

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, October 11, 2022
City Commission Room
151 Martin Street, Birmingham, Michigan

1. Call To Order

Minutes of the special meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, October 11, 2022. Chair Erik Morganroth convened the meeting at 7:30 p.m.

2. Rollcall

Present: Chair Erik Morganroth; Board Members Kevin Hart, John Miller, Ron Reddy, Pierre Yaldo; Alternate Board Members Carl Kona, Richard Lilley

Absent: Vice-Chair Jason Canvasser

Staff: Building Official Johnson; City Transcriptionist Eichenhorn, Assistant Building Official Morad, Assistant Building Official Zielke

Chair Morganroth welcomed those present and reviewed the meeting's procedures.

Chair Morganroth described BZA procedure to the audience. He noted that the members of the Board of Zoning Appeals are appointed by the City Commission and are volunteers who serve staggered three-year terms. They are a quasi-judicial board and sit at the pleasure of the City Commission to hear appeals from petitioners who are seeking variances from the City's Zoning Ordinance. Under Michigan law, a dimensional variance requires four affirmative votes from this board, and the petitioner must show a practical difficulty. A land use variance requires five affirmative votes and the petitioner has to show a hardship. He pointed out that this board does not make up the criteria for practical difficulty or hardship. That has been established by statute and case law. Appeals are heard by the board as far as interpretations or rulings. In that type of appeal the appellant must show that the official or board demonstrated an abuse of discretion or acted in an arbitrary or capricious manner. Four affirmative votes are required to reverse an interpretation or ruling.

Chair Morganroth took rollcall of the petitioners. All petitioners were present.

3. Announcements

The City continues to recommend the public wear masks while attending City meetings per CDC guidelines. The cases of COVID-19 are increasing in the area. All City employees, commissioners, and board members must wear a mask while indoors when 6-feet of social distancing cannot be maintained. This is to ensure the continuity of government is not affected by an exposure to COVID-19 that can be prevented by wearing a mask. The City continues to provide KN-95 respirators and triple-layered masks for all in-person meeting attendees.

4. Approval Of The Minutes Of The BZA Meetings Of September 13, 2022

T# 10-64-22

Motion by Mr. Lilley

Seconded by Mr. Kona to accept the Minutes of the BZA meeting of September 13, 2022 as amended.

Motion carried, 7-0.

VOICE VOTE

Yeas: Morganroth, Kona, Hart, Miller, Reddy, Yaldo, Lilley

Nays: None

5. Appeals

T# 10-65-22

**1) 600 Aten Ct
Appeal 22-40**

ABO Zielke presented the item, explaining that the owner of the property known as 600 Aten Ct was requesting the following variances to construct a new single family home with an attached garage:

A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average of homes within 200.00 feet in each direction. The required is 32.40 feet. The proposed is 27.83 feet, therefore, a variance of 4.57 feet is being requested.

B. Chapter 126, Article 4, Section 4.75(A)(1) of the Zoning Ordinance requires that private, attached, single-family residential garages must be setback a minimum of 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The proposed is the garage is 0.23 feet in behind the furthest façade. Therefore, a variance of 4.77 feet is being requested.

Staff answered informational questions from the Board.

In reply to the Chair, Gregory Aerts, architect, confirmed that one of the homes within 200 feet had a more extensive setback than the other nearby homes, which skewed the average setback and resulted in the appellant's request for variance A.

Mr. Aerts explained that he superimposed the existing home on the proposed plan to show the relationship between the two. He provided the setbacks of the neighboring homes and noted that the setback of the proposed home would be the average of homes' setbacks within 200 feet, not including the home with an outlying setback. He explained that the existing house was approximately five feet closer to the street than the proposed home.

Mr. Aerts also noted that the existing home was not within the building envelope and was non-conforming in the rear.

Mr. Miller noted that, at the Board's September 13, 2022 meeting, the Board asked the appellant to return with renderings that showed the relation between the proposed home and the other homes in the circle. He noted that those requested renderings were not provided.

In reply to Mr. Miller, Mr. Aerts said his impression was that the neighbors wanted to see the relationship between the existing house and the proposed house, which is why he overlaid the existing home on the proposed home's plans. He explained that the survey showed the adjacent homes and that the setbacks of the neighboring homes were also provided. He said he did not realize a site plan of the circle was necessary.

Mr. Miller said that the intent of requesting a rendering showing the proposed home in relation to the other homes was to give the Board and neighbors a visual representation of the proposal. He said he was struggling with the lack of the requested rendering.

Motion by Mr. Reddy

Seconded by Mr. Yaldo with regard to Appeal 22-40, A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average of homes within 200.00 feet in each direction. The required is 32.40 feet. The proposed is 27.83 feet, therefore, a variance of 4.57 feet is being requested; and, B. Chapter 126, Article 4, Section 4.75(A)(1) of the Zoning Ordinance requires that private, attached, single-family residential garages must be setback a minimum of 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The proposed is the garage is 0.23 feet in behind the furthest façade. Therefore, a variance of 4.77 feet is being requested.

Mr. Reddy moved to approve both the requested variances, stating that Mr. Aerts fit the proposed home within the footprint of the existing home, and brought the proposed home into compliance with the rear setback requirements. Mr. Reddy noted that the shape of the lot was also unusual. He said there were enough unique circumstances to merit the granting of the variances. He tied the approval to the plans as submitted.

Mr. Yaldo seconded the motion, stating that the appellant demonstrated that the shape of the cul-de-sac represented a practical difficulty and that strict compliance with the ordinance would render the property unable to be used for its permitted purpose. He said there was no self-creation, and said granting the variances would do substantial justice to the owner and the neighbors.

Mr. Miller said he could not support the motion given the lack of the requested rendering showing the proposed home in relation to the other homes. He said the lack of the documentation made the decision much more difficult. Mr. Miller explained that

part of the proposed home pulled further forward than the extant home, and said that seeing the relationship between that part of the home and the neighboring home was important.

Mr. Kona said that while he agreed with Mr. Miller about the front portion of the proposed home, he explained that the other circumstances combined to make the appellant's proposal the most appropriate one.

The Chair said he would also support the motion, citing the oddly-shaped lot and the impact of the outlying home on the average setbacks. He noted that while the corner of the garage was not five feet behind the front door, the shape of the lot and the angle of the home made that a necessity. He noted that the the garage was as close to being five feet behind the front door as possible given the circumstances and therefore largely aligned with the intent of the ordinance.

Motion carried, 6-1.

ROLL CALL VOTE

Yeas: Morganroth, Kona, Hart, Reddy, Yaldo, Lilley

Nays: Miller

T# 10-66-22

**2) 1998 Bowers
Appeal 22-43**

ABO Zielke presented the item, explaining that the owner of the property known as 1998 Bowers was requesting the following variances to construct a covered porch:

A. Chapter 126, Article 2, Section 2.08.1 of the Zoning Ordinance states that the maximum lot coverage is 30% for any lot. The maximum for this property is 1740.00 SF (30%). The existing is 1917.00 SF (33.00%). The proposed is 1929.00 SF (33.25%). Therefore, a variance of 189.00 SF (3.25%) is being requested.

B. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of total lot width, whichever is larger. The required is 14.00 feet on the west side. The proposed is 10.70 feet. Therefore, a variance of 3.30 feet is being requested.

Staff answered informational questions from the Board.

Raffi Bogosian of MainStreet Design Build reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

In reply to Mr. Reddy, Mr. Bogosian stated that the design of the porch was both for aesthetic reasons and to deal with water runoff. He said the alternate design would cause water to pool between the porch and the house.

In reply to Mr. Hart, Mr. Bogosian confirmed that an ordinance-compliant porch would not be appropriate to build. He confirmed that the present porch was largely unusable given its geometry and size, which amounted to a hardship. Mr. Bogosian also explained that the appellants wanted a larger porch so that it would be usable.

Motion by Mr. Hart

Seconded by Mr. Miller with regard to Appeal 22-43, A. Chapter 126, Article 2, Section 2.08.1 of the Zoning Ordinance states that the maximum lot coverage is 30% for any lot. The maximum for this property is 1740.00 SF (30%). The existing is 1917.00 SF (33.00%). The proposed is 1929.00 SF (33.25%). Therefore, a variance of 189.00 SF (3.25%) is being requested; and, B. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of total lot width, whichever is larger. The required is 14.00 feet on the west side. The proposed is 10.70 feet. Therefore, a variance of 3.30 feet is being requested.

Mr. Hart moved to approve both the requested variances and tied approval to the plans as submitted. He said that granting the variances would fix the geometry of the house and enhance the aesthetic appeal of the neighborhood. He explained that this would benefit both the owners and the neighboring properties. Mr. Hart noted that a conforming porch would result in an area where water would pool between the home and the porch. He said that the need for the variances was not self-created.

Mr. Miller supported the motion, noting that the geometry of the home was causing the need for the variances. He said that conformity with the ordinance in this case would be unnecessarily burdensome. Mr. Miller concurred with Mr. Hart that the issue was not self-created, and said granting the variances would be beneficial to the neighborhood.

The Chair noted that the appellant was already beyond their lot coverage, though he acknowledged that the overage was not necessarily the fault of the appellant. He noted that if the appellant were to build an ordinance-compliant porch, the area where water would pool could be waterproofed or dealt with in other ways. He said the desire for the porch was a preference and not a necessity, and said he did not see a practical difficulty. He said he had not decided how he would vote, but wanted to explain his concerns.

Mr. Kona said he had a similarly-sized porch to the appellant's present porch and said he did not find his porch to be unusable. He said he also found it difficult to increase the lot coverage. He said he was unsure how he would vote as well.

Mr. Miller noted that the extending of the porch would be ordinance-compliant. He reiterated that it was the geometry of the home that was necessitating the variances.

Mr. Hart reiterated his contention that an ordinance-compliant porch would be aesthetically displeasing. He said the Board has not required ordinance compliance in similar circumstances where compliance would require a notch in a wall.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Morganroth, Miller, Kona, Hart, Reddy, Yaldo, Lilley

Nays: None

T# 10-67-22

**3) 547 Bloomfield Ct
Appeal 22-44**

ABO Zielke presented the item, explaining that the owner of the property known as 547 Bloomfield Ct was requesting the following variance to construct a second floor addition to an existing non-conforming home:

A. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that the minimum rear yard setback is 30.00 feet. The existing and proposed is 7.20 feet. Therefore, a variance of 22.80 feet is being requested.

Staff answered informational questions from the Board.

Todd Emerson of Sterling Custom Homes reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to the Chair, Mr. Emerson said it would be structurally more difficult to built the addition stepped-in from the footprint of the first floor.

Motion by Mr. Hart

Seconded by Mr. Reddy with regard to Appeal 22-44, A. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that the minimum rear yard setback is 30.00 feet. The existing and proposed is 7.20 feet. Therefore, a variance of 22.80 feet is being requested.

Mr. Miller moved to approve the requested variance and tied approval to the plans as submitted. He stated that the placement of the home and the shape of the lot led to the homeowner requesting a variance. He said the issue was not self-created and that ordinance-compliance would unreasonably prevent the appellant from using the property as permitted.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Morganroth, Miller, Kona, Hart, Reddy, Yaldo, Lilley

Nays: None

T# 10-68-22

**4) 1016 Pierce
Appeal 22-45**

ABO Morad presented the item, explaining that the owner of the property known as 1016 Pierce was requesting the following variance to construct a new single-family home with an attached garage:

A. Chapter 126, Article 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width, whichever is larger. The required is 17.25 feet. The proposed is 14.00 feet on the North side. Therefore; a variance of 3.25 feet is being requested.

Staff answered informational questions from the Board. It was noted that the appellant was seeking re-approval of this variance because the approval time of a year had elapsed.

Brett Eilander, owner, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

Motion by Mr. Lilley

Seconded by Mr. Reddy with regard to Appeal 22-45, A. Chapter 126, Article 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width, whichever is larger. The required is 17.25 feet. The proposed is 14.00 feet on the North side Therefore; a variance of 3.25 feet is being requested.

Mr. Lilley moved to approve the requested variance and tied approval to the plans as submitted. He noted that the the same variance was approved unanimously by the Board a little over a year prior.

It was also noted that the home was ordinance-compliant and that it was only the neighboring home that caused this proposal to require a variance.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Morganroth, Miller, Kona, Hart, Reddy, Yaldo, Lilley

Nays: None

6. Correspondence

7. Open To The Public For Matters Not On The Agenda

T# 10-69-22

8. Adjournment

No further business being evident, the Board motioned to adjourn at 8:40 p.m.

Bruce R. Johnson, Building Official



Laura Eichenhorn

City Transcriptionist