

**Birmingham Board Of Zoning Appeals Proceedings**  
**Tuesday, November 8, 2022**  
**City Commission Room**  
**151 Martin Street, Birmingham, Michigan**

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**1. Call To Order**

Minutes of the special meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, November 8, 2022. Chair Erik Morganroth convened the meeting at 7:30 p.m.

**2. Rollcall**

**Present:** Chair Erik Morganroth, Vice-Chair Jason Canvasser; Board Members Kevin Hart, Richard Lilley, John Miller, Ron Reddy, Pierre Yaldo

**Absent:** Alternate Board Member Carl Kona

**Staff:** Building Official Johnson; Planning Director Dupuis, City Transcriptionist Eichenhorn, Assistant Building Official Morad, Assistant Building Official Zielke

Chair Morganroth welcomed those present and reviewed the meeting's procedures. 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 October 11, 2022**

**T# 11-72-22**

**Motion by Mr. Reddy**

**Seconded by Mr. Lilley to accept the Minutes of the BZA meeting of October 11, 2022 as amended.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

**5. Appeals**

**T# 11-73-22**

**1) 1511 E. Maple  
Appeal 22-50**

ABO Zielke presented the item, explaining that the owner of the property known as 1511 E. Maple was requesting the following variance to construct a rear addition to the existing non-conforming house:

**A. 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 20.00 feet on the east side. The proposed is 17.20 feet. Therefore, a variance of 2.80 feet is being requested.

Staff answered informational questions from the Board.

It was noted that the appellant was granted an incorrect variance in June 2022 due to a clerical error, and was before the BZA presently to request that the variance be changed from .80 feet to 2.80 feet.

In reply to the Chair, Jason Hurst, co-owner, explained that mitigating the requested variance would have introduced issues with the gutters and the foundation.

**Motion by Mr. Reddy**

**Seconded by Mr. Yaldo with regard to Appeal 22-50, A. 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 20.00 feet on the east side. The proposed is 17.20 feet. Therefore, a variance of 2.80 feet is being requested.**

**Mr. Reddy moved to approve the requested variance, stating that the request was largely similar to the variance granted by the BZA in June 2022, and that it did not**

**appear to be the appellant's fault that the correct variance amount was not noted at the June 2022 meeting. He tied approval to the plans as submitted.**

**Mr. Yaldo seconded the motion because granting the variance did substantial justice to the owner and neighboring properties, the issue was not self-created, and it was not contrary to the spirit or intent of the ordinance.**

**The Chair noted he would support the motion because the property was existing non-conforming, and the variance did not add to the non-conformity. He agreed with Mr. Yaldo that the variance would do substantial justice since it did not expand the non-conformity.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**T# 11-74-22**

**2) 220 Lake Park  
Appeal 22-48**

ABO Zielke presented the item, explaining that the owner of the property known as 220 Lake Park was requesting the following variance to construct a front addition to the existing house:

**A. 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 95.00 feet in front of the furthest façade. Therefore, a variance of 100.00 feet is being requested.

Staff answered informational questions from the Board.

Gayle McGregor, attorney for the appellant, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

The Chair noted that while the stated issue was replacing a non-functional garage, the request went beyond what would be needed to create a functional garage.

Mr. Reddy noted that a 100-foot variance request was particularly large. He said there was likely opportunity to at least partially mitigate the variance request.

Mr. Yaldo concurred with his colleagues' comments, asking whether the requested variance was the minimum required to add a functional garage.

Mr. Hart said he visited the property and that the addition would not be visible from the street as proposed. He said that given the floodplain and the drop from the front of the property to the rear, the appellant would have to seek approval from the Michigan Department of Natural Resources to add a garage in the rear of the home.

BO Johnson noted that a detached accessory structure could be built without a variance.

In reply to Board comment, Ms. McGregor stated:

- The ordinance would allow an addition of the same size and height if it were not a garage. For that reason, the appellant should be able to create a garage as part of the addition;
- While the variance requested was significant, the addition would still allow for the required distances between structures and would not enter into the required setbacks. Consequently, granting the variance would not cause the property to be inconsistent with the neighborhood or the neighboring properties;
- The norm in the neighborhood is three-vehicle attached garages;
- One of the mitigating factors was that the home cannot be viewed from the street. The addition would be in-line with the size of the home and the size of the lot;
- Granting the variance would be substantially just because none of the neighbors would be able to view the addition from the street;
- The concept drawing was not meant to be a to-scale rendering; and,
- Putting the garage in the rear of the property would change the character of the lakefront for the neighbors.

VC Canvasser said he lived in the same neighborhood as the appellants and was unsure if three-vehicle attached garages were the norm.

**Motion by Mr. Miller**

**Seconded by Mr. Hart with regard to Appeal 22-48, A. 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 95.00 feet in front of the furthest façade. Therefore, a variance of 100.00 feet is being requested.**

**Mr. Miller moved to approve the requested variance, stating the variance was necessary due to the unique circumstances of the property. He said the need for the variance was not self-created and said the ordinance in this matter was not applicable in any really practical sense. He said strict compliance with the ordinance would be unreasonable. He tied approval to the plans as submitted.**

**VC Canvasser said he would not support the motion. He stated that strict compliance with the ordinance would not be unnecessarily burdensome, since the structure could be built as long as it was detached from the home. He explained there had also been an insufficient showing of attempts to mitigate the variance request.**

**Mr. Yaldo noted that only 50% of the requested variance would be used as a garage, and that the non-garage space would be above the garage. He noted that the variance was not being expanded by adding non-garage space. He added that it was important that the concept drawing did not show the proposal to scale.**

**The Chair said he would support the motion. He said that the addition could be built without a variance, but that it would look substantially similar to the present proposal. He said it would not do substantial justice to the appellant to force them to walk to a detached structure that would otherwise largely look the same as the present proposal. He stated that the ordinance did not contemplate a lot of this size and shape where the proposed garage would be invisible from the street. He noted that the topography of the lot was also prohibitive for building a garage in the rear. He said that while he had some concern about providing a 100-foot variance, the lot was unique enough to merit his support of the motion.**

**Motion carried, 5-2.**

ROLL CALL VOTE

Yeas: Morganroth, Hart, Yaldo, Lilley, Miller

Nays: Reddy, Canvasser

**T# 11-75-22**

**3) 839 Ridgedale  
Appeal 22-49**

ABO Zielke presented the item, explaining that the owner of the property known as 839 Ridgedale was requesting the following variance to construct a second floor addition to an existing non-conforming home:

**A. Chapter 126, Article 2.08.2** of the Zoning Ordinance requires that a minimum front yard setback is the average of homes within 200 feet each way. The required is 32.70 feet. The existing and proposed is 28.30 feet. Therefore a variance of 4.40 feet is being requested.

Staff answered informational questions from the Board.

Art Lang, architect, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

Mr. Miller noted that he had moved to approve the February 2022 variance request for this property because the proposed remodeling would mitigate an existing non-conformity.

The Chair noted that the main bedroom had a number of closets, one of which would be in the expanded dormer. While the Chair praised the aesthetics of the design, he said he did not see the practical difficulty that necessitated the expanded dormer.

In reply to Board comment, Mr. Lang stated:

- The proposed shed roof dormer would be equally as appropriate as a gable dormer for the home's overall bungalow style;
- If he did not expand the dormer, he could not provide all of the features the homeowners requested; and,
- The appellant considered every option for mitigating the variance request.

In reply to the Chair, Mike Treash, co-owner, said it would not presently be financially feasible to reopen the porch as a partial mitigation of the variance request.

**Motion by Mr. Miller**

**Seconded by Mr. Reddy with regard to Appeal 22-49, A. Chapter 126, Article 2.08.2 of the Zoning Ordinance requires that a minimum front yard setback is the average of homes within 200 feet each way. The required is 32.70 feet. The existing and proposed is 28.30 feet. Therefore a variance of 4.40 feet is being requested.**

**Mr. Miller moved to approve the requested variance, stating the need for the variance stems from an older, non-conforming house that sits too far forward on the lot. While acknowledging some concerns about the removal of the mitigation, Mr. Miller explained that the request was reasonable in the context of the home. He said the basic need for the variance was not self-created. He noted that the present dormer was being expanded, rather than a new dormer being added. He said granting the variance would not do any harm and would enhance the neighborhood. He tied the approval to the plans as submitted.**

**Mr. Reddy concurred, saying that the lot provided enough unique circumstances that he was comfortable seconding the motion.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**T# 11-76-22**

**4) 479 S Old Woodward  
Appeal 22-47**

PD Dupuis presented the item, explaining that the owner of the property known as 479 S Old Woodward was requesting the following appeal and the following variance:

**A.** The applicant is requesting an appeal of the Planning Board's decision on September 28th, 2022 to deny the revised Final Site Plan and Design Review application for 479 S. Old Woodward.

**AND**

**B. Chapter 126, Article 4, Section 4.46(A) Table A** requires the off-street parking total for a site to be based on the land uses. Furthermore, Chapter 126, Article 4, Section 4.50(D) enables parking requirement reductions for a property in the B3 Zone when there is combined within a single building an office use, a residential use, and a restaurant use. The applicant is required to provide 113 parking spaces on-site. The amended site plan provides 39 parking spaces on-site. Therefore, a variance of 74 parking spaces is being requested.

Staff answered informational questions from the Board.

Stephen Estey, attorney for the appellant, reviewed the letter describing why this appeal and variance were being sought. The letter was included in the evening's agenda packet.

The Chair said he could not determine the intent or purpose of an appeal in this matter.

In reply to Board comment, Mr. Estey stated:

- The appellant would withdraw the request for the appeal, leaving only the variance to be considered;
- The appellant believed at the time of purchase of the property that there was a compelling reason and precedent for being allowed into the expired Parking Assessment District (PAD). It was only after purchase that it became clear that the appellant would not be able to follow the precedent for being admitted to the PAD;
- The appellant chose to file with the BZA before coming before the City Commission for this matter because of timing rules for filing with the BZA;
- It was uncertain why this property was excluded from the PAD when all other D4 zoned properties were included;
- The appellant would be willing to pay the requisite fees for admission to the PAD if given the opportunity;
- The request could be partially mitigated without the mezzanines or the higher intensity use of the whiskey bar;
- Any commercial use of the first floor would still require a significant variance for parking because the property was not in the PAD;
- There would be sufficient capacity in the structures to accommodate the requested parking variance; and,
- The possibility of a parking agreement was explored, but was deemed not possible with the neighbors within the required distance.

In reply to an inquiry from the Chair, PD Dupuis said that a regular commercial use of the first floor would still require a variance of approximately 62 parking spaces, though he noted that certain combinations of uses could allow for a lower number.

Public Comment

Lee Steinberg, neighboring business owner, said that while he supported development of the property, increasing the parking demand in the area via this variance was inappropriate given the recent removal of a number of street parking spaces on S. Old Woodward. He said he was supportive of the previously approved plans for the site.

Seeing no further public comment, the Chair returned the conversation to the Board.

Mr. Miller said he believed he liked the project, but said it was very difficult for the Board to determine the appropriateness of the project within the context of the City. He said that given the variables, the Board would need additional study, information, and expertise to make a determination on this variance request.

**Motion by VC Canvasser**

**Seconded by Mr. Miller with regard to Appeal 22-47, B. Chapter 126, Article 4, Section 4.46(A) Table A requires the off-street parking total for a site to be based on the land uses. Furthermore, Chapter 126, Article 4, Section 4.50(D) enables parking requirement reductions for a property in the B3 Zone when there is combined within a single building an office use, a residential use, and a restaurant use. The applicant is required to provide 113 parking spaces on-site. The amended site plan provides 39 parking spaces on-site. Therefore, a variance of 74 parking spaces is being requested.**

**VC Canvasser moved to deny the requested variance, noting that the request for an appeal was withdrawn by the appellant. He said that while the property needed redevelopment, the difficulty was the size of the variance. He said it was not clear that 74 parking spaces was the minimum number required to allow this property to be redeveloped. He said that strict compliance with the ordinance would not prevent the appellant from using the property for a permitted purpose, even if it would not allow the appellant to use the property to the extent they hope to use it. VC Canvasser acknowledged that there were some difficulties complying with the ordinance. He noted that it was unclear that granting the variance would do substantial justice to other property owners in the area, noting an alleged parking issue in the area.**

**Mr. Miller noted he supported the previous variance request for the site because he wanted to see the site developed. He said the issue here was the enormity of the variance request. He said he was also unclear that 74 parking spaces was the minimum number required to allow the property to be developed.**

**Mr. Reddy said he felt the Board had sufficient evidence for him to vote in support of the motion.**

**Mr. Hart said a project like this would be a great enhancement to the City. He noted the difficulties of doing extensive construction adjacent to aging buildings. He said he would not support the motion because this property needed to be developed.**

**The Chair said he was also unclear whether 74 parking spaces was the minimum number required to appropriately develop the property. He said voting for a variance**



**for that number of spaces in a City with a perceived parking issue would be irresponsible without more information. He noted that the City Commission may be able to resolve the issue via Special Land Use Permit or other options. He said he would support the motion.**

**Motion carried, 6-1.**

ROLL CALL VOTE

Yeas: Morganroth, Yaldo, Lilley, Miller, Reddy, Canvasser

Nays: Hart

**6. Correspondence**

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

**8. Adjournment**

No further business being evident, the Board motioned to adjourn at 9:52 p.m.

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Bruce R. Johnson, Building Official



Laura Eichenhorn

City Transcriptionist