

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, February 8, 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, February 8, 2022. Vice-Chair Erik Morganroth convened the meeting at 7:30 p.m.

2. Rollcall

Present: Board Members Jason Canvasser, Kevin Hart, John Miller, Erik Morganroth; Alternate Board Member Erin Rodenhouse

Absent: Chair Charles Lillie; Alternate Board Member Ron Reddy,

Administration:

Bruce Johnson, Building Official
Leah Blizinski, City Planner
Brooks Cowan, Senior Planner
Laura Eichenhorn, City Transcriptionist
Mike Morad, Assistant Building Official
Jeff Zielke, Assistant Building Official

Vice-Chair Morganroth welcomed those present and reviewed the meeting's procedures. He noted that only five board members were present, and that dimensional variances require four affirmative votes. Consequently, Vice-Chair Morganroth offered each petitioner the opportunity to postpone their petition to the next regularly scheduled BZA meeting.

In regards to Appeal 22-03, Vice-Chair Morganroth noted that Mr. Canvasser would be recusing. As a result, too few regular Board members were present to hear the appeal. Vice-Chair Morganroth stated that Staff would contact the appellant to reschedule the appeal.

Vice-Chair Morganroth took rollcall of the petitioners with the exception of Appeal 22-03. All remaining petitioners were present and interested in their appeals being heard at the present meeting.

Vice-Chair Morganroth 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.

T# 02-01-22

3. Announcements

The highly transmissible COVID-19 Delta variant is spreading throughout the nation at an alarming rate. As a result, the CDC is recommending that vaccinated and unvaccinated personnel wear a facemask indoors while in public if you live or work in a substantial or high transmission area. Oakland County is now at the HIGH level of community transmission for COVID-19. The City has reinstated mask requirements for all employees while indoors. The mask requirement also applies to all board and commission members as well as the public attending public meetings.

4. Approval Of The Minutes Of The BZA Meetings Of December 14, 2021

Motion by Mr. Canvasser

Seconded by Ms. Rodenhouse to accept the Minutes of the BZA meeting of December 14, 2021 as submitted.

Motion carried, 5-0.

VOICE VOTE

Yeas: Canvasser, Rodenhouse, Miller, Hart, Morganroth

Nays: None

T# 02-02-22

5. Appeals

**1) 1217 Washington
Appeal 20-05**

ABO Zielke presented the item, explaining that the owner of the property known as 1217 Washington was requesting the following variance for the total side yard setback to construct an addition to the existing non-conforming home:

A. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that the minimum total side yard setbacks are 14.0 feet or 25% of the lot width whichever is greater. The required total is 16.25 feet. The existing and proposed total is 12.40 feet. Therefore, a variance of 3.85 feet is being requested.

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

Motion by Mr. Miller

Seconded by Mr. Canvasser with regard to Appeal 20-05, A. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that the minimum total side yard setbacks are 14.0 feet or 25% of the lot width whichever is greater. The required total is 16.25 feet. The existing and proposed total is 12.40 feet. Therefore, a variance of 3.85 feet is being requested.

Mr. Miller moved to approve the variance and to tie the approval to the plans as submitted. He noted that the appeal regards a proposed addition to an existing non-conforming home and that the need for the variance was due to the unique circumstances of the property. He said it was reasonable for the addition to line up with the existing construction and said the proposal was a modest overlap of the setback.

Ms. Rodenhouse said she would support the motion for the reasons stated by Mr. Miller and to align with the Board's previous approval of the appeal.

Motion carried, 5-0.

VOICE VOTE

Yeas: Morganroth, Rodenhouse, Canvasser, Miller, Hart

Nays: None

**2) 1230 Latham
Appeal 21-53**

ABO Zielke presented the item, explaining that the owner of the property known as 1230 Latham was requesting the following variance for the total side yard setback to construct an addition to the existing non-conforming home:

A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that a minimum front yard setback is the average of homes within 200 feet each way. The required is 65.30 feet. The proposed is 50.50 feet. Therefore a variance of 14.80 feet is being requested.

B. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum total side yard setbacks are 14.0 feet or 25% of the lot width whichever is greater. The required total is 16.45 feet. The proposed is 10.55 feet. Therefore, a variance of 5.90 feet is being requested.

C. Chapter 126, Article 2.06.4 of the Zoning Ordinance requires a maximum building height is 30.00 feet. The proposed height is 35.33 feet; Therefore a variance of 5.33 feet is being requested.

D. Chapter 126, Article 2.06.4 of the Zoning Ordinance requires a maximum eave height is 24.00 feet. The proposed height is 31.92 feet; Therefore a variance of 7.92 feet is being requested.

Bruce Bloomingdale, co-owner of the building company, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

In reply to Vice-Chair Morganroth, Mr. Bloomingdale confirmed that the building company was, at the time of purchase, aware of the lot's drastic change in grade front the front to the rear.

Mr. Miller noted that Variance A would align this house in the front with the adjacent houses and that Variances C and D were related to the drop off in the rear of the lot. He said the slope in the rear yard would make it prohibitive to put a garage in the rear of the lot. He said was having more difficulty rationalizing Variance B.

Mr. Bloomingdale drew the meeting's attention to Exhibit B, specifically the part circled in red. He said part of that area would be retained in some way, and said it was 'in the wrong area'. He asked ABO Zielke to help clarify.

ABO Zielke clarified that a few feet of the area in discussion was not behind the home directly, so it is more in the side yard, hence the request for Variance B.

Vice-Chair Morganroth noted locating the staircase off the terrace was dictating the location of that wall. He said if the staircase were located elsewhere Variance B might not be needed.

Mr. Bloomingdale, and his brother, John Bloomingdale, also a co-owner of the building company, both concurred that the staircase could be brought within the building envelope in order to eliminate the need for Variance B.

The appellant thanked ABO Zielke for his assistance with the appeal.

Public Comment

In reply to Fadi Nassar, Vice-Chair Morganroth stated that any concerns about water drainage between properties and retaining wall materials could be addressed to the Building Department.

Motion by Mr. Canvasser

Seconded by Mr. Hart with regard to Appeal 21-53, A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that a minimum front yard setback is the average of homes within 200 feet each way. The required is 65.30 feet. The proposed is 50.50 feet. Therefore a variance of 14.80 feet is being requested; B. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum total side yard setbacks are 14.0 feet or 25% of the lot width whichever is greater. The required total is 16.45 feet. The proposed is 10.55 feet. Therefore, a variance of 5.90 feet is being requested; C. Chapter 126, Article 2.06.4 of the Zoning Ordinance requires a maximum building height is 30.00 feet. The proposed height is 35.33 feet; Therefore

a variance of 5.33 feet is being requested; and, D. Chapter 126, Article 2.06.4 of the Zoning Ordinance requires a maximum eave height is 24.00 feet. The proposed height is 31.92 feet; Therefore a variance of 7.92 feet is being requested.

Mr. Canvasser moved to approve Variances A, C, and D, and to deny Variance B. He tied approval of Variances A, C, and D, to the plans as submitted. Mr. Canvasser stated that the retaining wall should be changed to not require a variance, and that appropriate drawings should be provided to the City.

He noted that the lot is an irregularly-shaped property with a steep slope. Because of the characteristics of this property, Mr. Canvasser stated that strict compliance with the ordinance would be unnecessarily burdensome. He stated that granting the petition would do substantial justice to the property owner and to the other property owners in the area. Mr. Canvasser stated that the problem was not self-created.

Motion carried, 5-0.

VOICE VOTE

Yeas: Morganroth, Rodenhouse, Canvasser, Miller, Hart

Nays: None

**3) 1563 Lakeside
Appeal 22-01**

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 were being sought. The letter was included in the evening's agenda packet.

Motion by Mr. Hart

Seconded by Mr. Miller with regard to Appeal 22-01, 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 variance requests and to tie them to the plans as submitted. He stated that strict compliance with the ordinance would be very difficult for the permitted use. He stated that the appellant demonstrated that a detached garage would not work on this property for several reasons, including the difficulty of moving some of the DTE lines. He said granting the variance would provide substantial justice to the neighboring properties and to the homeowner. He stated that the problem was not self-created.

Motion carried, 5-0.

VOICE VOTE

Yeas: Morganroth, Rodenhouse, Canvasser, Miller, Hart

Nays: None

**4) 1690 Fairway
Appeal 22-02**

ABO Zielke presented the item, explaining that the owner of the property known as 1690 Fairway was requesting to construct an addition to an existing non-conforming single-family home with a detached garage:

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 20.00 feet. The existing and proposed is 18.70 feet. Therefore; a variance of 1.30 feet is being requested.

ABO Zielke noted that the work on this home was started without a permit, and that once code enforcement was made aware the work was stopped.

In reply to Mr. Canvasser, ABO Zielke confirmed that if the variance was granted it would not affect the neighbors.

In reply to Mr. Canvasser, BO Johnson confirmed that granting the appeal would not affect the City's ability to ensure that the structure would be safe.

Vic Ventimiglia, fiancé of the homeowner, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to Vice-Chair Morganroth, Mr. Ventimiglia confirmed that if construction had not been started the addition could have been designed to comply with the ordinance. He opined that aesthetically it looks better for the addition to align with the rest of the existing non-conforming home.

Mr. Ventimiglia thanked the Board for their time.

Public Comment

Margaret Dufault, neighbor, said she had no problem with the variance.

In reply to further comments by Ms. Dufault, Vice-Chair Morganroth stated that any concerns about the appellant being on Ms. Dufault's property without her permission should be directed to the Building Department and code enforcement.

Ms. Dufault thanked ABO Zielke for his help with her concerns.

Charles Gleeson, builder working with the appellant, said he would be happy to post a bond to ensure Ms. Dufault that the construction equipment and staff for 1690 Fairway would not cross onto her property. He spoke in support of the variance.

Motion by Ms. Rodenhouse

Seconded by Mr. Miller with regard to Appeal 22-02, 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 20.00 feet. The existing and proposed is 18.70 feet. Therefore; a variance of 1.30 feet is being requested.

Ms. Rodenhouse moved to deny the variance, stating that the Board has denied variances for this very issue in order to maintain conformity with the ordinance's requirements for the side setback. She said that while it was regrettable that construction was already started, it should not have a bearing on the Board's findings.

Mr. Miller said he supported the motion because Messrs. Ventimiglia and Gleeson both stated that the addition was designed as it was for reasons of aesthetics. He said he did not see the aesthetic value. He said he could not agree with the reasoning and did not think it justified granting the appeal. He said that while there might be reasons of constructability neither Mr. Ventimiglia or Mr. Gleeson mentioned that as a reason.

Mr. Canvasser said he would not support the motion. He noted that while there is precedent for the Board denying already-built variances, there is also precedent for approving the type of variance being requested here. He added that even though precedent was being discussed, the Board should look at each request on its own

merits. He stated that this house is pre-existing non-conforming and that the variance only proposes to extend the sight-line without adding to the non-conformity. He said that despite the improper steps that occurred to date, he would support a motion granting this variance.

Mr. Hart said he would not support the motion either. He said that while appellant's building without permits showed disrespect for the process and the neighboring properties, the appeal itself fulfills the requirements of not being self-created, and of doing substantial justice to the neighboring properties. He said that drawing out this process could serve to inconvenience the neighbor.

Vice-Chair Morganroth noted that while Messrs. Ventimiglia and Gleeson both acknowledged that permits should have been pulled for the construction on this home, permitting matters would be handled by the Building Department and not by the Board. He said that if the variance request had been submitted properly before construction began, he likely would have supported the request to align the new construction with the existing wall.

Motion failed, 2-3.

VOICE VOTE

Yeas: Miller, Rodenhouse

Nays: Morganroth, Canvasser, Hart

Motion by Ms. Canvasser

Seconded by Mr. Hart with regard to Appeal 22-02, 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 20.00 feet. The existing and proposed is 18.70 feet. Therefore; a variance of 1.30 feet is being requested.

Ms. Canvasser moved to approve the variance and to tie it to the plans as submitted. He said it was not a self-created problem since the house is pre-existing non-conforming which qualifies as unique circumstances. He said compliance with the ordinance would be unnecessarily burdensome. He concurred with Mr. Hart that granting the variance would do both substantial justice to the property owner and to the neighbor, since if the variance is denied Ms. Dufault would have to now deal with demolition at 1690 Fairway. He said the majority of similar appeals in the past have been approved by the Board.

Mr. Hart said he was supporting the motion, describing it as the lesser of two evils. He said that since the appeal meets the criteria for approval, it should be granted.

Vice-Chair Morganroth reminded all present that four affirmative votes would be required and that the chance to postpone being heard was offered at the beginning of the meeting.

Ms. Rodenhouse said she wanted the record clear that she was against the variance because similar variances have been denied by the Board, citing appeals in July 2021 as examples. She said she was not against the variance because the construction was improperly done, though she described that as unsavory. She said the appellants for July 2021 would have cause to wonder if this current appeal was approved because construction was already started or because it would cause the neighbor inconvenience via demolition. She said the City has an obligation to treat neighbors alike, and that since neighbors in the same exact scenario have been denied in the past she would not be supporting this motion to approve.

Mr. Miller said he would also not support the motion. He said the Board needs the opportunity to explore alternatives to plans and elevations and that here the Board has none. He said the house did not have to be built as it was and that there were other options.

Motion failed, 3-2.

VOICE VOTE

Yeas: Morganroth, Canvasser, Hart

Nays: Miller, Rodenhouse

**5) 1572 Holland
Appeal 22-03**

Mr. Canvasser stated he would have to recuse himself from Appeal 22-03. With Mr. Canvasser's recusal there would have been too few regular Board members to hear the appeal. Staff will contact the appellant to reschedule the appeal.

**6) 1572 Humphrey
Appeal 22-04**

ABO Zielke presented the item, explaining that the owner of the property known as 1572 Humphrey was requesting the following variance to construct a 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 8.30 feet. Therefore; a variance of 5.70 feet is being requested.

Brandon Potash, builder, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to Vice-Chair Morganroth, Mr. Potash said the resident of 1572 Humphrey would back out of their garage and down the driveway.

Motion by Mr. Hart

Seconded by Mr. Miller with regard to Appeal 22-04, 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 8.30 feet. Therefore; a variance of 5.70 feet is being requested.

Mr. Hart moved to approve the variance and to tie the approval to the plans as submitted. He noted that the current garage was one of the smaller ones in Birmingham and stated that the appellant proved the practical difficulty of the current garage configuration. Mr. Hart said strict compliance with the ordinance would prevent the appellant from proper use of the property, that compliance with the ordinance would be unduly burdensome, and that granting the variance would do substantial justice to the neighboring properties. He said the problem was due to the unique circumstances of the overhead DTE lines and that the problem was not self-created.

Mr. Miller noted that the non-conformity of the adjacent house was also a reason to grant the variance.

Mr. Hart concurred.

Motion carried, 5-0.

VOICE VOTE

Yeas: Morganroth, Rodenhouse, Canvasser, Miller, Hart

Nays: None

**7) 839 Ridgedale
Appeal 22-05**

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.

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

Motion by Mr. Miller

Seconded by Mr. Canvasser with regard to Appeal 22-05, 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 variance and to tie the approval to the plans as submitted. He said that since the appeal regards an addition to an existing non-conforming home the problem was not self-created. He said there were also unique circumstances to the property. He said the proposed remodeling will mitigate an existing non-conformity.

Mr. Hart said that while the Board does not usually comment on topics outside the Board's purview, he said that this was a good example of stewardship of an old home and he commended Mr. Lang on his work. Mr. Hart said the City would like to see more projects similar to this one. Mr. Hart said he would be supporting the motion.

Motion carried, 5-0.

VOICE VOTE

Yeas: Morganroth, Rodenhouse, Canvasser, Miller, Hart

Nays: None

T# 02-03-22

6. Correspondence

All correspondence was included in the agenda packet.

T# 02-04-22

7. General Business

T# 02-05-22

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

None.

T# 02-06-22

8. Adjournment

Motion by Mr. Canvasser

Seconded by Ms. Rodenhouse to adjourn the February 8, 2022 BZA meeting at 9:31 p.m.

Motion carried, 5-0.

VOICE VOTE

Yeas: Morganroth, Rodenhouse, Canvasser, Miller, Hart

Nays: None



Bruce R. Johnson, Building Official



Laura Eichenhorn

City Transcriptionist