

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, April 11, 2023
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 11, 2023. Chair Morganroth convened the meeting at 7:30 p.m.

2. Rollcall

Present: Chair Erik Morganroth, Vice-Chair Jason Canvasser; Board Members Richard Lilley, John Miller, Ron Reddy; Alternate Board Member Carl Kona

Absent: Board Members Kevin Hart, Pierre Yaldo

Staff: Building Official Johnson; 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 March 14, 2023

T# 04-17-23

Motion by VC Canvasser

Seconded by Mr. Miller to accept the minutes of the BZA meeting of March 14, 2023 as submitted.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

5. Appeals

T# 04-18-23

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

ABO Zielke presented the item, explaining that the owner of the property known as 832 Ann St. was requesting the following variances for a constructed pergola in the rear yard:

- A. Chapter 126, Article 2, Section 2.10.1 of the Zoning Ordinance requires the maximum lot coverage of the lot is 30% (1885.80 SF). The proposed with the pergola is 34.01% (2138.00 SF). Therefore, a variance of 4.10% (254.30 SF) is being requested.**
- B. Chapter 126, Article 4, Section 4.03(H) of the Zoning Ordinance requires the maximum area for permitted accessory structures in the R3 zoning district is 500.00 SF. The existing detached garage is 420 SF and the constructed pergola is 308 SF. The total of accessory structures is 728.00 SF. Therefore, a variance of 228.0 SF is being requested.**

Staff answered informational questions from the Board.

Toni Ratliff, owner, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet. Ms. Ratliff stated that the builder and project manager had not informed her that there would be any issues with lot coverage.

The Chair advised Ms. Ratliff that the only topic for consideration by the Board was whether there was a practical difficulty, stemming from unusual features of the lot or the context, that would necessitate a variance. He asked Ms. Ratliff whether such circumstances existed.

Ms. Ratliff said issues with drainage in the backyard limited what could be built.

The Chair advised Ms. Ratliff that drainage concerns could be discussed with the Building Department. He said she could also likely work with the Building Department to find ordinance compliant ways of creating shade in the backyard.

Motion by Mr. Miller

Seconded by VC Canvasser with regard to Appeal 23-08, A. Chapter 126, Article 2, Section 2.10.1 of the Zoning Ordinance requires the maximum lot coverage of the lot is 30% (1885.80 SF). The proposed with the pergola is 34.01% (2138.00 SF). Therefore, a variance of 4.10% (254.30 SF) is being requested; and, B. Chapter 126, Article 4, Section 4.03(H) of the Zoning Ordinance requires the maximum area for permitted accessory structures in the R3 zoning district is 500.00 SF. The existing detached garage is 420 SF and the constructed pergola is 308 SF. The total of accessory structures is 728.00 SF. Therefore, a variance of 228.0 SF is being requested.

Mr. Miller moved to deny the appeal. He stated the matter was not due to any unique features of the property and was self-created. He said that while it was unfortunate that a large structure had already been built, he noted that could not factor in to the Board's consideration.

VC Canvasser noted this was the third month in a row that the Board had to deny an already-built pergola. He said he did not know if it was a trend, and that the Board should remain relatively consistent even though there were some differences in the cases. He noted that while the appellant may have private contractual remedies vis-a-vis the builder and other involved parties, those issues were not part of the Board's purview. Given what the Board was permitted to consider, he said he would support the motion.

The Chair concurred with VC Canvasser about consistency. He noted that one of the reasons permitting is required for structures is so the City can verify the safety and permissibility of the structures. He stated that even if the Commission were to review whether open pergolas should be considered accessory structures, the appellant's closed structure would not likely be permitted by any potential change. He noted that lots in Birmingham often do not have enough open space to add an accessory structure in addition to the home and garage. He said he would support the motion.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

T# 04-19-23

**2) 2648 Dorchester
Appeal 23-12**

VC Canvasser stated that he had previously had a business relationship with the appellant, and stated that he would be recusing himself from Appeal 23-12 on that basis. VC Canvasser left the room for the duration of the discussion on Appeal 23-12.

ABO Zielke presented the item, explaining that the owner of the property known as 2648 Dorchester was requesting the following variance to construct a new single-family home with an attached garage:

- A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires that a minimum distance between principal residential buildings on adjacent lots to be 14.00 feet or 25% of the lot width, whichever is larger. The required is 14.00 feet. The proposed is 13.42 feet. Therefore, a variance of 0.58 feet is requested.**

Staff answered informational questions from the Board.

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

Motion by Mr. Reddy

Seconded by Mr. Lilley with regard to Appeal 23-12, A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires that a minimum distance between principal residential buildings on adjacent lots to be 14.00 feet or 25% of the lot width, whichever is larger. The required is 14.00 feet. The proposed is 13.42 feet. Therefore, a variance of 0.58 feet is requested.

Mr. Reddy moved to approve the appeal. He stated that there were non-compliant homes on both sides of 2648 Dorchester, and that if the homes were not there the proposed plans for 2648 Dorchester would be ordinance compliant. He noted the Board has seen cases in the past where non-compliant homes were impacting an otherwise ordinance compliant home.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Miller, Kona, Reddy, Lilley, Morganroth

Nays: None

T# 04-20-23

**3) 1267 Pilgrim
Appeal 23-14**

VC Canvasser rejoined the meeting.

ABO Zielke presented the item, explaining that the owner of the property known as 1267 Pilgrim was requesting the following variance to construct an egress window well in the front open space:

- A. Chapter 126, Article 4, Section 4.30(C)(4) of the Zoning Ordinance does not allow window wells to project into the required front open space. The proposed window well projects into the front open space. Therefore, a variance to allow a window well to be constructed in the front open space is requested.**

Staff answered informational questions from the Board.

Todd Emerson, representative for the appellant, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

The Chair stated that in the wall with the mechanicals there would likely be an area that could allow egress and be ordinance compliant. He noted the Board did not presently have blueprints of the basement to know whether that was the case. He observed that a bedroom in the basement was not required by code, and that asking the Board to allow a non-compliant egress window into the front yard, in order to build said bedroom, was a self-created issue. He asked if there was a practical difficulty that necessitated the variance.

In reply to Board inquiry, Mr. Emerson said:

- An egress window could likely be built to the rear of the home if the mechanicals and other aspects of the basement were entirely reconfigured; and,
- The egress window in the front of the home would be invisible from the street, would not impact the neighbors, would be obscured by boxwoods, and would make the home safer for the homeowner.

VC Canvasser and the Chair noted that if the room had the closet removed and did not function as a bedroom, it would not be required to have an egress window.

The Chair noted the client may still want an egress window somewhere in the basement for safety purposes. He noted that if the appellant wanted the room to remain a bedroom, they would likely have to find an ordinance compliant location for the egress window.

Mr. Emerson replied that visiting family would be occasionally sleeping in the room, and that an egress window would be required for that reason.

Motion by Mr. Miller

Seconded by Mr. Kona with regard to Appeal 23-14, A. Chapter 126, Article 4, Section 4.30(C)(4) of the Zoning Ordinance does not allow window wells to project into the required front open space. The proposed window well projects into the front open space. Therefore, a variance to allow a window well to be constructed in the front open space is requested.

Mr. Miller moved to deny the appeal. He said the problem was self-created. He noted the room in question could be used in a variety of ways, and was only prevented from being used and officially designated as a bedroom. He noted the Board is very careful about allowing anything in the front yard setback, as it can negatively impact the aesthetics of a neighborhood. He said he did not see a practical difficulty, and that allowing it would establish a precedent that would undermine part of the ordinance. He said without a plan for the basement there was not enough information, and the Board could not know where the egress window might otherwise be located.

The Chair offered his support for the motion. He said that while every bedroom in a basement should have egress, the room being called a bedroom in this case was located in the wrong location to allow egress.

VC Canvasser said he could not support the motion. He noted the room had functioned as a bedroom since 2000 and that the appellant proactively came to the Board in an attempt to make the room safer. He said the Board should be supporting the effort to make the house safer. He said the Board could be establishing a dangerous precedent by discouraging similar appellants from installing a window well, which could result in secret basement bedrooms with no means of egress. He said that while he would like to have seen plans, he had heard enough to know that the appellant was doing the right thing and the appeal should be granted.

Mr. Kona stated he supported the motion because there was 60 feet of wall on two sides of the house and 30 feet of garden bed where an egress window could be installed for the open space in the basement. He said the mechanicals on the one side did not likely span the whole 60 feet of yard. He noted that visiting family could sleep in the open part of the basement. He said he could not see a practical difficulty, having not seen more plans.

Motion carried, 4-2.

ROLL CALL VOTE

Yeas: Miller, Kona, Reddy, Morganroth

Nays: Canvasser, Lilley

T# 04-21-23

**4) 1563 Lakeside
Appeal 23-15**

ABO Zielke presented the item, explaining that the owner of the property known as 1563 Lakeside was requesting the following variance regarding the height of a fence in the front open space:

- A. Chapter 126, Article 4, Section 4.11(A)(2) of the Zoning Ordinance states that fences located in the required front open space shall not exceed 3.00 feet in height. The proposed fence is 6.00 in height. Therefore, a variance of 3.00 height is requested.**

Staff answered informational questions from the Board.

Pat Beshouri, owner, 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. Beshouri stated:

- The front yard was on Lakeside, and the area where the fence was being proposed was the sideyard for all intents and purposes and has been for 40 years;

- The proposal would be following the spirit of the ordinance; and,
- The shorter portion of the fence was being proposed because it faced the neighbor's side yard. There was ongoing discussion about possibly replacing the neighbor's fence with the Beshouris' fence.

Motion by Mr. Reddy

Seconded by Mr. Lilley with regard to Appeal 23-15, A. Chapter 126, Article 4, Section 4.11(A)(2) of the Zoning Ordinance states that fences located in the required front open space shall not exceed 3.00 feet in height. The proposed fence is 6.00 in height. Therefore, a variance of 3.00 height is requested.

Mr. Reddy moved to approve the appeal. He said there were sufficient unique circumstances of the lot to make the granting of the variance reasonable. He noted the appellant attempted to mitigate some of the variance by reducing the length of the six foot fence along Quarton.

The Chair said he would support the motion because a review of the site plan indicated that there was no other usable portion of the yard. He said if the appellant chose to fence in the area by the front door, which the Board was treating as the side yard and would have been ordinance compliant, the appellant would have just as much, if not more, six foot fencing. He said it was fair to allow the appellant as much six foot fence as any other neighbor would have along the road.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

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 9:00 p.m.



Bruce R. Johnson, Building Official



Laura Eichenhorn, City Transcriptionist