

**Birmingham Board Of Zoning Appeals Proceedings
Tuesday, March 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, March 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 February 14, 2023

T# 03-11-23

Motion by Mr. Reddy

Seconded by VC Canvasser to accept the Minutes of the BZA meeting of February 14, 2023 as submitted.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

5. Appeals

T# 03-12-23

**1) 592 Lincoln
Appeal 23-07**

ABO Zielke presented the item, explaining that the owner of the property known as 592 Lincoln was requesting the following variances for a constructed pergola:

- A. Chapter 126, Article 2, Section 2.10.1** of the Zoning Ordinance requires the maximum lot coverage of the lot is 30% (1936.92 SF). The existing is 30.80% (1989.00 SF). The proposed with the pergola is 32.80% (2120.55 SF). Therefore, a variance of 2.80% (183.63 SF) is being requested.
- B. Chapter 126, Article 4, Section 4.61(A)(2)** of the Zoning Ordinance requires corner lots where there is no abutting interior residential lot on such side street, the minimum side street setback shall be 15.00 feet for permitted accessory structures. The pergola is 5.03 feet. Therefore, a variance of 9.97 feet is being requested.
- C. Chapter 126, Article 4, Section 4.03(B)** of the Zoning Ordinance states accessory structures may occupy a portion of the rear open space. They shall be at least 3.00 feet from any lot line. The pergola is 2.61 feet. Therefore, a variance of 0.39 feet is being requested.

Staff answered informational questions from the Board.

Matt Mosher, landscape architect, 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. Mosher stated:

- A cantilever umbrella or moving the pergola was considered;
- While the pergola could be moved to meet the setback requirements and more arborvitae could be added, it would not be as architecturally pleasing as the present design;
- The lot is unique relative to other corner lots because it is further from other houses, because there is no access to the back yard except from the house;
- Birmingham counts the air as lot coverage, whereas other cities do not;
- The intent of the request is not beyond what other properties in Birmingham would be allowed to do; and,

- If the house was neighbored by another house, instead of being on a corner, it would be in compliance.

The Chair reminded those present that the Board was required to enforce ordinances, and could provide variances only when the appellant meets particular requirements. He noted that the Board does not have the authority to grant variances based on other criteria.

Public Comment

Alex Davis spoke in favor of the variances being granted.

Seeing no further public comment, discussion was returned to the Board.

Mr. Miller said the need for variance C could likely be easily resolved by the owner, there might be sufficient hardship for variance B, and that he could not personally see a way to grant variance A. He said if variance A could not be granted, then variance B became moot.

Mr. Yaldo explained the only potential hardship for variance B was that the property already exceeded its lot coverage. He said he did not find that to be persuasive as a reason to grant variance B.

Motion by Mr. Reddy

Seconded by VC Canvasser with regard to Appeal 23-07, A. Chapter 126, Article 2, Section 2.10.1 of the Zoning Ordinance requires the maximum lot coverage of the lot is 30% (1936.92 SF). The existing is 30.80% (1989.00 SF). The proposed with the pergola is 32.80% (2120.55 SF). Therefore, a variance of 2.80% (183.63 SF) is being requested; B. Chapter 126, Article 4, Section 4.61(A)(2) of the Zoning Ordinance requires corner lots where there is no abutting interior residential lot on such side street, the minimum side street setback shall be 15.00 feet for permitted accessory structures. The pergola is 5.03 feet. Therefore, a variance of 9.97 feet is being requested; and, C. Chapter 126, Article 4, Section 4.03(B) of the Zoning Ordinance states accessory structures may occupy a portion of the rear open space. They shall be at least 3.00 feet from any lot line. The pergola is 2.61 feet. Therefore, a variance of 0.39 feet is being requested.

Mr. Reddy stated that while he was sympathetic to the homeowners, he did not see any special or unique conditions that would allow the requested variances to be granted. Given this, Mr. Reddy moved to deny all three variances.

VC Canvasser concurred that the Board was sympathetic to the homeowners. He explained the Board could only consider potentially unique circumstances of the property. He noted that a similar case was denied by the Board in February 2022, and said that while the prior case was not dispositive that similar denial had to be considered. For these reasons, the Vice Chair lent his support to the motion. He asked the City to work with the homeowners on compliance.

The Chair noted that there was likely an ordinance-compliant way for the homeowner to achieve the desired shade on the property. He said he would support the motion for that reason.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 03-13-23

**2) 967 Southfield
Appeal 23-09**

ABO Zielke presented the item, explaining that the owner of the property known as 967 Southfield was requesting the following variances to reconstruct a rear and side patio:

- A. Chapter 126, Article 4, Section 4.03(A)** of the Zoning Ordinance requires that no 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 31.15 feet. The constructed rear porch is 14.24 feet. Therefore, a variance of 16.91 feet is requested.
- B. 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 is requested.

Staff answered informational questions from the Board.

John Ketty, owner, 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. Ketty stated:

- The back, right corner was the highest point at approximately 36 inches off grade;
- He did not realize the work required a permit or that the house was non-conforming;
- He was sorry for having done the work without the required permits;
- The patio off the north side of the house was required in order to have a hard surface to walk on that leads to the rear patio; and,
- He had not considered mitigating variance A, though it could likely be mitigated.

Motion by VC Canvasser

Seconded by Mr. Miller with regard to Appeal 23-09, A. Chapter 126, Article 4, Section 4.03(A) of the Zoning Ordinance requires that no 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 31.15 feet. The constructed rear porch is 14.24 feet. Therefore, a variance of 16.91 feet is requested; and, B. 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 is requested.

VC Canvasser moved to approve variance A and to deny variance B. He said the property was uniquely shaped which established a practical difficulty. He noted that the raised doors of the home required a way to exit to the lower yard. He said he did not see any unique circumstances or hardships for variance B. He said that any portion not considered a sidewalk by the City vis-a-vis variance B would have to be removed. He tied approval of variance A to the plans.

Mr. Miller concurred with VC Canvasser's reasons for approving variance A, adding that the property was pre-existing non-conforming.

The Chair said he supported variance A, and that he could go either way on approving variance B. He said the updated patio with a reduced non-conformity could be seen as positive.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 03-14-23

**3) 600 Fairfax
Appeal 23-10**

ABO Zielke presented the item, explaining that the owner of the property known as 600 Fairfax was requesting the following variance to construct an attached garage to an existing non-conforming home:

- A. Chapter 126, Article 2.06.2** of the Zoning Ordinance requires that the minimum total side yard setback are 14.00 feet or 25% of the total lot width whichever is larger. The required is 20.00 feet. The proposed is 16.80 feet. Therefore; a variance of 3.20 feet is being requested.

Staff answered informational questions from the Board.

Donald Wheeler of HRH Design Group reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

Seeing no Board inquiry of Mr. Wheeler or public comment on the appeal, the Chair invited a motion.

Motion by Mr. Miller

Seconded by Mr. Hart with regard to Appeal 23-10, A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum total side yard setback are 14.00 feet or 25% of the total lot width whichever is larger. The required is 20.00 feet. The proposed is 16.80 feet. Therefore; a variance of 3.20 feet is being requested.

Mr. Miller moved to approve the variance and tied approval to the plans as submitted. He said the request was very reasonable and would do substantial justice to the petitioner and other property owners in the area.

The Chair noted this addition did not require the same variance the garage required. He noted the same variance from December 2022 just needed to be re-approved along with the plans for this ordinance-compliant addition.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 03-15-23

**4) 300 Shirley
Appeal 23-11**

ABO Zielke presented the item, explaining that the owner of the property known as 300 Shirley was requesting the following variance to allow a basement to project into the required front open space:

- A. Chapter 126, Article 2, Section 2.06.2** of the Zoning Ordinance requires that the minimum front yard setback is the average of home within 200.00 feet in each direction. The required is 67.38 feet. The proposed is 62.88 feet. Therefore, a variance of 4.50 feet is requested.

There was discussion between the Board, Staff, and David Mendelson, owner, about which appeals had been filed and noticed.

It was confirmed that only a dimensional variance request had been noticed.

Mr. Mendelson stated that he had intended to appeal more than just the dimensional variance request, and that he was unsure how his present appeal came to be limited to the dimensional variance request.

He was advised that he could either limit the present conversation to the dimensional variance request or could resubmit in order to discuss additional requests at a future meeting.

Mr. Mendelson asked if he could return with an appeal of interpretation if the present variance request was not granted.

BO Johnson said he did not see why that would not be allowed.

Staff answered informational questions from the Board.

Mr. Mendelson 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. Mendelson stated:

- The new wall was poured simultaneously because his contractors discovered at the time of digging the foundation that they were concerned about the strength of the foundation;
- Once the new wall had to be poured, his contractors advised him that it would not be significantly more expensive to add cement flooring to the basement area and to extend the air duct in order to create a usable space;
- The blue clay soil underneath his home required the excavation of a larger area under the home, which then necessitated the new wall; and,
- Birmingham Staff advised Mr. Mendelson that had he not poured the new wall, the City likely would have required it.

The Chair stated that in his professional experience converting the basement area into usable space would be more expensive than filling it in.

Public Comment

In reply to Ms. Davis, the Chair confirmed that this potential variance would not impact her as a diagonal neighbor to Mr. Mendelson.

Seeing no further public comment, the Chair invited a motion.

Motion by Mr. Miller

Seconded by Mr. Hart with regard to Appeal 23-11, A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average of home within 200.00 feet in each direction. The required is 67.38 feet. The proposed is 62.88 feet. Therefore, a variance of 4.50 feet is requested.

Mr. Miller moved to approve the variance and tied approval to the plans as submitted. He said the issue with the soils meant that the need for the variance was not self-

created. He stated that the variance itself was minimal, reasonable, and unique. He said this should not be taken as precedent-setting since the Board is very careful about variances that project into the front yard.

Mr. Hart offered his support for the motion and agreed with Mr. Miller. Citing his professional experience, he stated that removing clay or working around it is vital. He said this was likely an expensive change, and was likely not done with any intent to deceive the City or initially to create more usable space. He noted that no injustice would be done to the neighbors by granting the variance.

VC Canvasser said he would not support the motion. He said the soil conditions likely merited the new wall, but did not merit the 4.50 foot variance into the front yard setback. He noted that soil conditions were likely a broader issue in the area. He stated the 4.50 food space could be filled in to comply with the ordinance. He explained he was unpersuaded that the need for the variance was not self-created.

The Chair said he would support the motion. He said the request would not impact the neighbors, would do substantial justice to the homeowner, and was minimal. He noted the request was part of an otherwise ordinance-compliant space.

Motion carried, 6-1.

ROLL CALL VOTE

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

Nays: Canvasser

T# 03-16-23

**5) 463 Golfview
Appeal 23-13**

ABO Zielke presented the item, explaining that the owner of the property known as 463 Golfview was requesting the following variance to construct an addition to the existing non-conforming home:

- A. Chapter 126, Article 4, Section 4.75(A)(1)** of the Zoning Ordinance requires that private residential building with an attached garage that faces the street 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. The proposed is 18.92 feet in front of the furthest front facade. Therefore, a variance of 23.92 feet is requested.

Staff answered informational questions from the Board.

Robin Ballew, architectural designer, 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. Ballew stated:

- The house needed to be brought up to the present standard of the houses in the area;
- If this variance were not granted, he might consider pursuing a single door for the existing garage, though that would not reduce the setback issue;
- The present plans best met the ordinance requirements while also doing justice to the homeowner;
- The non-conformity was reduced on the west side of the structure, and all other ordinance requirements were met;
- The design on the east was to preserve the landscaped part of the yard and would likely not be visible from the street given the trees; and,
- Some challenges were presented by the unusual shape of the lot.

Motion by Mr. Miller

Seconded by Mr. Hart with regard to Appeal 23-13, A. Chapter 126, Article 4, Section 4.75(A)(1) of the Zoning Ordinance requires that private residential building with an attached garage that faces the street 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. The proposed is 18.92 feet in front of the furthest front facade. Therefore, a variance of 23.92 feet is requested.

Mr. Miller moved to approve the variance and tied approval to the plans as submitted. He said strict compliance with the ordinance would render conformity unnecessarily burdensome. He said the plans minimized the impact of a front-facing garage.

Mr. Hart supported the motion. He explained the present design would better benefit the neighborhood over a design that would be one long, linear structure that would have a less integrated addition.

Motion carried, 4-3.

ROLL CALL VOTE

Yeas: Miller, Kona, Yaldo, Hart


Nays: Morganroth, Reddy, Canvasser

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 9:37 p.m.



Bruce R. Johnson, Building Official

Laura Eichenhorn, City Transcriptionist