

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, April 12, 2022
City Commission Room
151 Martin Street, Birmingham, Michigan

1. Call To Order

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, April 12, 2022. Chair Charles Lillie convened the meeting at 7:30 p.m.

2. Rollcall

Present: Chair Charles Lillie; Board Members Jason Canvasser, Kevin Hart, John Miller, Erik Morganroth, Ron Reddy, Pierre Yaldo

Absent: None

Administration:

Bruce Johnson, Building Official
Laura Eichenhorn, City Transcriptionist
Mike Morad, Assistant Building Official
Jeff Zielke, Assistant Building Official

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

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

3. Announcements

Per the CDC, COVID-19 Community Level for Oakland County is currently Low. The City continues to recommend the public wear masks while attending city meetings. These precautions are recommended while risks for COVID-19 transmission remain from new variants. All City

employees, commissioners and board members must wear a mask while indoors when 6-feet of social distancing cannot be maintained. The City continues to provide KN-95 respirators for all in-person meeting attendees.

BO Johnson introduced Heather Tolliver, a City employee who would be assisting with BZA correspondence moving forward.

T# 04-13-22

4. Approval Of The Minutes Of The BZA Meetings Of March 8, 2022

On page one, Mr. Canvasser recommended that 'interested in having' be replaced with 'agreed to have'.

Motion by Mr. Morganroth

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

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Abstain: Lillie

It was noted by Mr. Canvasser and BO Johnson that Board members were now permitted to vote on meeting minutes even if they were absent from said meeting.

5. Appeals

T# 04-14-22

**1) 1748 Stanley
Appeal 22-08**

ABO Zielke presented the item, explaining that the owner of the property known as 1748 Stanley was requesting the following variance to construct a new detached garage:

A. Chapter 126, Article 4.03(B) of the Zoning Ordinance requires that an accessory building is not permitted to be closer to a principal residential building on an adjoining lot than the sum of the minimum required side setbacks. The required is 14.00 feet. The proposed is 10.80 feet. Therefore; a variance of 3.20 feet is being requested.

Bruce Bloomingdale, representative for the builder, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to Mr. Morganroth, Mr. Bloomingdale said the angle in the foundation was included in order to make a vehicle's entry into the garage easier.

In reply to Mr. Miller, Mr. Bloomingdale said the petitioner did not bring the request to the BZA earlier because the petitioner has generally avoided seeking variances. Mr. Bloomingdale said the petitioner became aware of a recent, similar variance that was granted to a different petitioner and consequently thought it might be worthwhile to request a variance in this case.

Motion by Mr. Hart

Seconded by Mr. Morganroth with regard to Appeal 22-08, A. Chapter 126, Article 4.03(B) of the Zoning Ordinance requires that an accessory building is not permitted to be closer to a principal residential building on an adjoining lot than the sum of the minimum required side setbacks. The required is 14.00 feet. The proposed is 10.80 feet. Therefore; a variance of 3.20 feet is being requested.

Mr. Hart moved to approve the variance and tied the approval to the plans as submitted. He said the appellant adequately described how the lot's circumstances impacted the petitioner's ability to build a two-vehicle garage. Mr. Hart noted that the dimensions of the proposed garage would still be austere and challenging. He said the diagonal cut out of the southwest corner of the house showed evidence of the petitioner's attempts to mitigate the extent of the variance request. He stated that strict compliance with the ordinance would make this lot unnecessarily difficult to navigate. Mr. Hart noted that no fire code issue would arise from granting the variance, that granting the variance would do substantial justice to the petitioner and the neighbors, and that the problem was not self-created. He concluded that easements with DTE are often difficult to determine since they are different for each property.

Mr. Morganroth concurred with Mr. Hart that even with the variance and the diagonal cut in the southwest corner of the house the garage would remain challenging to use. He said the petitioner demonstrated a practical difficulty, showed how the previous plans were inadequate, and showed how this variance was necessary. He said he was supporting the motion for those reasons.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 04-15-22

**2) 1687 Quarton
Appeal 22-09**

ABO Zielke presented the item, explaining that the owner of the property known as 1687 Quarton was requesting the following variances to construct a new home with attached garages with an existing accessory structure:

A. Chapter 126, Article 4, Section 4.61(1) of the Zoning Ordinance requires the minimum street side yard setback for this property to be 70.00 feet. The proposed setback for the home is 48.50 feet; therefore, a variance of 21.50 feet is being requested.

B. Chapter 126, Article 4.03(A) of the Zoning Ordinance requires no accessory structures shall be located in the front open space. The required front open space is 38.00 feet. The existing accessory structure is 36.90 feet. Therefore, a variance of 1.10 feet is being requested.

C. Chapter 126, Article 4.03(H) of the Zoning Ordinance requires the maximum area of an accessory structure of 600.00 SF (R1 Zone) and an additional 75 SF is permitted for an interior stairway. The required is 675.00 SF. The existing and proposed is 688.60 SF. Therefore, a variance of 13.60 SF is requested.

Adam Speck, owner, reviewed the letter describing why these variances was being sought. The letter was included in the evening's agenda packet. He added that a number of neighbors were supportive of his request.

In reply to Chair Lillie, Mr. Speck said that if he were to shrink the house to minimize the variance request it would result in approximately a quarter acre of unusable lot space.

Public Comment

David Bozynski, neighbor to the east, spoke against the requested variances with a specific focus on the proposed encroachment into the Quarton-side setback. He said it would be detrimental to his views from his side porch.

In reply to Mr. Canvasser, Mr. Speck said that using the south and southeast areas of the property as a play area would be difficult because of the grade change. He also said that area was less large than the north area of the property.

Chair Lillie noted that while neighbors are welcome to comment on variance requests, the BZA grants or denies variance requests based on whether the petitioner adequately demonstrates a practical difficulty.

Motion by Mr. Miller

Seconded by Mr. Hart with regard to Appeal 22-09, A. Chapter 126, Article 4, Section 4.61(1) of the Zoning Ordinance requires the minimum street side yard setback for this property to be 70.00 feet. The proposed setback for the home is 48.50 feet; therefore, a variance of 21.50 feet is being requested; B. Chapter 126, Article 4.03(A) of the Zoning Ordinance requires no accessory structures shall be located in the front open space. The required front open space is 38.00 feet. The existing accessory

structure is 36.90 feet. Therefore, a variance of 1.10 feet is being requested; and, C. Chapter 126, Article 4.03(H) of the Zoning Ordinance requires the maximum area of an accessory structure of 600.00 SF (R1 Zone) and an additional 75 SF is permitted for an interior stairway. The required is 675.00 SF. The existing and proposed is 688.60 SF. Therefore, a variance of 13.60 SF is requested.

Mr. Miller moved to approve the variances and tied the approval to the plans as submitted. He said that the reorientation of the house to face Chesterfield resulted in the existing garage being outside of the building envelope. He said he did not find the extant garage objectionable. He found that the unique circumstances of the property, combined with the reasonable request to reorient the house, were causing the issues being face by the petitioner. Mr. Miller stated that strict compliance with the ordinance would be unnecessarily burdensome and would require the petitioner to tear down the garage.

Mr. Reddy said that strict compliance with the ordinance in this case would not unreasonably prevent the petitioner from using the property. While he understood the desire to preserve the garage, in building a new home Mr. Reddy said it was incumbent upon the petitioner to also give consideration to the zoning requirements. He said he would not be supporting the motion.

Mr. Canvasser said he would not support the motion either. He praised the design, and said it would be an asset to the neighborhood if it was moved to better align with the ordinance. He said the topography remains consistent throughout the buildable envelope and would allow for the building of the proposed home if the extant garage is moved. He said the petitioner had an issue with self-creation that was not overcome.

Chair Lillie said that while he had no issue with the garage, there had been no showing by the petitioner that the house had to extend as far north as proposed. He said he had a problem more specifically with variance A. He said he would not vote to support the motion.

Mr. Morganroth expressed praise for the home's layout. He continued that the second two car garage could be designed smaller, which would help mitigate the variance requests. He said not doing so showed that the proposed plans represented an ideal scenario, not an attempt to resolve a practical difficulty. He said at minimum there could be a three-foot reduction in the variance request just by making the garages the same size.

Motion failed, 2-5.

ROLL CALL VOTE

Yeas: Miller, Hart

Nays: Morganroth, Canvasser, Reddy, Yaldo, Lillie

Chair Lillie advised the petitioner that he could return with another request if the subsequent request represented a substantial change from the previous variance request.

T# 04-16-22

**3) 633 W Frank
Appeal 22-10**

ABO Zielke presented the item, explaining that the owner of the property known as 633 W Frank was requesting the following variance to place A/C units in the required side yard:

A. Chapter 126, Article 4.03(A) of the Zoning Ordinance requires no accessory structures shall be located in the side open space. There are three new A/C units located in the side open space. Therefore, a variance to have A/C units in the side open space is requested.

David Popelier, contractor, reviewed the letter describing why these variances was being sought. The letter was included in the evening's agenda packet.

In reply to Chair Lillie, Mr. Popelier said that the initial error in placement resulted from either the architect or the mechanical engineer. Mr. Popelier confirmed that once construction was started he was notified that there was an error in the placement of the A/C units.

In reply to Mr. Morganroth, Mr. Popelier said he did not realize there was an issue until notified because he had some confusion about the allowances for a regular side yard and the prohibitions in a required side yard. He said he was aware that many properties in the City have A/C units in the regular side yard, and did not realize that these proposed A/C units would be located in the required side yard in this case.

In reply to Mr. Canvasser, Mr. Popelier said he had been unable to source A/C units from his preferred manufacturer that would have more than an 80 foot run. He explained that if he had to place the A/C units in an ordinance-allowed area the run would be just over 100 feet and would not take into account where the furnace room is in relation to the outside wall.

In reply to Board inquiry, Mr. Popelier confirmed there would be five total A/C units.

In Board discussion, Messrs. Miller and Morganroth noted two potential areas where the requested three A/C units could be located that would comply with the ordinance.

Motion by Mr. Reddy

Seconded by Mr. Miller with regard to Appeal 22-10, A. Chapter 126, Article 4.03(A) of the Zoning Ordinance requires no accessory structures shall be located in the side open space. There are three new A/C units located in the side open space. Therefore, a variance to have A/C units in the side open space is requested.

Mr. Reddy moved to deny the variance. He said that strict compliance with the ordinance would not unreasonably prevent the petitioner from using his property for its permitted purposes.

Mr. Miller added there were ordinance-compliant options that would also have the benefit of not negatively impacting the neighbor to the west. He said the size of the lot, the fact that it would be new construction, and the availability of options compelled him to support Mr. Reddy's motion.

Mr. Canvasser said he would support the motion as well, noting that initially only three A/C units were included in the plans and that there were options for placement that would comply with the ordinance. He said the petitioner did not surmount the self-creation issue and so the variances were not justified in this case.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 04-17-22

**4) 270 S Glenhurst
Appeal 22-12**

ABO Zielke presented the item, explaining that the owner of the property known as 270 S Glenhurst was requesting the following variances to construct a second floor addition to an existing non-conforming home:

A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires a minimum rear yard setback of 30.00 feet. The existing and proposed is 22.60 feet. Therefore; a variance of 7.40 feet is being requested.

B. Chapter 126, Article 4.75 (A)1 of the Zoning Ordinance requires that a private attached, single family residential garage must be setback a minimum of 5.00 feet from the portion of the front façade on the first floor of a principal residential building that is furthest setback from the front property line. The existing and proposed is 2.86 feet behind the garage. Therefore; a variance of 7.68 feet is being requested.

C. Chapter 126, Article 4.75 (A)2 of the Zoning Ordinance requires garage doors on an attached garage which are facing a street may not exceed 9.00 feet in width. The existing and proposed is 18.00 feet. Therefore; a variance of 9.00 feet is being requested.

D. Chapter 126, Article 4.74(C) of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots be 14.00 feet or 25% of the total lot width whichever is larger. The required is 28.28 feet. The existing and

proposed is 25.39 feet on the south side. Therefore; a variance of 2.89 feet is being requested.

Joseph Brown, representative for the petitioner, reviewed the letter describing why these variances was being sought. The letter was included in the evening's agenda packet.

In reply to Mr. Morganroth, Mr. Brown said he was not opposed to maintaining 18 inches between the two garage doors.

In reply to a question from Mr. Canvasser, BO Johnson stated that if the Board chose not to approve variance C Staff could handle variance C's omission during the review process.

Motion by Mr. Canvasser

Seconded by Mr. Morganroth with regard to Appeal 22-12, A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires a minimum rear yard setback of 30.00 feet. The existing and proposed is 22.60 feet. Therefore; a variance of 7.40 feet is being requested; B. Chapter 126, Article 4.75 (A)1 of the Zoning Ordinance requires that a private attached, single family residential garage must be setback a minimum of 5.00 feet from the portion of the front façade on the first floor of a principal residential building that is furthest setback from the front property line. The existing and proposed is 2.86 feet behind the garage. Therefore; a variance of 7.68 feet is being requested; and, D. Chapter 126, Article 4.74(C) of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots be 14.00 feet or 25% of the total lot width whichever is larger. The required is 28.28 feet. The existing and proposed is 25.39 feet on the south side. Therefore; a variance of 2.89 feet is being requested.

Mr. Canvasser moved to approve variances A, B, and D and tied their approval to the plans as submitted with an exception depending on the outcome of Variance C. He noted that if the petitioner chose to create two garage doors, that exception to the plans should be approved at the City level. He continued that 270 S. Glenhurst is an existing non-conforming home, and that none of the non-conformities would be exacerbated by the requested variances. He praised the design, noted that the home would remain within its current footprint, and said it would do substantial justice to the neighborhood. He stated that there were practical difficulties due to some unique circumstances.

Mr. Miller offered support for the motion, stating that the surrounding properties would experience no negative impacts from the granting of the three variances.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

Motion by Mr. Canvasser

Seconded by Mr. Reddy with regard to Appeal 22-12, C. Chapter 126, Article 4.75 (A)2 of the Zoning Ordinance requires garage doors on an attached garage which are facing a street may not exceed 9.00 feet in width. The existing and proposed is 18.00 feet. Therefore; a variance of 9.00 feet is being requested.

Mr. Canvasser moved to deny variance C. He noted the petitioner expressed willingness to comply with this aspect of the ordinance.

Mr. Yaldo said the BZA had not heard whether compliance with the ordinance would pose a practical difficulty, and asked the petitioner to comment.

Mr. Brown said they would work with their structural engineer and the City to comply with this aspect of the ordinance, and would come back to the Board if they found that compliance posed a practical difficulty.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 04-18-22

**5) 1563 Lakeside
Appeal 22-13**

ABO Zielke presented the item, explaining that the owner of the property known as 1563 Lakeside was requesting the following variances to construct a new single-family home with an attached garage:

A. Chapter 126, Article 4, Section 4.61(1) of the Zoning Ordinance requires the minimum street side yard setback for this property to be 46.40 feet. The proposed setback for the home is 33.40 feet; therefore, a variance of 13.00 feet is requested.

B. Chapter 126, Article 4, Section 4.61(1) of the Zoning Ordinance requires the minimum street side yard setback for this property to be 46.40 feet. The proposed setback for a covered porch is 27.40 feet; therefore, a variance of 19.00 feet is requested.

C. Chapter 126, Article 4, Section 4.30(C)(3) of the Zoning Ordinance requires that patios may not project into a required side open space. A proposed patio is projecting into the west required side open space 9.00 feet; therefore, a variance of 9.00 feet is requested.

Jeff Dawkins, architect, reviewed the letter describing why these variances was being sought. The letter was included in the evening's agenda packet.

Motion by Mr. Hart

Seconded by Mr. Canvasser with regard to Appeal 22-13, A. Chapter 126, Article 4, Section 4.61(1) of the Zoning Ordinance requires the minimum street side yard setback for this property to be 46.40 feet. The proposed setback for the home is 33.40 feet; therefore, a variance of 13.00 feet is requested; B. Chapter 126, Article 4, Section 4.61(1) of the Zoning Ordinance requires the minimum street side yard setback for this property to be 46.40 feet. The proposed setback for a covered porch is 27.40 feet; therefore, a variance of 19.00 feet is requested; and, C. Chapter 126, Article 4, Section 4.30(C)(3) of the Zoning Ordinance requires that patios may not project into a required side open space. A proposed patio is projecting into the west required side open space 9.00 feet; therefore, a variance of 9.00 feet is requested.

Mr. Hart moved to approve the variances and tied approval to the plans as submitted. He noted that while the petitioner updated the design, the petitioner still faced the same conditions in this submittal as in an earlier, approved submittal. He said the same reasons for granting the variances in February 2022 remained true presently.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

6. Correspondence

A letter regarding Appeal 22-10 was provided to the BZA and to the petitioner.

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

None.

T# 04-19-22

8. Election of Chair and Vice-Chair

Mr. Hart nominated Mr. Morganroth to serve as Chair. Chair Lille then nominated Mr. Canvasser to serve as Chair.

Each nominee spoke briefly about his proposed approach to serving as Chair.

The Board decided that whoever received the most votes would serve as Chair, with the runner-up serving as Vice-Chair.

A vote on Mr. Morganroth's nomination was held first. The outcome led to Mr. Morganroth being appointed as Chair and Mr. Canvasser being appointed as Vice-Chair.

**Nomination by Mr. Hart:
To appoint Erik Morganroth as the Chair of the Board of Zoning Appeals.**

Motion carried, 5-2.

ROLL CALL VOTE

Yeas: Miller, Hart, Morganroth, Yaldo, Lillie

Nays: Canvasser, Reddy

T# 04-20-22

8. Adjournment

Motion by Chair Morganroth

Seconded by Vice-Chair Canvasser to adjourn the April 12, 2022 BZA meeting at 9:23 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None



Bruce R. Johnson, Building Official



Laura Eichenhorn
City Transcriptionist