

**Birmingham Board Of Zoning Appeals Proceedings**  
**Tuesday, December 13, 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, December 13, 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, Ron Reddy, Pierre Yaldo; Alternate Board Member Carl Kona

**Absent:** Board Member John Miller

**Staff:** Building Official Johnson; City Planner Blizinski, Senior Planner Cowan, 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 either present or arrived in time for their appeals to be heard.

**3. Announcements**

Announcements can be found in the evening's agenda packet.

**4. Approval Of The Minutes Of The BZA Meetings Of November 8, 2022**

**T# 12-77-22**

**Motion by VC Canvasser**

**Seconded by Mr. Reddy to accept the Minutes of the BZA meeting of November 8, 2022 as amended.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

**5. Appeals**

**T# 12-78-22**

**1) 555 Stanley  
Appeal 22-33**

ABO Zielke presented the item, explaining that the owner of the property known as 555 Stanley was requesting the following variances to construct an addition to an existing non-conforming home:

- A. Chapter 126, Article 2, Section 2.10.1** of the Zoning Ordinance states that the maximum lot coverage is 30% for any lot. The maximum for this property is 1728.00 SF (30%). The existing is 2544.00 SF (44.17%). The proposed is 2580.00 SF (44.79%). Therefore, a variance of 852.00 SF (14.79%) is being requested.
- B. Chapter 126, Article 2, Section 2.10.2** of the Zoning Ordinance requires that a minimum rear yard setback of 30.00 feet. The proposed is 22.17 feet. Therefore, a variance of 7.83 feet is being requested.
- C. Chapter 126, Article 2, Section 2.10.2** of the Zoning Ordinance requires that a minimum combined front and rear yard setback of 55.00 feet. The proposed is 34.50 feet. Therefore, a variance of 20.50 feet is being requested.
- D. Chapter 126, Article 2, Section 2.10.2** of the Zoning Ordinance requires that no side yard shall be less than 5.00 feet. The existing and proposed is 3.50 feet. Therefore, a variance of 1.50 feet is being requested.

Staff answered informational questions from the Board.

Paul Samulak, architect for the appellant, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

In reply to Board inquiry, Mr. Samulak stated:

- Removal of the upstairs closet and the stairs to access that closet could have partially mitigated the variance request. He noted that while one of the residents required a first-floor main bedroom, the other resident would be able to use the upstairs closet;
- The first floor main bathroom could not be moved to the side of the house due to the location of the ingress/egress of the garage;

- Efforts were made to minimize the encroachment into the setback by making the bathroom long and narrow. Efforts to mitigate the variances were balanced with the owner's requirements; and,
- An elevator was considered as a potential option for removing the need for the variances, but was decided against due to cost;
- The main bedroom's size was due to accessibility needs and the owner's preferences; and,
- The variance on the lot coverage was being requested due to the relatively small size of the lot.

The Chair suggested that an elevator or chair lift would likely be less costly than the proposed expansion.

Mr. Kona observed that there were a number of options for including a first-floor main bedroom suite, walk-in closet, and bathroom without needing variances from the ordinance.

#### Public Comment

Steven Susser, neighbor to the south, spoke in favor of the addition.

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

The Chair stated that while the plans were aesthetically pleasing, applicants often face particular difficulty in trying to expand non-conformities into the setbacks.

#### **Motion by Mr. Reddy**

**Seconded by Mr. Yaldo with regard to Appeal 22-33, A. Chapter 126, Article 2, Section 2.10.1 of the Zoning Ordinance states that the maximum lot coverage is 30% for any lot. The maximum for this property is 1728.00 SF (30%). The existing is 2544.00 SF (44.17%). The proposed is 2580.00 SF (44.79%). Therefore, a variance of 852.00 SF (14.79%) is being requested; B. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that a minimum rear yard setback of 30.00 feet. The proposed is 22.17 feet. Therefore, a variance of 7.83 feet is being requested; C. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that a minimum combined front and rear yard setback of 55.00 feet. The proposed is 34.50 feet. Therefore, a variance of 20.50 feet is being requested; D. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that no side yard shall be less than 5.00 feet. The existing and proposed is 3.50 feet. Therefore, a variance of 1.50 feet is being requested.**

**Mr. Reddy moved to deny variances A, B, C, and D. He said that while he was sympathetic to the utility of creating a first-floor main-bedroom suite, the applicant in this case had not demonstrated a practical difficulty that would necessitate the granting of the variances. He said the home could be used as is, and that changes could also be made to the plans to reduce the extent of the requested variances.**

**Mr. Yaldo said the large requested expansion of the lot coverage led him to support the motion.**

**Mr. Kona concurred with Mr. Reddy.**

**The Chair noted that this addition would impact lot coverage and the front and rear setbacks. He said there were so many viable alternatives available to the applicant that no practical difficulty could be established in this request.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**T# 12-79-22**

**2) 34901 Woodward Ste 200  
Appeal 22-51**

CP Blizinski presented the item, explaining that the owner of the property known as 34901 Woodward Ste 200 was requesting the following variances to replace three existing signs of similar size in similar locations:

- A. Chapter 86, Article 1, Section 1.05 Table B** of the Sign Ordinance requires Wall Signs to be located within the Sign Band, which for this building is defined as a horizontal band extending the full width of the building facade and located between the highest first floor windows and the bottom of the second floor windows. The proposed sign is located in between the highest second floor windows and the bottom of the third floor windows. Therefore, a dimensional variance of 11.00 feet is requested.
- B. Chapter 86, Article 1, Section 1.05 Table B** of the Sign Ordinance permits buildings with more than 100 linear feet of building frontage to contain no more than 100 square feet of signage area placed on walls other than the principal frontage. The proposed signs increase the signage area on walls other than the principal frontage to 114.00 square feet. Therefore, a dimensional variance of 14.00 square feet is requested.

Staff answered informational questions from the Board.

Jim Fields, of Allied Signs, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

In reply to Board inquiry, Mr. Fields stated:

- While the size of the backer could be reduced, the backer as-proposed would help cover the staining and discoloration that would otherwise be present;
- The extant box sign would be the same height as the proposed backer panel and the proposed backer panel would only be two inches more in width; and,
- If the variance were denied, the sign could not align with the corporate requirements.

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

**Motion by VC Canvasser**

**Seconded by Mr. Lilley with regard to Appeal 22-51, A. Chapter 86, Article 1, Section 1.05 Table B of the Sign Ordinance requires Wall Signs to be located within the Sign Band, which for this building is defined as a horizontal band extending the full width of the building facade and located between the highest first floor windows and the bottom of the second floor windows. The proposed sign is located in between the highest second floor windows and the bottom of the third floor windows. Therefore, a dimensional variance of 11.00 feet is requested; and, B. Chapter 86, Article 1, Section 1.05 Table B of the Sign Ordinance permits buildings with more than 100 linear feet of building frontage to contain no more than 100 square feet of signage area placed on walls other than the principal frontage. The proposed signs increase the signage area on walls other than the principal frontage to 114.00 square feet. Therefore, a dimensional variance of 14.00 square feet is requested.**

**VC Canvasser moved to approve variances A and B and tied approval to the plans as submitted. He noted that the new signs were necessitated by a rebranding, aesthetic concerns, and that the width increase was a marginal amount. He said strict compliance with the ordinance would be unnecessarily burdensome in this case, and that granting the variances would do substantial justice to the petitioner and other property owners. He said the unique design of the building meant that the need for the variances was not self-created.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**T# 12-80-22**

**3) 1626 Taunton  
Appeal 22-52**

ABO Morad presented the item, explaining that the owner of the property known as 1626 Taunton was requesting the following variance to construct a second floor addition to an existing non-conforming home:

- A. Chapter 126, Article 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 the total lot width whichever is larger. The required is 14.00 feet. The proposed is 13.33 feet. Therefore; a variance of 0.67 feet is being requested.

Staff answered informational questions from the Board.

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

Public Comment

The relative of a neighbor of Mr. Clark raised concerns about the some missing property markers and the accuracy of Mr. Clark's survey.

The Chair advised the neighbor that his concerns were not related to the present appeal, and recommended the neighbor reach out to Staff to further address his concerns.

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

**Motion by Mr. Reddy**

**Seconded by VC Canvasser with regard to Appeal 22-52, A. Chapter 126, Article 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 the total lot width whichever is larger. The required is 14.00 feet. The proposed is 13.33 feet. Therefore; a variance of 0.67 feet is being requested.**

**Mr. Reddy moved to approve the variance and tied approval to the plans as submitted. He noted that the property was pre-existing non-conforming, and that the lot was narrow. He said that for practical purposes people should be allowed to have a third bedroom if it fits within the footprint of their home.**

**The Chair said he would support the motion since the home conformed on its own property and that it was the non-conformity of the adjacent home that necessitated the variance. He noted that the addition also did not increase the non-conformity.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**T# 12-81-22**

**4) 585 Wellesley  
Appeal 22-53**

ABO Zielke presented the item, explaining that the owner of the property known as 585 Wellesley was requesting the following variances to construct a second floor addition above the garage of an existing non-conforming home:

- A. Chapter 126, Article 2.06.2** of the Zoning Ordinance requires that the minimum total side yard setback are 14.00 feet or 25% of the total lot width whichever is larger. The required is 17.50 feet. The existing and proposed is 14.66 feet. Therefore, a variance of 2.84 feet is being requested.

**B. Chapter 126, Article 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 the total lot width whichever is larger. The required is 17.50 feet. The proposed is 13.04 feet. Therefore, a variance of 4.46 feet is being requested.

Staff answered informational questions from the Board.

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

In reply to Board inquiry, Mr. Rouhan stated that ordinance-compliant plans were considered, but the locations of the bearing loads would have created issues in construction.

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

**Motion by Mr. Yaldo**

**Seconded by VC Canvasser with regard to Appeal 22-53, A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum total side yard setback are 14.00 feet or 25% of the total lot width whichever is larger. The required is 17.50 feet. The existing and proposed is 14.66 feet. Therefore, a variance of 2.84 feet is being requested; and B. Chapter 126, Article 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 the total lot width whichever is larger. The required is 17.50 feet. The proposed is 13.04 feet. Therefore, a variance of 4.46 feet is being requested.**

**Mr. Yaldo moved to approve the variances as requested and tied approval to the plans as submitted. He said the appellant proved that strict compliance with the ordinance would prevent the appellant from using the property for its permitted purpose. The need for the variances was not self-created, and granting the variances would do substantial justice to the owner and neighboring property owners. The circumstances necessitating the variances were unique to the property and not shared with neighboring properties.**

**VC Canvasser thanked the applicant for providing a 3D rendering, saying it made it very easy to conceptualize the request.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**T# 12-82-22**

**5) 924 Lakeside  
Appeal 22-54**

ABO Morad presented the item, explaining that the owner of the property known as 924 Lakeside was requesting the following variance to construct an uncovered porch in the required front open space:

- A. Chapter 126, Article 4.30(C)(1)** of the Zoning Ordinance permits an unenclosed, covered or uncovered, concrete, masonry or wooden porch, deck and/or steps may project into a front open space for a maximum distance of 10.00 feet. The proposed is 13.66 feet. Therefore, a variance of 3.66 feet is being requested.

Staff answered informational questions from the Board.

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

In reply to Board inquiry, Mr. Moore stated:

- The planter was designed as such to create symmetry with the house and to be large enough to allow plants to survive. It was the shape of the lot that was causing the planter's encroachment into the front open space; and,
- The grade change by the stairs necessitated that the planter have a spread footing for the stability of the front walkway and the functionality of the home. The masonry was needed as a transition between the driveway and the front porch area.

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

**Motion by Mr. Hart**

**Seconded by Mr. Kona with regard to Appeal 22-54, A. Chapter 126, Article 4.30(C)(1) of the Zoning Ordinance permits an unenclosed, covered or uncovered, concrete, masonry or wooden porch, deck and/or steps may project into a front open space for a maximum distance of 10.00 feet. The proposed is 13.66 feet. Therefore, a variance of 3.66 feet is being requested.**

**Mr. Hart moved to approve the variance and tied approval to the plans as submitted. He said the appellant's plans responded to some challenging geometries on the site, noting that the topography was very pronounced in the front of the home. He said approval of the variance would do substantial justice to the owners and adjacent property owners. He said the planter had a dual function of both aesthetics and assisting people to access the main staircase. He said the need for the variance was not self-created and was due to the unique circumstances of the site.**

**Mr. Lilley concurred with Mr. Hart.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None



**T# 12-83-22**

**6) 600 Fairfax  
Appeal 22-56**

ABO Zielke presented the item, explaining that the owner of the property known as 600 Fairfax was requesting the following variance to construct an attached garage of an existing non-conforming home:

- A. Chapter 126, Article 2.06.2** of the Zoning Ordinance requires that the minimum total side yard setback are 14.00 feet or 25% of the total lot width whichever is larger. The required is 20.00 feet. The proposed is 16.80 feet. Therefore, a variance of 3.20 feet is being requested.

Staff answered informational questions from the Board.

Don Wheeler, speaking on behalf of the appellant, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

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

**Motion by Mr. Hart**

**Seconded by Mr. Lilley with regard to Appeal 22-56, A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum total side yard setback are 14.00 feet or 25% of the total lot width whichever is larger. The required is 20.00 feet. The proposed is 16.80 feet. Therefore, a variance of 3.20 feet is being requested.**

**Mr. Hart moved to approve the variance and tied approval to the plans as submitted. He noted that the home had a pre-existing non-conformity and that the proposed change would reduce the pre-existing non-conformity. He said the need for the variance was not self-created, and stated that the variance would be harmonious with the home and the neighborhood.**

**Motion carried, 7-0.**

**ROLL CALL VOTE**

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

Nays: None

**T# 12-84-22**

**7) 34745 Woodward  
Appeal 22-55**

SP Cowan read the closing paragraphs of the 6th Circuit Court's Order to the BZA, which can be found in the evening's agenda packet, and presented the item, explaining that the owner of the property known as 34745 Woodward was requesting the following appeal of the Planning Board's determination on October 13, 2021 in order to renovate the property and update the operations of a car wash known as Jax Kar Wash:

**A. Chapter 126, Article 4, Section 4.54(C)(3)** of the Zoning Ordinance requires a screen wall to be placed along the front or side of any parking facility that abuts a street, alley, passage, or mixed passage. On October 13th, 2021, the Planning Board approved the applicant's site plan application with the condition that the applicant submit revised plans with sufficient screening that meets the screening requirements of Article 4, Section 4.54 of the Zoning Ordinance. The applicant is requesting an appeal of the Planning Board's decision with the condition that the applicant satisfy all screening requirements of Article 4, Section 4.54.

Staff answered informational questions from the Board.

Nicholas Camargo, attorney for the appellant, reviewed the appellant's reply brief to the 6th Circuit Court. The reply brief was included in the evening's agenda packet.

The Chair explained that scenarios where one puts one's vehicle in park and exits one's vehicle amounts to parking one's vehicle. He also said that parked vehicle headlights could be a distraction to other drivers or pedestrians, and that the movement of the vehicles around the Jax lot could be a risk to pedestrians. He said those factors indicated the need for the protection afforded by a screen wall. The Chair invited Mr. Camargo to comment.

Mr. Camargo opined that the area where one leaves one's vehicle with a valet service could not be described as a 'parking facility', and said that example was most akin to the scenario at hand. He noted that parking on the street also does not require screen walls, despite having parking, because those portions of the street would not be described as a 'parking facility'. He reiterated that 'parking facility' must have a different definition from 'parking', 'parking area', or other similar but non-identical phrases.

In reply to VC Canvasser, Mr. Camargo said he did not believe that there was ambiguity to the definition of 'parking facility'. He also said he had been unable to locate any Michigan statute or case law that defined 'parking facility'.

VC Canvasser reviewed the definitions of 'parking' and 'parking areas' in Birmingham ordinance and the definitions of 'park', 'public way', and 'facility' from Merriam-Webster's Dictionary. He asked Mr. Camargo to explain how the area on the site in question did not meet those definitions.

Mr. Camargo opined that the definitions could lead to an overbroad understanding of parking, suggesting that it could even lead to describing stopping a vehicle at a red light as being parking. He asked where one should differentiate between stopping a vehicle and parking. He explained that a drive-through bank teller, a drive-through restaurant, and the situation at Jax would be located conceptually somewhere between those two actions. He stated that the 'facility' of the area in question at Jax was for vacuuming of vehicles, and not for parking.

In reply to Mr. Reddy, Mr. Camargo stated that the term 'parking facility' was specific and could not encompass every single area where there is parking.

Mr. Kona said that someone could park in one of the vacuum spaces and run into the Jax store to briefly conduct business. He asked how that was different from parking at a different store to briefly conduct business.

Mr. Camargo said that visitors to the Jax store would be expected to park in the southern parking spaces and not in the vacuum spaces. He concurred that one could, however, park in the vacuum spaces and enter the Jax store briefly, even though that was not the intent of those spaces.

Mr. Hart opined that an ordinary person would not describe the four vacuum spaces in question as a 'parking facility'. He noted that there were ancillary issues to the discussion, such as whether having a screen wall was safer, but noted those issues were not presently before the Board.

Mr. Yaldo said that while one would park in one of the four vacuum spaces, he was not sure whether that area would amount to a 'parking facility'.

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

**Motion by VC Canvasser**

**Seconded by Mr. Yaldo regarding the interpretation of the term "parking facility".**

**VC Canvasser stated there are a number of different definitions of parking. He explained that the City of Birmingham's code defines 'parking' as "An area used for the parking of motor vehicles"; the City of Birmingham's code defines the 'parking area' as "The actual parking area and the area of the access drive"; and Merriam-Webster's Dictionary defines parking as "1. An area or a location to bring a vehicle to a stop and keep standing at the edge of a public way. 2. To leave temporarily on a public way or in a parking lot or garage. 3. To set and leave temporarily, for example, an 'individual parked his book on a chair'."**

**He continued that the term 'facility' is defined as, among other things, "Something (such as a hospital) that is built, installed, or established to serve a particular purpose."**

**Based on those definitions, VC Canvasser moved to interpret 'parking facility' as "An area, designated for a specific purpose, where you leave your car - put it in park - even if it is for a temporary period of time in a designated location."**

**Mr. Yaldo said he would second the motion, stating that VC Canvasser articulated the interpretation clearly in the plain language coming straight from the dictionary definitions of 'parking' and 'facility'. He noted that VC Canvasser included 'for a purpose' in the interpretation without elaboration, but said he did not believe any further elaboration on that aspect was needed, since it could include any particular purpose.**

**Mr. Hart said that it was important to use the term 'facility' in 'parking facility'. He noted that one considers both the letter of the law and the spirit of the law, and said**

**the spirit of the law as it applies to this facility was that it was not a 'parking facility'. He said a parking structure, where one gets out of one's car and leaves it there to go to another location, or to go into a building, is a parking facility. He opined that the key word was 'facility'. He said that the interpretation in the motion was more broad than what the BZA was being asked to do. He said the BZA had to decide what the 'facility' was.**

**The BZA clarified in conversation that the present task of interpreting 'parking facility' was not specific to 34745 Woodward. It was noted that once the BZA agreed on an interpretation, then the BZA had to determine whether it applied to 34745 Woodward.**

**Mr. Kona said that when he was reading the ordinance, he defined 'parking facility' as "An area that facilitates parking."**

**Mr. Yaldo said Mr. Kona's version could still raise questions about the definition of 'parking.'**

**The Chair said there was some 'facilitating' going on in the situation in question, and direction into where one parks, because one puts one car in park. He said that could be considered as a possible addition to the interpretation if the present motion failed.**

**Motion carried, 6-1.**

ROLL CALL VOTE

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

Nays: Kona

**T# 12-85-22**

**Motion by Mr. Hart**

**Seconded by Mr. Lilley with regard to Appeal 22-55, A. Chapter 126, Article 4, Section 4.54(C)(3) of the Zoning Ordinance requires a screen wall to be placed along the front or side of any parking facility that abuts a street, alley, passage, or mixed passage. On October 13th, 2021, the Planning Board approved the applicant's site plan application with the condition that the applicant submit revised plans with sufficient screening that meets the screening requirements of Article 4, Section 4.54 of the Zoning Ordinance. The applicant is requesting an appeal of the Planning Board's decision with the condition that the applicant satisfy all screening requirements of Article 4, Section 4.54.**

**Mr. Hart moved to approve the appellant's request to appeal the Planning Board decision. He said 34745 Woodward was definitely not a 'parking facility'. He said the spirit of the law, versus the letter of the law, was more relevant in this consideration.**

**Mr. Kona said he could not support the motion. He noted that if the vehicles were moved further forward or backward they would not be reached by the vacuuming stations. He noted that the car is put in 'Park' for several minutes, with the driver**

**exiting the vehicle. He said, accordingly, that the area in question was a 'parking facility' dedicated for that purpose.**

**Motion failed, 2-5.**

ROLL CALL VOTE

Yeas: Hart, Lilley

Nays: Kona, Morganroth, Canvasser, Reddy, Yaldo

**T# 12-86-22**

**Motion by VC Canvasser**

**Seconded by Mr. Kona with regard to Appeal 22-55, A. Chapter 126, Article 4, Section 4.54(C)(3) of the Zoning Ordinance requires a screen wall to be placed along the front or side of any parking facility that abuts a street, alley, passage, or mixed passage. On October 13th, 2021, the Planning Board approved the applicant's site plan application with the condition that the applicant submit revised plans with sufficient screening that meets the screening requirements of Article 4, Section 4.54 of the Zoning Ordinance. The applicant is requesting an appeal of the Planning Board's decision with the condition that the applicant satisfy all screening requirements of Article 4, Section 4.54.**

**VC Canvasser moved to deny the appeal and to uphold the findings of the Planning Board. He said that based on the BZA's de novo review and the BZA's approved interpretation of what constitutes a 'parking facility', the evidence firmly established that there are four specific locations where cars would stop, would be put in park for safety reasons, and in nearly all instances the occupants of the vehicle would exit the vehicle for a specific purpose. He said these were specific areas established for a specific purpose, which qualifies as a 'parking facility' under the interpretation the BZA accepted.**

**VC Canvasser continued that, based on the requirement in the Zoning Ordinance that 'a screen wall be placed along the front or side of any parking facility that abuts a street, alley, passage, or mixed passage', and there being no dispute that this area abuts two streets, Woodward and Brown, and also abuts the pedestrian sidewalk and right-of-way, that based on a de novo review and a review of the facts, pleadings, and Circuit Court's order, that the findings of a requirement of a screen wall be upheld in this case.**

**Mr. Reddy concurred. He said the BZA heard sufficient evidence from the City, and combined with the very narrow requirement of what the BZA was supposed to define, that the facility clearly fit into the BZA's interpretation of 'parking facility', and required it to follow the normal ordinances for any parking facility that is used to park vehicles, for a specific purpose, for some temporary period of time.**

**The Chair said he would support the motion. He said the lanes on the site, and the separation of the lanes with gates, were all a facilitation of the direction of the**

**vehicles going to the car wash and then to an end location where anyone making a turn to remain on the property would then be exiting their vehicle. There would be an assumption that one would be parking in a particular spot, close enough to the vacuum machines, exiting the vehicle for vacuuming purposes, and the cars are put into 'Park'. He said that although he recognized the challenge and the issues the appellant presented, the circumstances caused the situation to sufficiently fall within the interpretation of 'parking facility' accepted by the BZA.**

**Motion carried, 5-2.**

ROLL CALL VOTE

Yeas: Kona, Morganroth, Canvasser, Reddy, Yaldo

Nays: Hart, Lilley

**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 11:18 p.m.



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Bruce R. Johnson, Building Official



Laura Eichenhorn

City Transcriptionist