THE REGULAR MEETING OF THE BERKLEY CITY ZONING BOARD OF APPEALS WAS CALLED TO ORDER AT 7:00 PM, MONDAY, DECEMBER 13, 2021 BY CHAIR MCALPINE.

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

PRESENT: Ryan J. Gesund Kevin Wilner
Sue McAlpine Miles Uhlar
Joseph V. Krug Mark Riley (Alternate)
Joann Serr (Alternate)

ABSENT: Erick McDonald Maria Ward

ALSO PRESENT: Andrew Ball, 1069 Eaton
Will MacDonnell, 1079 Eaton
Megan Masson-Minock, Interim Community Development Director
Dennis Hennen, City Council Liaison

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APPROVAL OF AGENDA
It was moved by Mr. Gesund to approve the agenda. Motion supported by Mr. Krug.

AYES: McAlpine, Gesund, Uhlar, Wilner, Krug, Riley, Serr
NAYS: None
ABSENT: McDonald, Ward

MOTION CARRIED

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APPROVAL OF MINUTES
It was moved by Mr. Krug to approve the minutes of August 10, 2021, as presented. Motion supported by Mr. Uhlar.

AYES: McAlpine, Gesund, Uhlar, Wilner, Krug, Riley, Serr
NAYS: None
ABSENT: McDonald, Ward

MOTION 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 recommended postponing the election until the next meeting due to the absence of two members. Ms. Masson-Minock confirmed that the January 2022 meeting would be held. A motion was made to postpone the elections until the next meeting.

   Motion by Mr. Gesund. Motion supported by Mr. Wilner.

   **AYES:** McAlpine, Gesund, Uhlar, Wilner, Krug, Riley, Serr
   **NAYS:** None
   **ABSENT:** McDonald, Ward

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**NEW BUSINESS**

2. **APPLICATION PBA-09-21; 1069 Eaton** – Use variance request for non-conforming duplex use of a property in the Single-Family Residential District that is no longer in compliance with the Zoning Ordinance

   **Petitioner:**
   Andrew Ball
   1069 Eaton
   Berkley, MI  48072

   Interim Community Development Director Masson-Minock summarized the December 9, 2021 review letter and read the four standards of review by which the ZBA would discuss the use variance request.

   Mr. Gesund asked if the recently passed Master Plan addressed multiple family uses at all. Director Masson-Minock responded that multiple-family was addressed in the Master Plan, particularly along corridors, where zoning changes were recommended. In terms of single-family neighborhoods and duplexes, the Master Plan noted that more analysis and community engagement was needed before any changes to zoning were made.

   Vice Chair McAlpine asked why this petition was evaluated on four criteria instead of five criteria, which the Board typically uses. Director Masson-Minock responded that the request was for a use variance, which is governed by a different set of standards than dimensional variances usually reviewed by the Board.

   Vice Chair McAlpine asked for the applicant to come to the podium and talk about the request.

   Mr. Ball shared that he bought the building as a duplex in 2018 and has lived in the upper unit. He rented the lower unit out until September of last year. At that time, he had a fiancé with four kids and he thought they could use both units for the family to live in. However, with the two units split between the two floors, it was not sufficient for a single family to live in both areas as a single-family home.

   Mr. Ball shared a presentation with photographs showing how the property has two driveways, and the building has two mailboxes, two deadbolted entrances, two kitchens, two electrical lines,
two gas lines, two hot water heaters, and two cable lines. He stated that the building also had two separate entrances to the back yard, one from each unit.

Mr. Riley asked if the basement was used as habitable space for either unit. Mr. Ball replied that both tenants have access to and share the basement space to use the washer and dryer.

Mr. Wilner asked if the applicant had received the letter in February notifying him to renew the rental license. Mr. Ball said that he did but that, at that time, he did not have a good idea of the ramifications of not renewing the license.

Mr. Uhlar asked when the prior tenant moved out. Mr. Ball said September 2020. Mr. Uhlar asked what unique circumstances should be considered. Mr. Ball described how his fiancé and her four kids, ages one to eight, moved in. Mr. Uhlar asked why it was not feasible for the building to be used as a single-family home. Mr. Ball said that each unit is 700 square feet and where ever the children are, you are, so they were really living in one of the two units.

Mr. Uhlar asked if the applicant had been working from home during the pandemic. Mr. Ball responded that he had not but his fiancé has been.

Mr. Uhlar asked if he was going to stay in the upper unit and rent out the downstairs unit or leave. Mr. Ball replied that he intends to sell the building and has a buyer.

Director Masson-Minock asked if his intent in January was to use it as a single-family house. Mr. Ball replied yes but he did not realize what it would be like with everyone in the house. Director Masson-Minock asked at what point did his intent change to use it as a duplex. Mr. Ball responded his intent change in October/November of 2021.

Director Masson-Minock explained to the Board that the timeline is important as to intent. She said that the Board may want to consider tabling the case, bringing the documentation of intent to the City Attorney. She had spoken to the City Attorney who apologized for not being able to attend. She stated that the life circumstances of the applicant, while compelling, are not standards in the Zoning Ordinance or supported by case law. The Board would need to make findings about the building or the property.

Mr. Gesund asked if the buyer had made an earnest money deposit. Mr. Ball responded yes and that if the property does not return to multiple family use the deal would fall apart due to financing.

Mr. Uhlar asked Director Masson-Minock if the unique circumstances could take into account the pandemic, which has not happened before and what she meant by giving the timeline to the attorney. Director Masson-Minock replied that by giving the timeline to the attorney, he could make a judgement, based on case law, as to whether the use was truly abandoned. If he found that the use was never abandoned, there would not be a need for a use variance. She said that if the Board was considering granting the use variance, she would ask that they specifically cite evidence shared by the applicant at this hearing, such as the two entrances or the cost of converting the building to single-family, etc. While the circumstances of the pandemic could be mentioned in the motion, she recommended that those not be the keystone of the motion.

Mr. Riley shared that under the national electrical code that one of the electrical lines would need to be removed, which is a substantial cost. Vice Chair McAlpine stated that there would be a substantial cost and that she thought that the applicant had never truly abandoned the property since he still lived there.

Director Masson-Minock outlined options that the Board had to move forward.
Vice Chair McAlpine asked the applicant if the Board table the case how it would affect the sale of his property. Mr. Ball replied that the deal was contingent on a decision at this meeting.

Vice Chair McAlpine read the instructions for participating in the Public Hearing. Vice Chair McAlpine opened the Public Hearing at 7:32 p.m.

Director Masson-Minock noted that no emails and communications had been received prior to the meeting.

No on-line participants were present.

Will MacDonald, 1079 Eaton, stated that he has lived next door to the property in question for thirty years. There had always been nice neighbors. It was built as a duplex. He did not see what the issue was since it was the last duplex in the neighborhood. He said there was no problem, no reason to change and things should be kept as they are. New stuff is a headache and a half. He would love to keep the duplex as it is.

Vice Chair McAlpine closed the Public Hearing at 7:36 p.m.

Mr. Riley asked if it was converted to a duplex in 1980. Director Masson-Minock said that a rental license was pulled in 1980 but that it was possible that the building had been originally built as a duplex. The Board discussed whether the building could have been a duplex at the time that it was built and the nonconforming status.

Mr. Krug stated that the building was built as a rental unit and saw that it would be a great expense to convert to single-family. Mr. Riley said that in the municipality he works for requires the second kitchen to be removed when a duplex is converted to a single-family home. Mr. Krug cited the two driveways as significant. Mr. Uhlar cited the two driveways and that there is not easy congress between the two units. He did not think there was an intent to abandon. Vice Chair McAlpine cited that in the review there was not enough information but that information had been presented by the applicant at the hearing. Mr. Wilner stated that the applicant did not intend to abandon the use and the cost to convert the building to a single-family home would be exorbitant. Mr. Gesund felt that the duplex use would not change the character of the use and the case meets the four standards.

Vice Chair McAlpine reviewed the four standards for deciding a use variance.

Motion by Mr. Uhlar to approve PBA-09-21, use variance request for a nonconforming duplex use at 1069 Eaton based the evidence presented by the applicant that due to the unique physical conditions of the building and property - specifically the two driveways, two electrical boxes, different cable boxes, different electrical boxes – the building and property at 1069 Eaton could not be reasonably used for a single-family house; and that the timeline presented by the applicant show that he did not abandon the two-family use, and the standards for review of Section 138-606 have been met.

Motion supported by Mr. Wilner.

AYES: McAlpine, Gesund, Uhlar, Wilner, Krug, Riley, Serr
NAYS: None
ABSENT: McDonald, Ward

3. **2022 Zoning Board of Appeals Calendar Dates**
Vice Chair McAlpine reviewed the calendar, noting the Board would continue to meet on the second Monday of the month. The Board discussed the dates in January and August where they would meet on the second Tuesday.

Motion by Mr. Wilner to approve the calendar as presented. Motion supported by Mr. Gesund.

AYES: McAlpine, Gesund, Uhlar, Wilner, Krug, Riley, Serr
NAYS: None
ABSENT: McDonald, Ward

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OTHER BUSINESS

None

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STAFF / BOARD MEMBER REPORT

Community Development Director Masson-Minock did not have a staff report.

Council Member Hennen thanked former Community Development Director Schlutow for her service to the City. He thanked Ms. Masson-Minock for stepping into the interim role. He said that the position was posted and asked the Board to please share any ideas they had for what the City should look for in that hire.

Council Member Hennen also reported that the Master Plan had been adopted by the City Council in November. He noted that, based on the proceedings tonight, he would be asking the City Attorney to see whether the Zoning Ordinance was compatible with case law in relation to abandonment.

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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 7:57 p.m.