

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, January 10, 2023
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, January 10, 2023. Vice-Chair Canvasser convened the meeting at 7:30 p.m.

2. Rollcall

Present: Vice-Chair Jason Canvasser; Board Members Kevin Hart (arrived 7:36 p.m.), Richard Lilley, John Miller, Ron Reddy, Pierre Yaldo; Alternate Board Member Carl Kona

Absent: Chair Erik Morganroth

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

VC Canvasser 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.

VC Canvasser took rollcall of the petitioners. He noted that 584 Tooting Lane, 1616 Croft, and 188 N. Old Woodward were being postponed. All remaining 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 December 13, 2022

T# 01-01-23

Motion by Mr. Lilley

Seconded by Mr. Yaldo to accept the Minutes of the BZA meeting of December 13, 2022 as submitted.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

5. Appeals

T# 01-02-23

**1) 1496 Chesterfield
Appeal 23-01**

ABO Zielke presented the item, explaining that the owner of the property known as 1496 Chesterfield was requesting the following variance to construct an 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 27.10 feet. The proposed is 17.29 feet on the south side. Therefore, a variance of 9.81 feet is being requested.

Staff answered informational questions from the Board.

Joe Novitsky, architect for the appellant, 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. Novitsky stated:

- It was difficult to demonstrate a hardship but said that granting the variance would do no harm to the neighbor or neighborhood; and,
- The home would not be extended south.

Public Comment

Jeff Hannigan, neighbor to the south, said he wanted to ensure that the ordinances were met. Given the larger size of 1496 Chesterfield's lot, he said it should not be difficult for the owner to meet the ordinances.

Motion by Mr. Reddy

Seconded by Mr. Lilley with regard to Appeal 23-01, 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 27.10 feet. The proposed is 17.29 feet on the south side. Therefore, a variance of 9.81 feet is being requested.

Mr. Reddy moved to approve the variance request and tied approval to the plans as submitted. He noted that the property in question had an existing non-conforming home. He noted it would not be encroaching any further to the south and that the setback did not appear to be an issue.

Motion carried, 6-1.

ROLL CALL VOTE

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

Nays: Kona

T# 01-03-23

**2) 2428 Northlawn
Appeal 23-03**

ABO Zielke presented the item, explaining that the owner of the property known as 2428 Northlawn was requesting the following variances to construct an addition to an existing non-conforming home:

- A. Chapter 126, Article 2, Section 2.06.2** of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 59.13 feet. The proposed is 58.10 feet. Therefore, a 1.03 foot variance is being requested.
- B. Chapter 126, Article 4, Section 4.61(A)(1)** of the Zoning Ordinance requires that a corner lot which has on its side street an abutting residential lot shall have a minimum setback from the side street equal to the minimum front setback for the zoning district in which such building is located. The required is 47.25 feet on the east side. The existing and proposed is 24.97 feet. Therefore, a variance of 22.28 feet is being requested.
- C. 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 27.37 feet on the west side. The existing and proposed is 26.40 feet. Therefore, a variance of 0.97 feet is being requested.

Staff answered informational questions from the Board.

Kent Johnston, homeowner, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

Motion by Mr. Miller

Seconded by Mr. Hart with regard to Appeal 23-03, A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 59.13 feet. The proposed is 58.10 feet. Therefore, a 1.03 foot variance is

being requested; **B. Chapter 126, Article 4, Section 4.61(A)(1) of the Zoning Ordinance requires that a corner lot which has on its side street an abutting residential lot shall have a minimum setback from the side street equal to the minimum front setback for the zoning district in which such building is located. The required is 47.25 feet on the east side. The existing and proposed is 24.97 feet. Therefore, a variance of 22.28 feet is being requested; and, C. 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 27.37 feet on the west side. The existing and proposed is 26.40 feet. Therefore, a variance of 0.97 feet is being requested.**

Mr. Miller moved to approve the variance requests and tied approval to the plans as submitted. He noted the request was essentially the same as the July 2022 approval in regards to the critical aspects. He explained that since the changes were so minor and actually mitigated some of the previous issues, he believed the variances should be granted.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 01-04-23

**3) 300 S. Old Woodward
Appeal 23-05**

SP Cowan presented the item, explaining that the owner of the property known as 300 S. Old Woodward was requesting the following variances:

- A. Chapter 126, Article 3, Section 3.04 (E)(4)** requires all buildings in the Downtown Overlay District to contain storefronts transparent areas equal to 70% of its portion of the facade between one and eight feet from the ground. The proposed building contains a storefront on Daines with a transparency percentage of 62% (392 sq. ft.) where 70% (440 sq. ft.) is required. Therefore, a variance of 48 sq. ft. is requested for the Daines storefront.
- B. Chapter 126, Article 3, Section 3.04 (E)(4)** requires all buildings in the Downtown Overlay District to contain storefronts transparent areas equal to 70% of its portion of the facade between one and eight feet from the ground. The proposed building contains a storefront on S. Old Woodward with a transparency percentage of 60% (700 sq. ft) where 70% (812 sq. ft.) is required. Therefore, a variance of 112 sq. ft. is requested for the S. Old Woodward storefront.
- C. Chapter 126, Article 3, Section 3.04 (E)(4)** requires all buildings in the Downtown Overlay District to contain storefronts transparent areas equal to 70% of its portion of the

facade between one and eight feet from the ground. The proposed building contains a storefront on Brown with a transparency percentage of 58% (364 sq. ft) where 70% (440 sq. ft.) is required. Therefore, a variance of 76 sq. ft. is requested for the Brown storefront.

D. Chapter 86, Article 1, Section 1.05 (K)(2) of the Sign Ordinance permits non-illuminated signs identifying the entire structure by a building name to be permitted above the first floor. The applicant is proposing four illuminated building identification signs at 16.5 sq. ft. each (66 sq. ft. total). Therefore, the applicant is requesting a dimensional variance of 66 sq. ft. of illuminated building identification signage.

Staff answered informational questions from the Board.

Rick Rattner, attorney for the appellant, reviewed the letter describing why the variances were being sought. The letter was included in the evening's agenda packet. Mr. Rattner and Victor Saroki, architect for the appellant, answered questions from the Board.

In reply to Board inquiry, Messrs. Rattner and Saroki stated:

- The RH sign would be light bronze in color, as would the other metals on the building;
- When the restaurant closes in the evening, the top floor lights would be turned off;
- When the building closes at 9 p.m., the sign on the western facade would be turned off so as to not impact the residences across the street;
- Lowering the signs would result in pedestrians not being able to see the signs as they would be eclipsed by the canopies;
- The distance between the western facade of the building and the buildings to the west would be 20 feet;
- RH would not be able to add signage in a sign band to this building, and so the proposed signage was appropriate;
- The slight backlighting on the sign would be more appropriate for the context and aligns better with the Master Plan. The sign had no photometric value at the street level;
- Granting the variance for a sign would not establish a precedent since this building is unique in being all-retail and the size of a City block;
- Lighting the sign was necessary because of its location on the building. At eye level, the sign would not need to be lit;
- It is normal and expected that a retail building would have a illuminated sign, in contrast with an office or non-profit building;
- If the sign were located in the sign band the sign could be approximately 90% larger than the sign presently proposed;
- In the evenings, if the sign is not halo-lit it would not be seen; and,
- Usually when a building has a canopy, it would be at eight or nine feet and the sign could be above it. In this case, the canopies would be at nearly 14 feet, which is why signage above the canopies would be obscured from pedestrian level.

Mr. Yaldo said the sign would look strange in its proposed location without being slightly backlit.

Mr. Hart noted that if the sign were moved down in location it would have a higher photometric value at the pedestrian level.

Mr. Kona said the building would be so notable that it was hard to argue that the proposed signage needed to be illuminated in order to identify the building.

Motion by Mr. Miller

Seconded by Mr. Reddy with regard to Appeal 23-05, A. Chapter 126, Article 3, Section 3.04 (E)(4) requires all buildings in the Downtown Overlay District to contain storefronts transparent areas equal to 70% of its portion of the facade between one and eight feet from the ground. The proposed building contains a storefront on Daines with a transparency percentage of 62% (392 sq. ft.) where 70% (440 sq. ft.) is required. Therefore, a variance of 48 sq. ft. is requested for the Daines storefront; B. Chapter 126, Article 3, Section 3.04 (E)(4) requires all buildings in the Downtown Overlay District to contain storefronts transparent areas equal to 70% of its portion of the facade between one and eight feet from the ground. The proposed building contains a storefront on S. Old Woodward with a transparency percentage of 60% (700 sq. ft) where 70% (812 sq. ft.) is required. Therefore, a variance of 112 sq. ft. is requested for the S. Old Woodward storefront; and, C. Chapter 126, Article 3, Section 3.04 (E)(4) requires all buildings in the Downtown Overlay District to contain storefronts transparent areas equal to 70% of its portion of the facade between one and eight feet from the ground. The proposed building contains a storefront on Brown with a transparency percentage of 58% (364 sq. ft) where 70% (440 sq. ft.) is required. Therefore, a variance of 76 sq. ft. is requested for the Brown storefront.

Mr. Kona moved to approve variances A, B, and C and to tie approval to the plans as submitted. He said the glazing satisfied the intent of the ordinance in this case.

Mr. Lilley said the building would be a valuable addition to the City, and that the ordinances pertaining to lighting had many aspects that were no longer relevant to today's technology. He acknowledged that the Board could not change ordinances, but recommended that the Board consider that the ordinances had obsolete aspects in making its decision.

Mr. Miller offered his support for the motion noting the building was unique in its size and activation on all four sides. Dealing with 70% glazing requirement and architectural aspects like stairwells and loading docks would be difficult, and the amount of the variance requested was very minimal. He said the 70% glazing requirement makes sense when a retail building only has glass in the front. He said in this case, given the size and the glass on all sides, this building represented a unique condition. He said granting these variances would not set a precedent for these reasons.

VC Canvasser said he would also support the motion. He praised the aesthetics of the building and said the City was fortunate to have it. He agreed with Mr. Miller that granting these variances would not set a precedent. He noted that approval would be tied to the plans, which would necessitate further reviews by the City should changes to the building be proposed in the future.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 01-05-23

Motion by Mr. Kona

Seconded by VC Canvasser with regard to Appeal 23-05, D. Chapter 86, Article 1, Section 1.05 (K)(2) of the Sign Ordinance permits non-illuminated signs identifying the entire structure by a building name to be permitted above the first floor. The applicant is proposing four illuminated building identification signs at 16.5 sq. ft. each (66 sq. ft. total). Therefore, the applicant is requesting a dimensional variance of 66 sq. ft. of illuminated building identification signage.

Mr. Kona said that since the building featured so much illumination, and the sign would be so minimally backlit that the lighting may not even be visible, he would move to deny variance D.

Mr. Yaldo said it was likely difficult to design a building consistent with the Master Plan that did not have a prominent identification sign. He said without the backlit sign the building could seem like an office building. He said trying to see signs above the canopies from the pedestrian level would be difficult, and said the signage would look asymmetrical in other locations. He said he would not support the motion to deny for these reasons.

VC Canvasser said that the ordinance did not allow the backlighting of the sign, and said he was not sure that the Board could allow a variance from the ordinance based on the fact that the proposed backlighting would be lesser than some other backlighting could be. He said he would not want this approval to set a precedent. He opined that the need for the backlit sign in this case was a matter of self-creation. He said it would likely be more appropriate for the Commission to address this through an ordinance amendment if they wanted to grant permission for the sign as-proposed.

Mr. Miller said he would not support the motion, explaining that he had previously noted around five or six illuminated signs in Birmingham located above the third story level on their respective buildings. He said that those instances demonstrate that lighted signage in certain unique conditions was not unreasonable. He said the conditions for this building met that requirement.

Mr. Reddy said that while he was normally advocated adherence to the ordinance for these types of requests, there were a number of unique circumstances that would cause him to vote differently in this case. He noted that the restaurant above the sign would be lit most of the time the sign would be illuminated, that there was a lot of

ground-level illumination that would minimize the sign's visibility, that the backlighting of the sign in the context of the rest of the illumination would seem comparable to the rest of the building's lighting, the glazing on the higher floors would be adding ambient illumination, and the building would be a City block long. He said that while he was sympathetic to concerns about precedent, there were so many unique circumstances here that he did not share the concern. He said he would not be able to support the motion.

Mr. Hart said he would not support the motion. He explained that the proposed signage adhered to the spirit of the ordinance in terms of its subtle and minimalist approach to signage.

Motion failed, 2-5.

ROLL CALL VOTE

Yeas: Canvasser, Kona

Nays: Miller, Lilley, Reddy, Yaldo, Hart

T# 01-06-23

Motion by Mr. Hart

Seconded by Mr. Miller with regard to Appeal 23-05, D. Chapter 86, Article 1, Section 1.05 (K)(2) of the Sign Ordinance permits non-illuminated signs identifying the entire structure by a building name to be permitted above the first floor. The applicant is proposing four illuminated building identification signs at 16.5 sq. ft. each (66 sq. ft. total). Therefore, the applicant is requesting a dimensional variance of 66 sq. ft. of illuminated building identification signage.

Mr. Hart moved to approve variance D and tied approval to the plans as submitted. He said the appellant identified the hardships and the challenges of the building. He said there was no adverse effects for neighboring properties and that granting the variance would do substantial justice to the appellant and neighbors. He said the need for the variance was not self-created. He also required that the western facade sign be turned off at 9 p.m. every evening.

Motion carried, 5-2.

ROLL CALL VOTE

Yeas: Miller, Lilley, Reddy, Yaldo, Hart

Nays: Canvasser, Kona

6. Correspondence

BO Johnson noted that three letters were submitted after the agenda was published regarding 1496 Chesterfield and 584 Tooting Lane. He noted that the Board members would be provided with copies of the correspondence.

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

The Board briefly discussed the Board's upcoming transition from paper agendas to electronic ones.

8. Adjournment

No further business being evident, the Board motioned to adjourn at 9:14 p.m.



Bruce R. Johnson, Building Official



Laura Eichenhorn, City Transcriptionist