

**Birmingham Board Of Zoning Appeals Proceedings**  
**Tuesday, March 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, March 8, 2022. Vice-Chair Jason Canvasser convened the meeting at 7:30 p.m.

**2. Rollcall**

**Present:** Board Members Jason Canvasser, Kevin Hart, Erik Morganroth, Ron Reddy, Pierre Yaldo

**Absent:** Chair Charles Lillie; Board Member John Miller

**Administration:**

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

Vice-Chair Canvasser 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 Canvasser offered each petitioner the opportunity to postpone their petition to the next regularly scheduled BZA meeting.

Vice-Chair Canvasser also noted that he would have to recuse himself from Appeal 22-03. He advised the appellant that if they chose to be heard this evening, the appeal would need to receive unanimous approval from the remaining four Board members present.

Vice-Chair Canvasser took rollcall of the petitioners. All petitioners were present and agreed to have their appeals heard at the present meeting.

Vice-Chair Canvasser 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# 03-07-22**

**3. Announcements**

Vice-Chair Canvasser welcomed new Board member Mr. Yaldo and congratulated Mr. Reddy on becoming a regular member of the Board.

The CDC recommends vaccinated and unvaccinated individuals wear a facemask indoors while in public. The City requires masks in City Hall for all employees, board and commission members, and the public. KN-95 respirators and 3-ply masks will be provided to everyone attending public meetings.

**4. Approval Of The Minutes Of The BZA Meetings Of February 8, 2022**

Mr. Hart said that on page eight "Mr. Hart said he would not support the variance either." should be changed to "Mr. Hart said he would not support the motion to deny either."

**Motion by Mr. Morganroth**

**Seconded by Vice-Chair Canvasser to accept the Minutes of the BZA meeting of February 8, 2022 as amended.**

**Motion carried, 5-0.**

VOICE VOTE

Yeas: Morganroth, Canvasser, Hart, Reddy, Yaldo

Nays: None

**T# 03-08-22**

**5. Appeals**

**1) 1572 Holland  
Appeal 22-03**

Vice-Chair Canvasser recused himself from Appeal 22-03 at 7:37 p.m., citing an active business relationship with the appellant.

Vice-Chair Morganroth assumed facilitation of the meeting at 7:37 p.m.

ABO Zielke presented the item, explaining that the owner of the property known as 1572 Holland was requesting the following variance to construct a new single-family home with an attached 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 19.20 feet. The proposed is 14.61 feet. Therefore; a variance of 4.59 feet is being requested.

Derek Babi, 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. Babi confirmed that the variance could be reduced by shifting the house further towards the east, but that the property would be more aesthetically pleasing with the variance as-proposed.

Vice-Chair Morganroth clarified that the BZA is required to evaluate appeals according to ordinance and potential practical difficulties, and not according to aesthetics or a variety of other factors.

Mr. Babi added that shifting the house to the east to reduce the variance would also prevent the appellant from meeting the 30% lot coverage limit.

In reply to Mr. Hart, ABO Zielke confirmed that the survey incorrectly showed the eastern setback as being at 13.9 feet instead of the correct 10.0 feet.

Mr. Hart observed that, in that case, the house could shift 3.9 feet to the east while maintaining the proposed dimensions. He stated that 3.9 feet could then be subtracted from the variance request, leaving a variance request of 0.69 feet.

#### Public Comment

Kevin O'Brien summarized comments from an email he sent to the Building Department about trees on the property.

Vice-Chair Morganroth noted that the topic was not within the Board's purview, and recommended Mr. O'Brien speak directly with the appellant, Code Enforcement, or the Building Department in order to address his concerns further.

#### **Motion by Mr. Hart**

**Seconded by Mr. Reddy with regard to Appeal 22-03, 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 19.20 feet. The proposed is 14.61 feet. Therefore; a variance of 4.59 feet is being requested.**

**Mr. Hart moved to approve a reduced variance request for 0.69 feet on the east side setback. He said the appellant demonstrated some difficulties with the lot. He noted that the house could be shifted to the east without any loss of size. He said the**

**approval should be tied to the submitted documents and a corrected survey which would show the setback along Torry Street being at 10.0 feet.**

**Motion carried, 4-0.**

VOICE VOTE

Yeas: Morganroth, Hart, Reddy, Yaldo

Nays: None

**2) 1001 Willow  
Appeal 22-06**

Vice-Chair Canvasser rejoined the meeting and resumed facilitation at 8:02 p.m.

ABO Zielke presented the item, explaining that the owner of the property known as 1572 Holland was requesting the following variances regarding the height of a fence in the side yard and open space to install artificial turf in the rear open space:

**A. Chapter 126, Article 4.11(A)1** of the Zoning Ordinance requires that fences shall not exceed 6.00 feet in height above grade when located in any portion of the required side or rear open space. The proposed fence located in the side yard is 7.00 feet in height. Therefore; a variance of 1.00 feet is being requested.

**B. Chapter 126, Article 2.06.1** of the Zoning Ordinance requires that a lot maintain a minimum open space of 40% (5422.80 SF). The proposed is 37% (5023.00 SF). Therefore; a variance of 3% (399.80 SF) is being requested.

In reply to Mr. Hart, BO Johnson clarified that the ordinance would consider artificial turf a structure.

Jason DeLong, representative for the appellant, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

In reply to Mr. DeLong, BO Johnson stated that there might be a way for a fence to be installed near the current proposal that would be measured at six feet. He said that would take further discussion between the appellant and Staff.

Mr. Hart suggested that the height of the fence be measured at the average height since there is a slope, which he said might reduce the size of the request for variance B.

BO Johnson said that would be a way to look at it, but emphasized that any height over the six feet would still require a variance request.

Mr. Hart acknowledged that, saying that the unusual circumstances might result in a justification for a variance.

BO Johnson concurred, saying that he believed there is some topography on the site.

Mr. DeLong added that privacy is especially necessary in this case because of the appellant's celebrity status.

In reply to Mr. Yaldo, Mr. DeLong confirmed that the fence would not offer its intended function without a variance due to the slope of the backyard. He stated that currently if one were standing in the street they would be able to see directly into the rear yard.

In reply to Mr. Hart, Mr. DeLong confirmed that the shape of the property also contributed to the need for variance B.

**Motion by Mr. Reddy**

**Seconded by Vice-Chair Canvasser with regard to Appeal 22-06, A. Chapter 126, Article 4.11(A)1 of the Zoning Ordinance requires that fences shall not exceed 6.00 feet in height above grade when located in any portion of the required side or rear open space. The proposed fence located in the side yard is 7.00 feet in height. Therefore; a variance of 1.00 feet is being requested.**

**Mr. Reddy moved to approve variance A only. He said that looking at the unique circumstances presented by the lot shape and the topography of the lot, the variance should be granted.**

**Mr. Morganroth said that while he has generally opposed fences higher than the ordinance allows, he found that the challenging grades of the lot in this case result in an exception to that rule. He noted that the average height of the fence if measured on both sides and averaged would be between six and seven feet. Since the rear yard is higher than the front yard, the fence would not serve its purpose if forced to comply with the ordinance in this case. He said for these reasons he would support the motion.**

**Vice-Chair Canvasser also offered his support of the motion. He noted that the lot has unique circumstances which include an irregular shape, a transformer in the rear yard, and an uneven grade. He stated that the four factors required for the granting of a variance were met by variance A said he would support the motion as a result.**

**Motion carried, 5-0.**

VOICE VOTE

Yeas: Morganroth, Hart, Reddy, Yaldo, Canvasser

Nays: None

**Motion by Mr. Hart**

**Seconded by Mr. Morganroth with regard to Appeal 22-06, B. Chapter 126, Article 2.06.1 of the Zoning Ordinance requires that a lot maintain a minimum open space of**

**40% (5422.80 SF). The proposed is 37% (5023.00 SF). Therefore; a variance of 3% (399.80 SF) is being requested.**

**Mr. Hart moved to approve variance B tied to the plans as submitted. He said that the neighboring properties would benefit from a system that would allow drainage without running off into other properties. He said the condition was not self-created, citing the topography and shape of the lot. He said granting the variance would do substantial justice to the property owner and to the adjacent properties.**

**Mr. Reddy said he would also support the motion since the variance was only for 3% and since the lot had a number of unique circumstances.**

**Mr. Morganroth clarified that the material is allowed under the ordinance, and that the topic under consideration was whether the extra 399.80 SF could be permitted. He said that in perspective that amounts to the size of a family room, and that granting the variance would allow the appellant to have as much use of his property as anyone else. He noted that other variances have been granted in the past regarding open space in order to enable an appellant's enjoyment of their property.**

**Vice-Chair Canvasser said he could not support the motion, despite his desire to, citing the fact that options were available for mitigating the need for variance A.**

**Vice-Chair Canvasser added that he was fully supportive of the Commission evaluating how artificial turf is treated in the ordinance vis-a-vis open space.**

**Motion carried, 4-1.**

VOICE VOTE

Yeas: Morganroth, Hart, Reddy, Yaldo

Nays: Canvasser

**3) 680 Brookside  
Appeal 22-07**

ABO Zielke presented the item, explaining that the owner of the property known as 680 Brookside was requesting the following variances to construct a new single family home with a detached garage:

**A. Chapter 126, Article 4.03(B)** of the Zoning Ordinance requires if a lot has frontage on two streets so that the rear lot line abuts the street, accessory structures shall be set back from the rear lot line the same distance required as a front setback for lots fronting on the street. The required is 54.80 feet. The proposed is 25.50 feet. Therefore; a variance of 29.30 feet is requested.

**B. Chapter 126, Article 4.30(C)1** of the Zoning Ordinance allows covered porches to project into the required front open space and shall not be higher than the floor of the

first story. The proposed porch is higher than the floor of the first story. Therefore: a variance for the porch is being requested.

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

In reply to Mr. Yaldo, Mr. Bonislawski stated that if the garage were attached to the house, the size of the house would need to be reduced. He said he believed a different variance than the ones being proposed would end up being required.

ABO Zielke confirmed that attaching the garage would result in the need for a different variance.

It was observed that the architect explored a number of ways of fitting the home on the property with a two-car garage while remaining in compliance with the ordinance.

Mr. Hart observed that there is quite a distance between this property and the next neighboring property to the east. He said it the neighbor to the east would have no real view of this property.

ABO Zielke concurred.

Mr. Bonislawski confirmed for Mr. Reddy that the extant driveway curb cut was reviewed and approved by MDOT.

#### Public Comment

Kristen Tait, neighbor to the north of 680 Brookside, said she appreciated the scale and design of the project. She noted that there is a gas service line that runs through hers and the appellant's yards. She said that the alternative of attaching 680 Brookside's garage to the house might not work because it might require building over the gas service line. She opined that the design as-proposed was a better design than the aforementioned alternative.

#### **Motion by Mr. Morganroth**

**Seconded by Mr. Hart with regard to Appeal 22-06, A. Chapter 126, Article 4.03(B) of the Zoning Ordinance requires if a lot has frontage on two streets so that the rear lot line abuts the street, accessory structures shall be set back from the rear lot line the same distance required as a front setback for lots fronting on the street. The required is 54.80 feet. The proposed is 25.50 feet. Therefore; a variance of 29.30 feet is requested; and, B. Chapter 126, Article 4.30(C)1 of the Zoning Ordinance allows covered porches to project into the required front open space and shall not be higher than the floor of the first story. The proposed porch is higher than the floor of the first story. Therefore: a variance for the porch is being requested.**

**Mr. Morganroth moved to approve variance A and B and tied them to the plans as submitted. He said the appellant's review of the adjacent house placements, lot sizes, and the impact of those on the setbacks of the appellant's property, plus the fact that all attempts to build an ordinance-compliant home with a two car garage have been explored, plus the property's unique shape, location, and grade, persuaded him of the**

**need for variance A. Mr. Morganroth continued that variance B was necessary because of the grade change of the property. He noted that the need was not self-created and granting the variance would allow the appellant to use the property as intended.**

**Mr. Hart said he would support the motion because he also believed the project met the spirit of the ordinance. He said granting the variances would do substantial justice to the neighbor by not having the garage facing Brookside. He said with the grade changes and other unique circumstances of the lot the architect did an excellent job and for that reason he would be supporting the motion.**

**Mr. Yaldo said that the narrowness of the lot and the topography led to a practical difficulty without self-creation.**

**Motion carried, 5-0.**

VOICE VOTE

Yeas: Morganroth, Hart, Reddy, Yaldo, Canvasser

Nays: None

**T# 03-09-22**

## **6. Correspondence**

BO Johnson provided the Board with one letter in regards to Appeal 22-03 than came in after the agenda went out. He noted the letter was also provided to the appellant. All other correspondence was included in the agenda packet.

**T# 03-10-22**

## **7. General Business**

Vice-Chair Canvasser announced that elections for Vice-Chair and Chair would occur at the April 2022 meeting and that those interested in running for a position should notify BO Johnson of their interest.

**T# 03-11-22**

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

None.

**T# 03-12-22**

## **8. Adjournment**

**Motion by Mr. Morganroth**



**Seconded by Mr. Reddy to adjourn the March 8, 2022 BZA meeting at 9:16 p.m.**

**Motion carried, 5-0.**

VOICE VOTE

Yeas: Morganroth, Reddy, Yaldo, Canvasser, Hart

Nays: None



---

Bruce R. Johnson, Building Official



Laura Eichenhorn

City Transcriptionist