambers, 3338 Coolidge, Berkley, Michigan on Monday, Monday, February 14, 2022 at 7:03 p.m. or as near thereto as the matter may be reached.

Application Number PBA-01-22
Michael Ely, on behalf of Sam Dabish, 2740 Gardner Ave, Parcel #25-18-253-099, east side of Gardner Avenue, between Catalpa Drive and Wiltshire Road, is requesting two (2) dimensional variances: 1) to construct an addition on a non-conforming structure that encroaches into the required minimum 15 ft. separation distance; and, 2) to construct an addition that will encroach into the required 35 ft. rear yard setback.

1. The addition to the non-conforming single-family dwelling is proposed to be 12 ft. 6 in. from adjacent dwelling to the north.

2. The addition to the dwelling is proposed to be 27 ft. 6 in from the rear lot line.

Berkley City Code
Berkley City Code, Chapter 138 Zoning,
1. Berkley City Code, Chapter 138 Zoning, Article V, Division 17, Sec.138-527(d), Notes to Schedule of Regulations requires a minimum separation distance of at least 15 feet between dwellings. The applicant is requesting a variance of 2 ft. 6 in. separation distance for the proposed addition to adjacent dwelling to the north.

2. Berkley City Code, Chapter 138 Zoning, Article V, Division 17, Sec.138-526, Schedule of Regulations table requires minimum 35 ft. rear yard setback in the R-1D District. The applicant is requesting a 7 ft. 6 in. rear yard setback variance for the proposed addition.

Comments on the granting of the above variance may be made in person on the night of the meeting or in writing. All written comments must be in the hands of the Berkley Building Department before 6:00 p.m. on the date of the Public Hearing.

MEGAN MASSON-MINOCK
INTERIM COMMUNITY DEVELOPMENT DIRECTOR

Publish Once:
Royal Oak Tribune
Thursday, January 27, 2022
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