

THE JOINT MEETING OF THE PLANNING COMMISSION AND FORTY-FIRST COUNCIL OF THE CITY OF BERKLEY, MICHIGAN WAS CALLED TO ORDER AT 5:30 PM ON MONDAY, MARCH 16, 2026 BY MAYOR DEAN

PRESENT: Councilmember Steve Baker
Councilmember Clarence Black (attending remotely due to military duty)
Councilmember Gary Elrod
Mayor Pro Tem Gavin
Councilmember Gregory Patterson
Mayor Bridget Dean
Planning Commissioner Joseph Bartus
Planning Commissioner Shiloh Dahlin
Planning Commissioner Dana Kaplan
Planning Commissioner Josh Stapp
Planning Commissioner Eric Arnsman

ABSENT: Councilmember Dennis Hennen
Planning Commissioner Michael Woods
Planning Chair Lisa Kempner

OTHER STAFF PRESENT:

City Manager Crystal VanVleck
City Clerk Victoria Mitchell
City Attorney Lisa Hamameh
Community Development Director Kristen Kapelanski

APPROVAL OF AGENDA

Councilmember Patterson moved to approve the agenda
Seconded by Councilmember Baker
Ayes: Black, Elrod, Gavin, Patterson, Baker, Dean, Bartus, Dahlin, Kaplan, Stapp and Arnsman
Nays: None
Absent: Hennen, Woods and Kempner
Motion Approved.

PUBLIC COMMENT

None.

REGULAR AGENDA

Special Land Use Training.

Community Development Director Kristen Kapelanski introduced Megan Masson-Minock, Carlisle Wortman Associates principal, and said she will be conducting Special Land Use training.

Agenda:

- What makes a special land use special?
- Making effective decisions and findings
- Risk management

WHAT MAKES A SPECIAL LAND USE SPECIAL

Statutory Authority

Zoning:

- Michigan Zoning Enabling Act
 - Section 502
 - Legislative body *may* provide for special land uses in a zoning district. If so, must specify:
 - Special land uses and activities eligible for approval
 - The body or official responsible for reviewing and granting approval
 - The requirements and standards for approval
 - The procedures and supporting materials required
 - Public hearing required when a discretionary decision:
 - Notice in newspaper and mailed to property within 300 feet
 - Must happen before decision is made
 - Body or official may deny, approve, or approve with conditions:
 - Decision incorporated in a statement of findings and conclusions relative to the special land use which specifies the basis for the decision and any conditions imposed

Masson-Minock placed emphasis on a public hearing is required when a discretionary decision is made.

Masson-Minock reviewed statements of findings and specifics when conditions are involved.

- Public Act 110 of 2006 (MCL 125.3101 et seq)
- City of Berkley Zoning Ordinance
 - Special land uses in each zoning district (Article 10)
 - Planning commission recommends and City Council makes the final decision
 - Conditions of approval – Sec. 10.04
 - Process and supporting materials – Section 10.02 to Section 10.5
 - Public hearing with notice for Planning Commission & City Council
 - City Council: table, approve, approve with conditions, deny, postpone

The Special Land Use Process:

- Staff:
 - Pre-application meeting
 - Application submission
 - Technical review
 - Other including planning, zoning, DPW, etc.
- Planning Commission:
 - Public Hearing
 - Recommendation
- City Council:
 - Public Hearing
 - Decision

Special Land Use Standards

Section 10.03

- The Planning Commission must consider all of the following general standards, and any standards established for a specific use when reviewing a special use request. (Must meet ALL of the standards and if doesn't, must think about denial)

Section 10.03.A

- Compatibility with Adjacent Uses
 - The special land use must be designed and constructed in a manner harmonious with the character of adjacent properties and the surrounding area, as compared to the impacts of permitted uses.

Section 10.03.B

- Compatibility with the Master Plan
 - The proposed Special Land Use must be compatible and in accordance with the goals and objectives of the City of Berkeley Master Plan and any associated sub-area and corridor plans, including the Downtown Master Plan.

Section 10.03.C

- Traffic Impact
 - The proposed Special Land Use must be located and designed in a manner that will minimize the impact of traffic, taking into consideration the following:
 - Impact on ... pedestrians, mass transit, construction, maps, loading and unloading, street capacity, traffic flow, etc.
 - Efforts must be made to ensure that multiple transportation modes are safely and effectively accommodated in an effort to provide alternate mode of access and alleviate vehicular traffic congestion.

Masson-Minock went into further detail on traffic studies. She explained often traffic studies look at capacity and not safety. She said often staff has to come in and ask if it is safe.

City Attorney Hamameh explained a lot of times you get a traffic study that says its fine, but a Planning Commission (PC) or City Council does have discretion to determine other factors such as safety.

Section 10.03.D

- Impact on Public Services
 - The proposed Special Land Use must be adequately served by essential public facilities and services, such as:
 - Parks, cyclists, schools, emergency services, etc.
 - Such services must be provided and accommodated without an unreasonable public burden.

Section 10.03.E

- Compliance with Zoning Ordinance Standards
 - The proposed Special Land Use must be designed, constructed, operated, and maintained to meet the stated intent of the zoning districts and must comply with all applicable ordinance standards.

Section 10.03.F

- Impact on the overall environment
 - The proposed Special Land Use must not unreasonably impact the quality of natural features and the environment in comparison to the impacts associated with the typical permitted uses.

Section 10.03.G

- Special Land Use Approval Specific Requirements
 - The general standards and requirements of this Section are basic to all uses authorized by Special Land Use Approval. The specific and detailed requirements relating to particular uses and area requirements must also be satisfied for those uses.

Special Land Use Standards Section 10.03.H

- The following factors must also be considered by the PC when reviewing a special land use request:
 - Factors like hours of operation, if noisy then testing before and after for noise, look at other limitations that link back to a rule. They can't be arbitrary. The condition has to link to the standard and could be regulated.

MAKING EFFECTIVE DECISIONS (AND FINDINGS)

Elements of effective decisions:

- Expect complete information
- Be prepared
- Conduct orderly meetings
- Deliberate properly
- Document decisions

Preparation:

- Conduct a site visit
 - Don't always rely on google maps
 - Don't go on private property
- Avoid "ex parte" contacts
 - You don't want to know more than your colleagues. You want to have equal information
 - Ex: Don't interview neighbors, etc.
- Review Materials
 - Planner and other professional reports
 - Application and plans
 - Ordinance requirements
- Ask questions

Site Visits:

- Dos:
 - Look at the plans beforehand
 - Have a list of things to look at on the site visit
 - Observe the site from the street or public property
 - Look at the character of the surrounding area
 - Look at the site using Google Street View or Oakland County parcel viewer
 - Ask staff for assistance
- Don'ts:
 - Trespass on the applicant's property or any other private property
 - Talk with the applicant or the neighbors about the case – "Ex Parte" discussion

General Meeting Rules

- Keep order
- Stay on subject
- Eliminate misunderstanding of outcomes
- Maintain fairness during deliberation
- Deliberation process
 - Rules for Speakers
 - Degree of formality
 - Comments through the Chair
 - Speaking time should adhere to Rules of Procedure
 - Rules for Speakers
 - Comments through the Chair
 - Deliberate in the open
 - Express opinions
 - Use ordinance standards for decisions
- Decisions and Motions
 - A motion is a formal proposal by a member
 - Types of motions include Main and Secondary
 - Main motion brings subject to the floor and are amendable and debatable
 - Secondary motion modifies a main motion and may be amenable and debatable
 - Common secondary motions: amendment and recess
- Debate: Limits
 - Chair must recognize speaker
 - Cannot speak or carry on side conversation while another is speaking
 - Common modifiers to speaking order
 - Maker of motion speaks first

- No member permitted to speak twice until each member has the opportunity to speak
- Debate: Protocol
 - Stick to the subject
 - Debate issues and not personalities
 - Use formal speech such as “Mr. Smith” and not “Joe” or “Madam Chair” and not “Betty”
 - Motion to limit or extend limits on debate possible
 - Motion to immediately close debate possible
- Meeting Etiquette
 - Face of the City
 - Respect each other and the public
 - Treat all fairly
 - Keep actions simple and understandable
- Delays
 - Appropriate:
 - Incomplete application
 - Extensive changes necessary to comply with ordinance standards
 - Applicant requests delay in writing
 - When necessary information from an agency or the applicant has not been received
 - Not appropriate:
 - When receipt of another agency permit can be handled as a condition
 - Minor changes to the plan are required which will not affect site layout and can be handled as a condition (e.g., variance request for a larger sign)
- Motions
 - Phrase motions carefully to withstand scrutiny by a court
 - Ensure everyone is clear on motion
 - Reference relevant sections of ordinance and reports
 - Conditions may be imposed on a special land use decision
- Motion Musts
 - Special Land Use name and number
 - Site Plan name and number attached to the Special Land Use
 - Date of plan (including revision dates)
 - The result (approved, approved with conditions, denied, tabled)
 - Findings supporting action(s) taken
 - Any conditions (with timetables, if applicable)
 - Who will verify conditions are met (if applicable)
- Conditions
 - May be attached to any affirmative decision
 - Must be reasonable and bear a relationship to the review standards

Masson-Minock discussed when to attach a condition to an approval. She said to consider the request without the condition. She said if the condition was not attached to the decision, would the review standards be met? If not, then a condition can be attached.

General Zoning Principles

- Right to control land use decision is not absolute
- The rights to the public must be weighed against the rights of individuals
 - Reasonable use of their property; and
 - Reasonable economic return
- Zoning Ordinance must be fair and reasonable
 - It must not be arbitrary
- A good Master Plan is a good defense in zoning litigation
- Zoning ordinances should not exclude otherwise lawful uses
 - There are exceptions to this rule

A discussion took place regarding material changes and postponements.

- Zoning ordinances should not exclude otherwise lawful uses
 - Following procedure matters. Adhere to the letter of the requirements of the ZEA and the local ordinance
 - Require applicants seeking zoning relief to follow procedure. Sometimes applicants want to skip steps, but you have procedures for a reason
 - Deal with zoning issues in a prompt manner
- Make sure all zoning decisions are made in open meetings
- Do not express an opinion regarding a pending zoning decision until all the facts have been received in open meeting; to do otherwise is to deprive the applicant of the right to a fair hearing and invite litigation
- When making a decision, make sure it is supported by competent evidence
 - Create a good record
- Experts provide an invaluable service to the City at every stage of the zoning process
 - Their expertise and guidance can be crucial in zoning litigation
 - Whenever there is an issue that appears to be generating controversy, they should be consulted early in the process

A discussion took place regarding to whom the project questions should be directed. It was stated that all questions regarding a project should be directed to city staff. That stands for city council members and planning commissioners.

RISK MANAGEMENT

- You can't avoid litigation
- You can manage risk and liability exposure by:
 - Using consistent rules and procedures
 - Treating everyone fairly and consistently
 - Avoiding conflicts of interest
 - Keeping accurate and complete records
- Risk Management: Conflict of Interest
 - Identification
 - You are the applicant
 - Relative
 - Business associate
 - If you have to ask ...
 - Procedure
 - State nature of conflict
 - Request to abstain from discussion and voting
 - Must be approved by the body
 - Minutes should reflect abstention and reason
 - Zoning must provide a reasonable use
 - The use need not be the most profitable
 - Support your decision with findings based on review standards
 - Follow proper procedures
 - Case law: In state and federal courts is still emerging

ADJOURNMENT:

Councilmember Patterson moved to adjourn the Work Session at 6:33 PM

Seconded by Councilmember Baker

Ayes: Elrod, Gavin, Patterson, Baker, Black, Dean, Bartus, Dahlin,

Kaplan, Stapp and Arnsman

Nays: None

Absent: Hennen, Woods and Kempner

Motion Approved.

Bridget Dean, Mayor

ATTEST:

Victoria Mitchell, City Clerk