

THE REGULAR MEETING OF THE BERKLEY CITY ZONING BOARD OF APPEALS WAS CALLED TO ORDER AT 7:00 PM, MONDAY, FEBRUARY 14, 2022 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/cityofberkeley>.

PRESENT:	Ryan J. Gesund	Kevin Wilner
	Sue McAlpine	Miles Uhlar (Arrival 7:10pm)
	Joseph V. Krug	Maria Ward
	Erick McDonald	Mark Riley (Alternate)

ABSENT: NONE

ALSO, PRESENT: Megan Masson-Minock, Interim Community Development Director
Dennis Hennen, City Council Liaison
Matt Baumgarten, City Manager

APPROVAL OF AGENDA

Motioned to approve the agenda by Mr. Gesund and supported by Ms. Ward

AYES: Gesund, Krug, McAlpine, McDonald, Riley, Ward, Wilner,

NAYS: NONE

ABSENT: Uhlar

MOTION CARRIED

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APPROVAL OF MINUTES

Motion to approve the minutes of January 11, 2022 by Ms. Ward and supported by Mr. Gesund with the revision of:

1. Page 6 third paragraph down, Alpine to be changed to McAlpine
2. Page 7 top of page, Alpine changed to McAlpine

AYES: Gesund, Krug, McAlpine, McDonald, Riley, Ward, Wilner

NAYES: NONE

ABSENT: Uhlar

MOTIONED CARRIED

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OLD BUSINESS

1. **APPLICATION PBA-11-21; 1940 Franklin** - Appeal, interpretation and-or use variance as to whether the definition of a home occupation includes a Federally Licensed Firearms Dealer.

Chair McAlpine called a recess at 7:08 p.m.

Chair McAlpine called the meeting back to order at 7:10 p.m.

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Interim Community Development Director Masson-Minock gave a summary of the previous meeting actions and requests for more information coming from the board on this specific public hearing. Community Development Director Masson-Minock reiterated the board had the option to affirm, modify, or reverse the letter from the city manager, which would set a precedent moving forward. She also reviewed the motion that had been drafted for discussion.

Ms. Ward asked for a point of clarification on what specific actions would be taken place by the board.

Petitioner:

Steve Nowak
1490 Franklin
Berkley, MI 48072

Petitioner, Mr. Nowak stated all the changes that have been made since the last meeting, and provided an overview of the recent information that was included. Chair McAlpine suggested revisiting some social media posts, as some may imply that sales happen.

The board asked petitioner, Mr. Nowak, for clarification on direct sales. In which Mr. Nowak stated that direct sales have not happened.

Chair McAlpine opened the floor up for public comment.
Chair McAlpine closed the floor up for public comment.

The board discussed their various thoughts on what they agreed with the draft presented before them. The board also discussed the findings from the attorney's letter and took that into consideration.

Co-Chair Uhlar asked City Manager, Matt Baumgarten, about the conversations and the nature of the conversations that were had with previous Community Development Director, Erin Schlutow, that were stated in this letter to the applicant from the City Manager.

City Manager, Matt Baumgarten, clarified that the process of how they conducted the business was applied to the standard set forth by the ordinance, which is where former Community Development Director, Erin Schlutow and City Manager felt it did not meet that ordinance.

The board discussed the decision on just action or activity and prompted discussion on what the ordinance states and if it needs to be rewritten.

The board discussed that if this motion is passed, and the City makes this more restrictive what the action would be on ATF's part and what they can be dependent upon, and the duties of the city.

Councilmember Hennen, stated that he found an Instagram account for Wolverine State Armory shows a post on February 19, 2020 that has implication of direct sales. The petitioner, Mr. Nowak stated that this post is gun parts sold on auction sites online and shipped out not sold directly from the house.

City Manager, Matt Baumgarten, stated that this is different and wanted to differentiate an eBay business etc., then actually owning or having a home-based business to fulfill orders and send with off-site mailing, where here the transfer has to happen on premise.

Chair McAlpine stated that the board has 90 days to decide on a final conclusion which would be April 11th.

Motion by Mr. Gesund supported by Co-Chair Uhlar. A recommendation was made to add to the last condition that: the City also monitors any change of ownership for that particular property, and if that does transpire that the appropriate step would be that we contact ATF to let them know that there's a change of ownership for that particular piece of property; and the City will commit to notifying the ATF if Mr. Nowak name is removed from the deed on the property. Both Mr. Gesund and Co-Chair Uhlar were friendly to that amendment of the motion.

The City of Berkley Board of Zoning Appeals finds that a modification of the administrative decision by City Manager Matt Baumgarten to deny Wolverine State Armory is a home occupation based upon the definition of home occupation in section 138-32 of 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 will restrict 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 shall 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.
 - c. The City of Berkley will monitor compliance with the modification to the best of its ability.
 - d. The City of Berkley will monitor any change of ownership for that particular property and will notify the ATF if Mr. Nowak's name is removed from the deed of the property at 1490 Franklin.

AYES: Gesund, Krug, McAlpine, McDonald, Uhlar, Wilner

NAYES: Ward

ABSENT: NONE

MOTIONED CARRIED

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NEW BUSINESS

1. **APLLICATION 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.**

Interim Community Development Director Masson-Minock summarized the history of the house and the previous building permits with that address. She noted that per the request of one of the Board members, the distance between the dwellings checked by the Building Official that day and verified as in compliance with the 15-foot separation of dwellings. The applicant is not proposing to extend the house beyond the existing wall into the side yard setback. Interim Community Development Director Masson-Minock summarized the standards of review by which the ZBA would discuss the dimensional variance request.

Petitioner:

Michael Ely
3865 Galloway Bay Dr
Troy, MI 48098

Petitioner, Mr. Ely provided an overview of the renovation of this particular property. He is asking for the rear variance to make this addition ADA compliant.

Interim Community Development Director Mason-Minock asked the applicant specific questions on the particular structure of the house currently.

The board asked and discussed with the applicant alternatives and questions on ADA compliance. The board also discussed with the applicant, the specific details on the blueprints, on what is present and what would need to be added.

Chair McAlpine asked Interim Community Development Director Mason-Minock on what the board is specifically deciding on. She replied that the board is deciding on whether the addition as proposed should be allowed based on finding about the property or the building itself, and the case has been noticed for two variances. Interim Community Development Director Mason-Minock stated the various options the board can do, including tabling the matter and asking the petitioner come back for the second variance.

Homeowner

(Speaking on behalf of her brother)
Jiehan Alonzo
686 Mohegan St
Birmingham, MI 48009

Ms. Alonzo gave an overall summary of the living situation with the three current residents in the household. She also stated the obstacles and challenges the residents currently face with the structured house as is.

Chair McAlpine opened the floor up for public comment at 8:44 p.m.
Chair McAlpine closed the floor for public comment at 8:44 p.m.

Chair McAlpine opened the floor for discussion amongst the board members.

There were no responses from the neighbors or correspondence.

Ms. Ward reviewed the five-point rule, in order to approve a variance all five of these rules need to be addressed. Ms. Ward expressed this is a hardship case, in order for the family to be able to continue to live in the existing dwelling, that this would be necessary.

Motion from Ms. Ward and supported by Krug to approve the variance of 7 ft. 6 in. from the required 35-foot rear yard setback to 27 ft. 6 in. rear yard setback, with a finding that the case meets all criteria for a variance, with the condition that, when the plans are submitted to the building department, the design is appropriate for the ADA requirements.

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

MOTIONED CARRIED

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The next item for discussion was the variance request for the separation distance between dwellings.

Ms. Ward asked Interim Community Development Director Mason-Minock, should there be an automatic granting of this variance, due to a city mistake.

Community Development Director Mason-Minock explained that this was not an error and explained the process of the building inspector for site plans that are submitted to the city. This was done because Mr. Krug asked for dimensions and confirmation.

Ms. Ward motioned to move to table the side variance until proper inspections can be made and measurements done to legitimize the actual distance between the two dwellings of 2740 Gardner and of 2758 Gardner. This motion was supported by Wilner.

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

MOTIONED CARRIED

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OTHER BUSINESS

NONE

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STAFF/BOARD MEMBER REPORT

Community Development Report was included in the packet. Interim Community Development Director Masson-Minock reported that the application for the dimensional variance heard in January for the new construction on Royal had been withdrawn.

LIAISON REPORT

Councilmember Hennen provided that prior to tonight's discussions that the home-business ordinance needs a fresh look. He also provided resources the board can look into for framework structure.

Councilmember Hennen also provided that the council approved the rezoning on South Coolidge, from Coolidge district to Gateway District. This is closer to what the master plan calls for, and will be compatible with proposed future land use maps.

Councilmember Hennen provided an update on the Marihuana ordinance in the city. The council directed staff to prepare an ordinance amendment to increase the number of licenses from three to five. He thanked everyone for volunteering their Valentine's Day evening here, as well as the spouses of the board.

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PUBLIC COMMENT

NONE

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With no further business, the meeting was adjourned at 9:01 p.m.