

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, February 14, 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, February 14, 2023. Chair Morganroth convened the meeting at 7:30 p.m.

2. Rollcall

Present: Chair Erik Morganroth, Vice-Chair Jason Canvasser; Board Members Kevin Hart, John Miller, Ron Reddy, Pierre Yaldo; Alternate Board Member Carl Kona

Absent: Board Member Richard Lilley

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

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

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

4. Approval Of The Minutes Of The BZA Meetings Of January 10, 2022

T# 02-07-23

Motion by VC Canvasser

Seconded by Mr. Reddy to accept the Minutes of the BZA meeting of January 10, 2022 as submitted.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

5. Appeals

T# 02-08-23

**1) 832 Ann
Appeal 23-08**

Toni Ratliff, appellant, requested that her appeal be postponed. She said she was recently made aware that a third variance would be necessary and needed more time to prepare.

Motion by VC Canvasser

Seconded by Mr. Hart to adjourn 832 Ann to the April 2023 meeting.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

T# 02-09-23

**2) 584 Tooting Lane
Appeal 23-02**

ABO Zielke presented the item, explaining that the owner of the property known as 584 Tooting Lane was requesting the following variances to reconstruct the second floor and roof of an existing nonconforming detached garage:

A. Chapter 126, Article 4, Section 4.03(H) of the Zoning Ordinance requires the maximum area of the first floor of any accessory structure in the R2 zoning district is 550.00 SF and per Section 4.30(C)(6) permits an additional 75.00 SF for having an interior staircase. Therefore, the accessory structure can be 625.00SF. The existing and proposed is 747.50 SF. Therefore, a variance of 122.50 SF is being requested.

B. Chapter 126, Article 4, Section 4.03(B) of the Zoning Ordinance requires that accessory structures shall be at least 3.00 feet from any lot line. The existing and proposed on the southeast side is 0.00 feet. Therefore, a variance of 3.00 feet is being requested.

Staff answered informational questions from the Board.

Mike Ableson, 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. Ableson stated:

- The driveway was removed since the angle at which it entered the garage made the driveway unusable;
- The pitch of the proposed design would be the same as the pitch of the roof; and,
- Adding an internal stairway would reduce the non-conformity by 75 sq. ft.

Motion by Mr. Miller

Seconded by Mr. Kona with regard to Appeal 23-02, A. Chapter 126, Article 4, Section 4.03(H) of the Zoning Ordinance requires the maximum area of the first floor of any accessory structure in the R2 zoning district is 550.00 SF and per Section 4.30(C)(6) permits an additional 75.00 SF for having an interior staircase. Therefore, the accessory structure can be 625.00SF. The existing and proposed is 747.50 SF. Therefore, a variance of 122.50 SF is being requested; and, B. Chapter 126, Article 4, Section 4.03(B) of the Zoning Ordinance requires that accessory structures shall be at least 3.00 feet from any lot line. The existing and proposed on the southeast side is 0.00 feet. Therefore, a variance of 3.00 feet is being requested.

Mr. Miller moved to approve the variance requests and tied approval to the plans as submitted. He stated the problem was not self-created and was due to the unique circumstances of the property. He noted that the existing garage did not comply with the present ordinance. He noted that the garage was in need of maintenance, that the owner was making improvements to the garage, and that the owner was somewhat mitigating the variance in terms of the roof overhang. He said granting the variances would do substantial justice to the petitioner and to the neighborhood.

The Chair noted that the addition of the internal stairs also mitigated the non-conformity.

Mr. Miller concurred.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**3) 1616 Croft
Appeal 23-04**

ABO Zielke presented the item, explaining that the owner of the property known as 1616 Croft was requesting the following variances regarding a pergola and impervious surfaces to an existing non-conforming home:

- A. Chapter 126, Article 4, Section 4.03(H)** of the Zoning Ordinance requires the maximum area of the first floor of any accessory structure in the R2 zoning district is 550.00 SF. The existing detached garage is 528.00 SF. The constructed pergola brings the structures to 662.00 SF. Therefore, a variance of 112.00 SF is being requested.
- B. Chapter 126, Article 4, Section 4.03(D)** of the Zoning Ordinance requires that an accessory structure shall not be closer than 10.00 feet to the principal building located on the same lot. The constructed pergola is 4.50 feet away from principle house. Therefore, a variance of 5.50 feet is being requested.
- C. Chapter 126, Article 4, Section 4.03(A)** of the Zoning Ordinance requires that no accessory structure shall be erected in the required front or side open space. This is a corner lot and per Section 6.61(A)1; A Corner lot which has on its side street an abutting an interior 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 35.90 feet. The constructed pergola is 2.80 feet. Therefore, a variance of 33.10 feet is being requested.
- D. Chapter 126, Article 4, Section 4.30 (C) (3)** of the Zoning Ordinance requires that patios, porches or decks may not project into the required side open space. The patio is in the required side open space. Therefore, a variance to permit a patio in the side open space of 35.90 feet is being requested.

Staff answered informational questions from the Board.

Sandeep Sarna, 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. Sarna stated:

- If these variances were not approved, he might return with a smaller variance request for the left corner of the lot given the lot's shape; and,
- He had a dry fire extinguisher for the outdoor barbeque, and since the adjacent wall was brick it did not pose a risk of catching fire as long as the pergola was removed.

Public Comment

Mary Milton spoke on behalf of Bernice Betterndorf, neighbor at 1741 Tory.

In reply to Ms. Milton, the Chair noted that 1616 Croft did not exceed the allowed amount of impervious material on the property. He noted that if Ms. Milton had further concerns about water accumulation at 1741 Tory, she could contact the Building Department to discuss her concerns.

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

Mr. Miller said there seemed to be two separate issues: the pergola and the paving plus the built-in barbeque. He said the pergola would be very difficult to allow, given its proximity to the house

and its non-conforming location. He said the paving may be somewhat different since it was invisible from the street by virtue of being fenced in.

The Chair noted that BO Johnson said the outdoor barbeque could possibly be preserved but might require variances because of the lot shape, size, or because it may exceed the amount of accessory structure allowed on the lot. He noted the Board was unlikely to approve an accessory structure in the setback.

Mr. Miller said he would be more comfortable with a more straightforward appeal that requested exactly what the owner was hoping to preserve, rather than the extraneous aspects included in the present appeal.

The Chair said the Board should opine on all four proposed variances since the work was already complete. He said the appellant could then return with a substantially different request once the Board had ruled on the present appeal.

Motion by VC Canvasser

Seconded by Mr. Reddy with regard to Appeal 23-04, A. Chapter 126, Article 4, Section 4.03(H) of the Zoning Ordinance requires the maximum area of the first floor of any accessory structure in the R2 zoning district is 550.00 SF. The existing detached garage is 528.00 SF. The constructed pergola brings the structures to 662.00 SF. Therefore, a variance of 112.00 SF is being requested; B. Chapter 126, Article 4, Section 4.03(D) of the Zoning Ordinance requires that an accessory structure shall not be closer than 10.00 feet to the principal building located on the same lot. The constructed pergola is 4.50 feet away from principle house. Therefore, a variance of 5.50 feet is being requested; C. Chapter 126, Article 4, Section 4.03(A) of the Zoning Ordinance requires that no accessory structure shall be erected in the required front or side open space. This is a corner lot and per Section 6.61(A)1; A Corner lot which has on its side street an abutting an interior 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 35.90 feet. The constructed pergola is 2.80 feet. Therefore, a variance of 33.10 feet is being requested; and, D. Chapter 126, Article 4, Section 4.30 (C) (3) of the Zoning Ordinance requires that patios, porches or decks may not project into the required side open space. The patio is in the required side open space. Therefore, a variance to permit a patio in the side open space of 35.90 feet is being requested.

VC Canvasser moved to deny the variance requests. He expressed sympathy for the appellants and noted that any portion of the pavers that is allowed within the ordinance should be allowed to remain. He asked the City to provide a path towards compliance as opposed to requiring that everything non-compliant be removed immediately.

BO Johnson said the Building Department would work with the appellant to bring their lot into compliance, which could include redesigns and further variance requests.

Mr. Reddy commented that the homeowners made these changes to their lot in good faith and the contractor did not seek the required permits. He hoped the City would be tolerant in giving the appellant an opportunity to correct the issues.

Mr. Miller said that while sometimes limited allowances could be made for a corner lot, this request had too many complexities. He expressed sympathy for the appellants as well. He said he would support the motion.

In reply to Mr. Hart, it was confirmed that there were only four variance requests being considered: A, B, C, and D.

Mr. Hart said he would not support the motion.

The Chair said that while he had sympathy for the appellants, homeowners also have a responsibility to reach out to the City and to confirm that their planned work would be code and ordinance compliant. He said doing so was a means for homeowners to protect their own interests. He said he would support the motion.

Motion carried, 6-1.

ROLL CALL VOTE

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

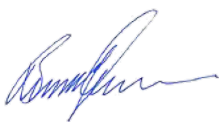
Nays: Hart

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 8:50 p.m.



Bruce R. Johnson, Building Official

A handwritten signature in black ink, appearing to read 'Laura Eichenhorn', with a long horizontal flourish extending to the right.

Laura Eichenhorn, City Transcriptionist