

CASE DESCRIPTION

282 Greenwood

Hearing date: August 9, 2022

Appeal No. 22-34: The owner of the property known **282 Greenwood**, requests the following variances to construct a deck and rework the existing impervious area to an existing non-conforming site:

- A. Chapter 126, Article 4, Section 4.30(C)(5) of the Zoning Ordinance allows a deck and/or steps to project into the rear open space for a maximum distance of 15.00 feet. This provision shall not reduce the required rear yard setback to less than 15.00 feet. The proposed deck is to reduce the rear yard to 10.00 feet; therefore, a variance of 5.00 feet is requested.
- B. Chapter 126, Article 4, Section 4.31(A) of the Zoning Ordinance requires that a minimum of 65% (998.53 SF) of the front open space in all single- family districts shall be free of paved surfaces. The existing is 43.19% (663.50 SF) and the proposed is 56.98% (875.30 SF). Therefore a variance of 8.02% (123.23 SF) is being requested.

Staff Notes: The applicant is looking to construct a deck in the rear that projects into the rear open space and rework the existing open space requirements in the front open space of the existing non-conforming home. This appeal was before the board in August 2021 for a similar request (minutes attached)

This property is zoned R2 – Single family residential.

282 GREENWOOD MAP



CITY OF BIRMINGHAM
Community Development - Building Department
151 Martin Street, Birmingham, MI 48009
Community Development: 248-530-1850
Fax: 248-530-1290 / www.bhamgov.org

APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: 6.28.22

Hearing Date: 8.9.22

Received By: HT

Appeal #: 22-0034

Type of Variance:	<input checked="" type="checkbox"/> Interpretation	<input checked="" type="checkbox"/> Dimensional	<input checked="" type="checkbox"/> Land Use	<input checked="" type="checkbox"/> Sign	<input checked="" type="checkbox"/> Admin Review
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I. PROPERTY INFORMATION:

Address: <u>282 GREENWOOD ST</u>	Lot Number:	Sidwell Number:
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II. OWNER INFORMATION:

Name: <u>Robert Jacob</u>			
Address: <u>282 GREENWOOD ST</u>	City: <u>BIRMINGHAM</u>	State: <u>MI</u>	Zip code: <u>48009</u>
Email: *		Phone:	

III. PETITIONER INFORMATION:

Name: <u>DARYL Toby</u>	Firm/Company Name: <u>AGUAFINA</u>		
Address: <u>2629 ORCHARD LAKE RD</u>	City: <u>SYLVAN LAKE</u>	State: <u>MI</u>	Zip code: <u>48320</u>
Email: <u>toby@aguafina.com</u>		Phone: <u>(248) 535-5390</u>	

IV. GENERAL INFORMATION:

The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12th day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.

To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted. Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.

The BZA application fee is **\$360.00** for single family residential; **\$560.00** for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.

Variance Chart Example				
Requested Variances	Required	Existing	Proposed	Variance Amount
Variance A, Front Setback	25.00 Feet	23.50 Feet	23.50 Feet	1.50 Feet
Variance B, Height	30.00 Feet	30.25 Feet	30.25 Feet	0.25 Feet

V. REQUIRED INFORMATION CHECKLIST:

- ☐ One original and nine copies of the signed application
- ☐ One original and nine copies of the signed letter of practical difficulty and/or hardship
- ☐ One original and nine copies of the certified survey
- ☐ 10 folded copies of site, plan and building plans including existing and proposed floor plans and elevations
- ☐ If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting

VI. APPLICANT SIGNATURE

Owner hereby authorizes the petitioner designated below to act on behalf of the owner.
By signing this application, I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

*By providing your email to the City, you agree to receive news and notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

Signature of Owner: Robert Jacob Date: 5.31.22

Signature of Petitioner: _____ Date: _____

**CITY OF BIRMINGHAM
BOARD OF ZONING APPEALS
RULES OF PROCEDURE**

ARTICLE I - Appeals

- A. Appeals may be filed under the following conditions:
1. A property owner may appeal for variance, modification or adjustment of the requirements of the Zoning Ordinance.
 2. A property owner may appeal for variance, modification or adjustment of the requirements of the Sign Ordinance.
 3. Any aggrieved party may appeal the decision of the Planning Board and/or the Building Official in accordance with the City of Birmingham Zoning Ordinance, Article Eight, Section 8.01 (D) Appeals. If an appellant requests a review of any determination of the Building Official, a complete statement setting forth the facts and reasons for the disagreement with the Building Official's determination shall include the principal point, or points on the decision, order or section of the ordinance appealed from, on which the appeal is based.
- B. Procedures of the Board of Zoning Appeals (BZA) are as follows:
1. Regular BZA meetings, which are open to the public, shall be held on the second Tuesday of the month at 7:30 P.M. provided there are pending appeals. There will be a maximum of seven appeals heard at the regular meeting which are taken in the order received. If an appeal is received on time after the initial seven appeals have been scheduled, it will be scheduled to the next regular meeting.
 2. All applications for appeal shall be submitted to the Community Development Department on or before the 12th day of the month preceding the next regular meeting. If the 12th falls on a Saturday, Sunday, or legal holiday, the next working day shall be considered the last day of acceptance.
 3. All property owners and occupants within 300 feet of the subject property will be given written notice of a hearing by the City of Birmingham.
 4. See the application form for specific requirements. If the application is incomplete, the BZA may refuse to hear the appeal. The Building Official or City Planner may require the applicant to provide additional information as is deemed essential to fully advise the Board in reference to the appeal. Refusal or failure to comply shall be grounds for dismissal of the appeal at the discretion of the Board.
 5. In variance requests, applicants must provide a statement that clearly sets forth all special conditions that may have contributed to a practical difficulty that is preventing a reasonable use of the property.

6. Where the Birmingham Zoning Ordinance requires site plan approval of a project by the City Planning Board before the issuance of a building permit, applicants must obtain preliminary site plan approval by the Planning Board before appeal to the BZA for a variance request. If such appeal is granted by the BZA, the applicant must seek final site plan and design review approval from the Planning Board before applying for a building permit.
 7. An aggrieved party may appeal a Planning Board decision. Such appeal must be made within 30 days of the date of the decision. The BZA, in its discretion, may grant additional time in exceptional circumstances.
 8. Appeals from a decision of the Building Official shall be made within 30 days of the date of the order, denial of permit, or requirement or determination contested. The BZA, in its discretion, may grant additional time in exceptional circumstances.
 9. An appeal stays all proceedings in accordance with Act #110, Public Acts of 2006, Article VI, Section 125.3604 (3).
- C. The order of hearings shall be:
1. Presentation of official records of the case by the Building Official or City Planner as presented on the application form.
 2. Applicant's presentation of his/her case—the applicant or his/her representative must be present at the appeal hearing.
 3. Interested parties' comments and view on the appeal.
 4. Rebuttal by applicant.
 5. The BZA may make a decision on the matter or request additional information.
- D. Motions and Voting
1. A motion is made to either grant or deny a petitioner's request
 - a) For a motion to grant or deny a non-use variance request, the motion must receive four (4) affirmative votes to be approved.
 - b) For a motion to grant or deny a use variance request, the motion must receive five (5) affirmative votes to be approved.
 - c) For a motion to grant or deny an appeal of a decision or order by an administrative official or board, the motion must receive four (4) affirmative votes to be approved.
 2. When a motion made is to approve or deny a petitioner's request and if there is a tie vote, then the vote results in no action by the board and the petitioner shall be given an opportunity to have his or her request heard the next regularly scheduled meeting when all the members are present.
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3. When there are less than seven (7) members of the board present for a meeting, then a petitioner requesting a use variance shall be given an opportunity at the beginning of the meeting to elect to have it heard at the next regularly scheduled meeting.
4. When there are less than six (6) members present for a meeting, then all petitioners shall be given an opportunity at the beginning of the meeting to elect to have the request heard at the next regularly scheduled meeting.

ARTICLE II - Results of an Appeal


- A. The Board may reverse, affirm, vary or modify any order, requirement, decision or determination as in its opinion should be made, and to that end, shall have all the powers of the officer from whom the appeal has been taken.
- B. The decisions of the Board shall not become final until the expiration of five (5) days from the date of entry of such orders or unless the Board shall find that giving the order immediate effect is necessary for the preservation of property and/or personal rights and shall so certify on the record.
- C. Whenever any variation or modification of the Zoning Ordinance is authorized by resolution of the BZA, a Certificate of Survey must be submitted to the Community Development Department with the building permit application. A building permit must be obtained within one year of the approval date.
- D. Failure of the appellant, or his representative, to appear for his appeal hearing will result in the appeal being adjourned to the next regular meeting. If, after notice, the appellant fails to appear for the second time, it will result in an automatic withdrawal of the appeal. The appellant may reapply to the BZA.
- E. Any applicant may, with the consent of the Board, withdraw his application at any time before final action.
- F. Any decision of the Board favorable to the applicant is tied to the plans submitted, including any modifications approved by the Board at the hearing and agreed to by the applicant, and shall remain valid only as long as the information or data provided by the applicant is found to be correct and the conditions upon which the resolution was based are maintained.

ARTICLE III - Rehearings

- A. No rehearing of any decision of the Board shall be considered unless new evidence is submitted which could not reasonably have been presented at the previous hearing or unless there has been a material change of facts or law.
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B. Application or rehearing of a case shall be in writing and subject to the same rules as an original hearing, clearly stating the new evidence to be presented as the basis of an appeal for rehearing.

I certify that I have read and understand the above rules of procedure for the City of Birmingham Board of Zoning Appeals.



Signature of Applicant

On August 10th 2021, the Board approved the request for the appeal of for two variances.

A) Chapter 126, Article 4.30 (c) (5) of the Zoning Ordinance allows a deck and/or steps may project into the rear open space for a maximum distance of 15.00 feet. The provision shall not reduce the required rear setback to less than 15 feet.

In 2021, the proposed was to reduce the rear setback to 5 feet and therefore board approved a variance of 10 feet.

The current proposal is for a variance of 5 feet, bringing it closer to the required rear setback.

B) Chapter 126, Article 4.31 (A) of the Zoning Ordinance requires that a minimum of 65% (998.53 feet) of the front open space in all single family districts be free of paved surfaces. The existing is 43.19% (663.5 SF).

The proposed was for 56.44% (867.00 SF) and a variance was approved of 8.56% (131.53 SF)

Subsequent to the approval, AguaFina Gardens International was engaged to redesign the landscape. The objective was to soften the landscape by increasing green space from the prior design and minimize hard surfaces/structures. Our revised plan resulted in a design that reduced the non-conformity in the variances granted in 2021.

Variance A – Design Change to Deck

Reviewing with the client, the primary reason for the deck to have a staircase is for safety in the event of a fire or other emergency. It was decided that it was unnecessary for the stairs to act as a method to interact with the lower garden level and redundant as the interior staircase would be more likely and convenient to use to access this area. By removing the back staircase and allowing for emergency egress/regress to the northeast of the property, this reduces the protrusion of the deck into the rear setback. Additionally, the reconfiguration of the design allows for more usable surface area by having the entire structure on one level. One further note on the redesign – the prior design includes the removal of a large mature white pine due to the configuration of the deck. The new design allows for the preservation of this tree.

Variance B - Design Change to Hardscape

In redesigning the overall landscape, the open space for the entire property increased 5.6% (409 square feet), compared to the board approved design. While the majority of this increase was in the back of the property, the front of the property also improved slightly by 1%.

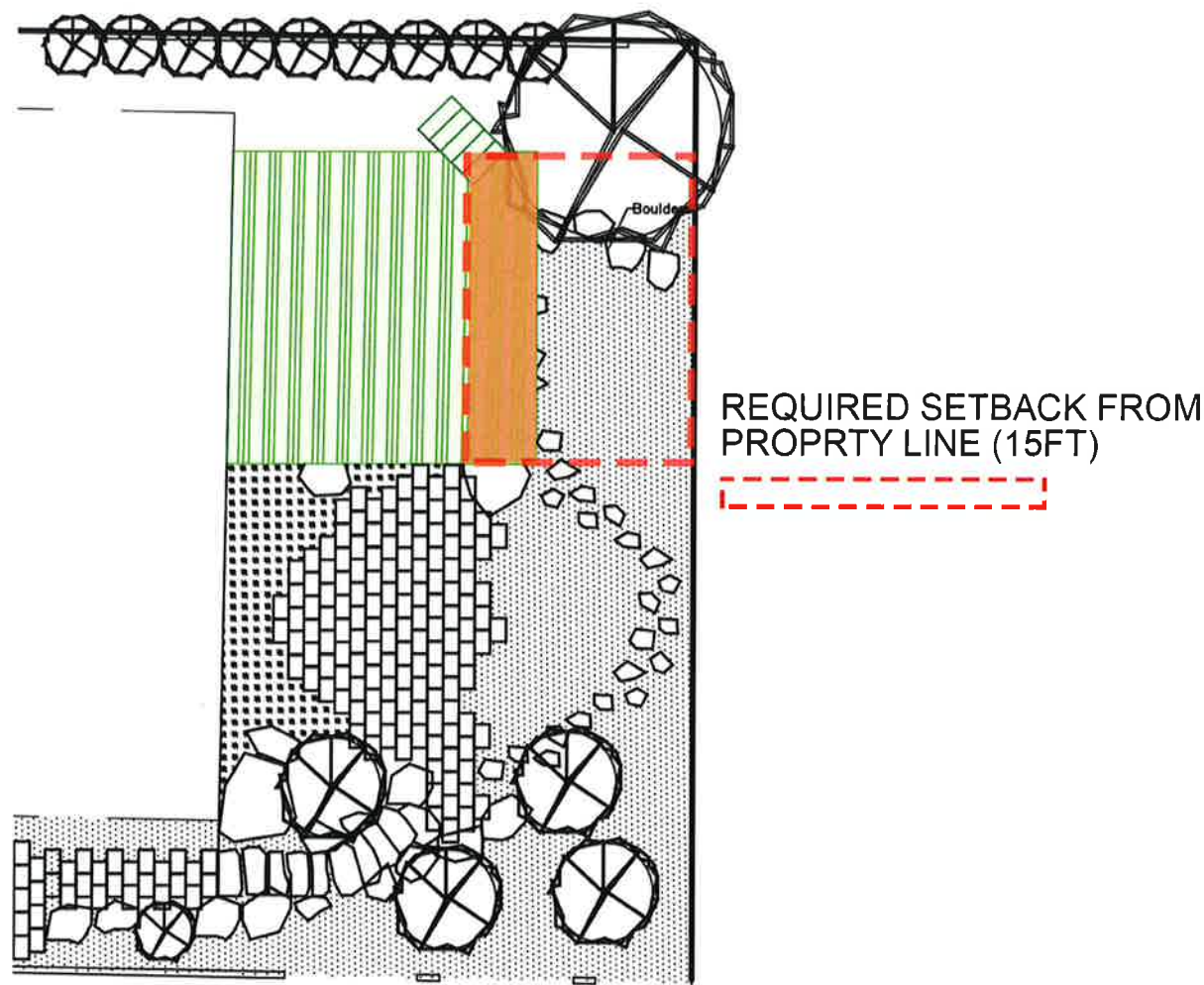
On both these points as we were able to reconfigure the spaces working within the parameters of the given, we request that both these variances be approved.


Daryl Toby – AguaFina Gardens International

6/15/2022
Date

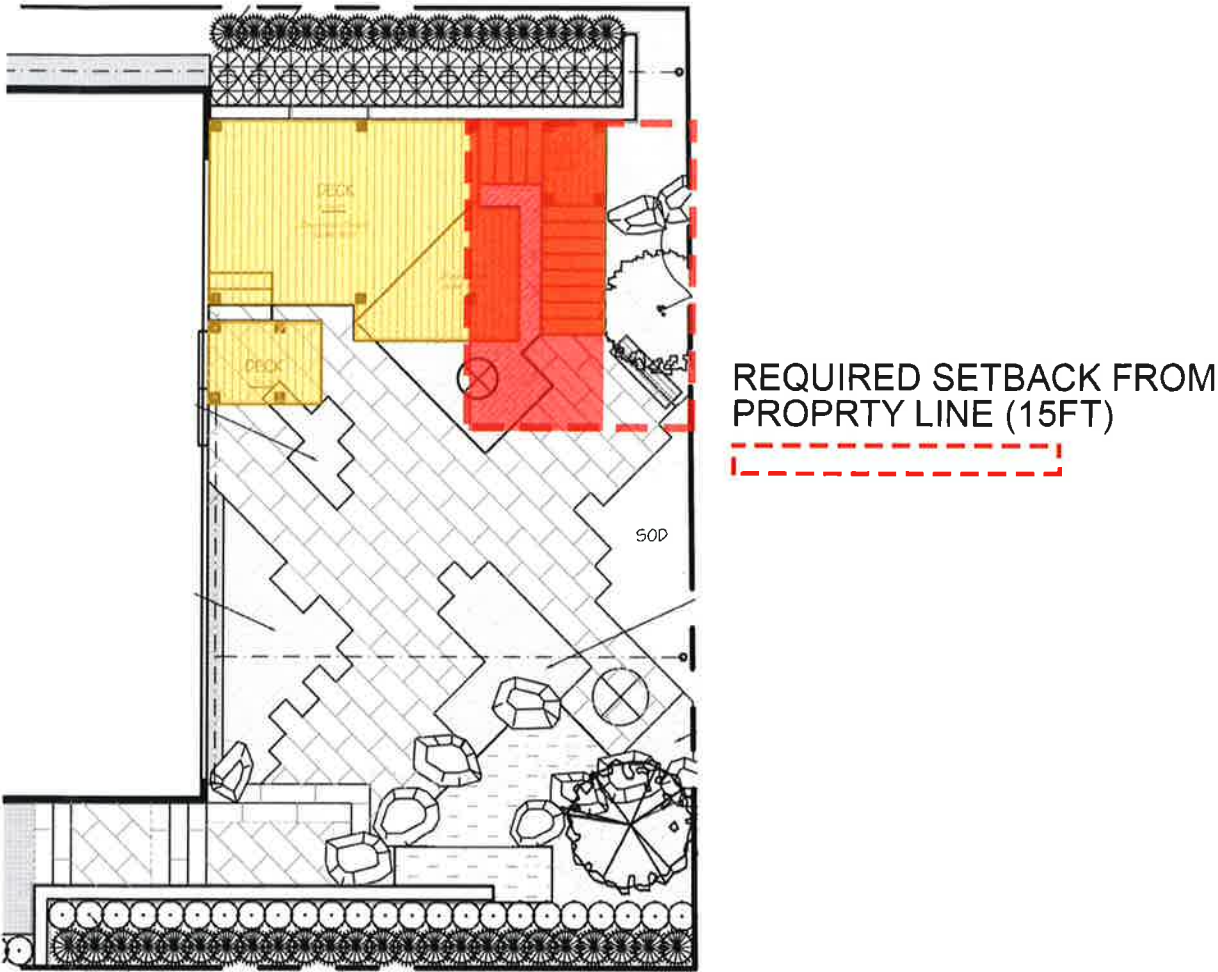
VARIANCE REQUEST COMPARISON

2022 VARIANCE REQUEST



2022 DECK
5FT VARIANCE REQUEST

2021 VARIANCE REQUEST
(APPROVED)






2021 DECK
10FT VARIANCE REQUEST
(APPROVED)

PROJECT: **Jacob Residence**
282 Greenwood St. Birmingham, MI
SUBJECT: Overlap Comparison
CLIENT: Robert Jacob

Overlap Comparison

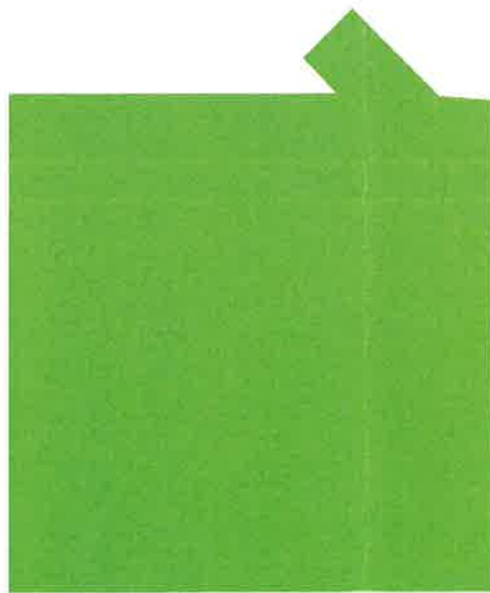


2021 Design 
Overlap Area 
2022 Design 

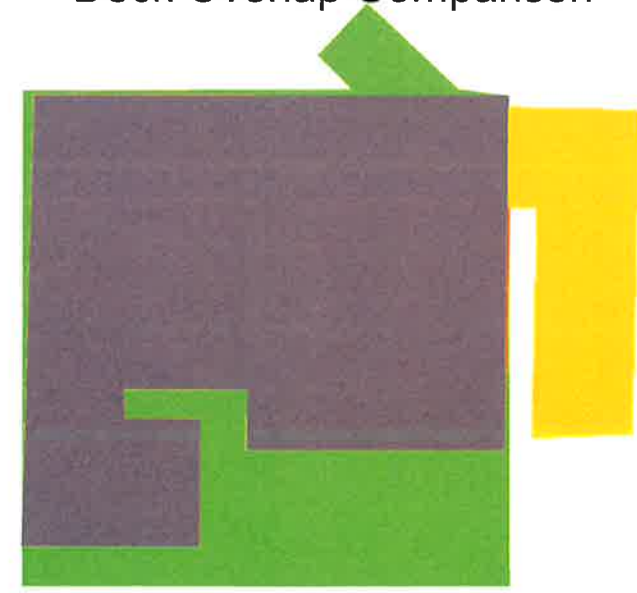
2021 Deck Perimeter



2022 Deck Perimeter



Deck Overlap Comparison



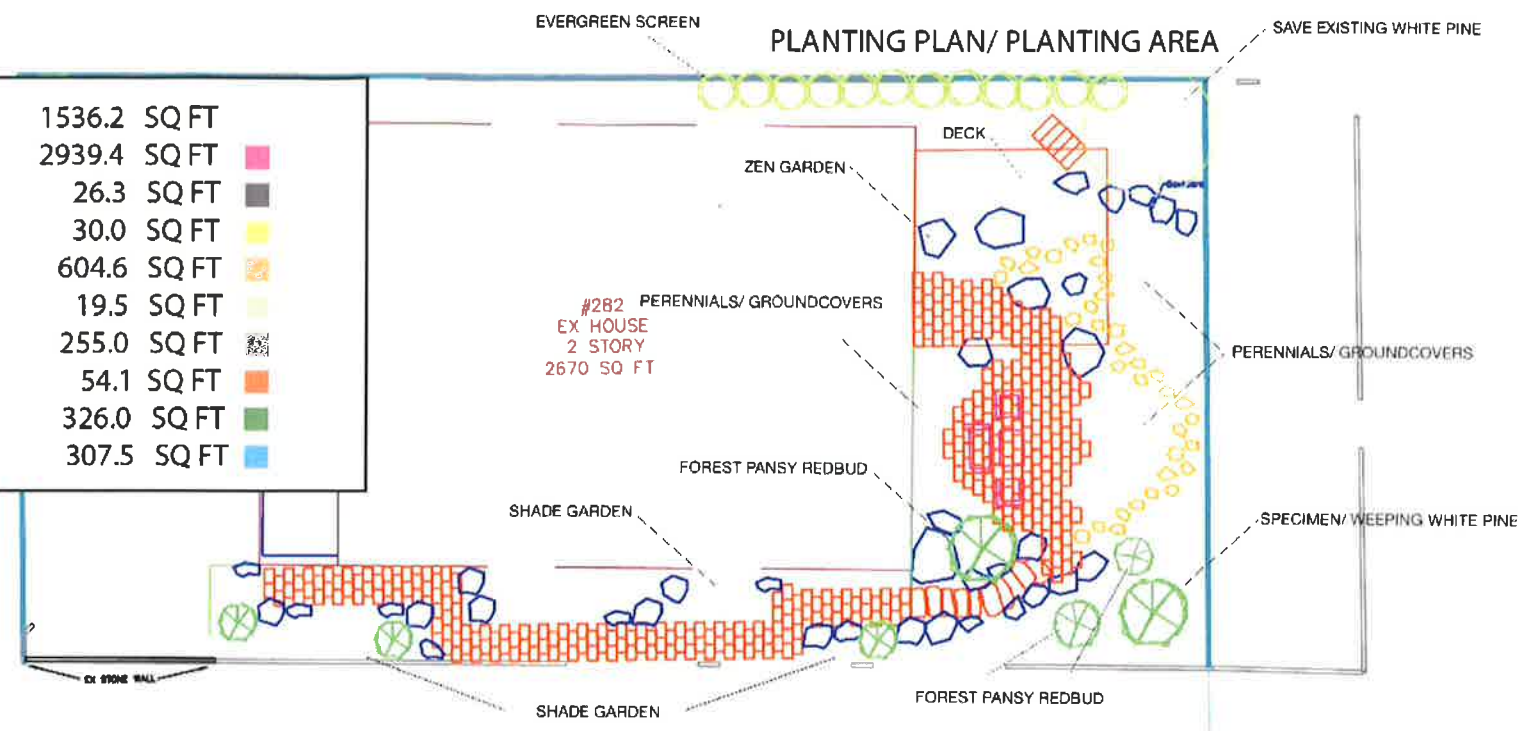
RELEASE DATE: May 12, 2022
REVISE DATE: June 17, 2022

Jacob Residence
282 Greenwood St. Birmingham, MI

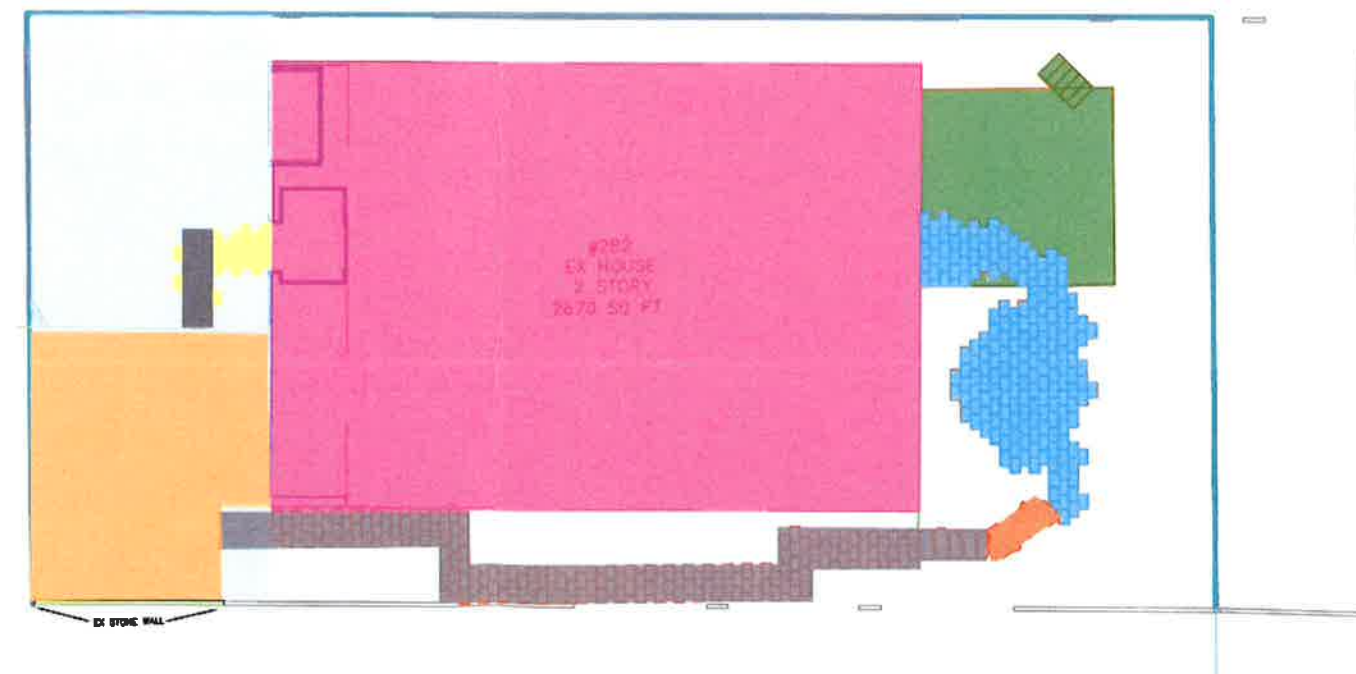
PROJECT: **Jacob Residence**
SUBJECT: Overlap Comparison
CLIENT: Robert Jacob

AGUAFINA
GARDENS INTERNATIONAL
2629 ORCHARD LAKE ROAD
SYLVAN LAKE, MI 48320 USA
(248) 738-0500 / FAX (248) 738-0554
www.aguafina.com

FRONT YARD SF	1536.2	SQ FT	
HOUSE FOOT PRINT	2939.4	SQ FT	
FRONT 36" WALKWAY (DOES NOT COUNT)	26.3	SQ FT	
FRONT YARD WALK AND PATIO	30.0	SQ FT	
FRONT YARD DRIVEWAY	604.6	SQ FT	
FRONT YARD RETAINING WALL	19.5	SQ FT	
SIDEYARD 36" WALKWAY (DOES NOT COUNT TO LOT COVERAGE)	255.0	SQ FT	
STONE STAIR	54.1	SQ FT	
DECK -DOES NOT INCLUDE AREA THAT LOWER PATIO COVERS	326.0	SQ FT	
BACKYARD PATIO (INCLUDING AREA THAT IS COVERED BY DECK)	307.5	SQ FT	



HARDSCAPE PLAN



RELEASE DATE: May 20, 2022

Jacob Residence
282 Greenwood St. Birmingham, MI

PROJECT:

SUBJECT: PLANTING AND HARDSCAPE PLANS

CLIENT: Robert Jacob

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LOT COVERAGE DETAILS – JACOBS RESIDENCE

282 Greenwood Boulevard, Birmingham, MI 48009

R2 Zoning

May 20, 2022 – ALL MATERIALS INCLUDED IN COUNT

Minimum Lot Size 6000 sq ft
 Maximum Lot Coverage 30%
 Minimum Open Space = 40%
 Minimum Front Open Space = 65%

LOT COVERAGE

	Current Existing	2022 Proposed	2021 Proposed
Description	Conditions (sq ft)	Conditions (sq ft)	Conditions (sq ft)
Lot Size	7307	7307	7307
Existing House Foot Print	2939.4	2939.4	2939.4
Front yard Walk (36" wide)	N/A	N/A	N/A
Front yard Patio/Walk	184	30	82
Driveway	659.1	604.6	559.4
Front yard Wall	29.6	19.5	27.4
Remaining Wall	304.2	N/A	71
Side Yard Walk and Steps (Gravel Walk is 36" wide)	229.4	N/A	121.8
Back Yard Patio	813.4	307.5	505.9
Back Yard stone stair	N/A	54.1	N/A
Backyard Deck (excludes SF overlapping patio below)	N/A	326	307.9
Pond	N/A	N/A	74.9

Sum of Above Less Lot Size	5159.1	4281.1	4690.1
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Lot Coverage
 Percent Open Space (40% or more needed)

FRONT YARD COVERAGE

	Current Existing	2022 Proposed	2021 Proposed
Description	Conditions (sq ft)	Conditions (sq ft)	Conditions (sq ft)
Front Yard Area	1536.2	1536.2	1536.2
Front yard Driveway	659.1	604.6	559.4
Front yard Wall	29.6	19.5	27.4
Front yard Patio/Walk	184	30	82.4

Sum of Front Coverage	872.7	654.1	669.2
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Percent Front Coverage
 Percent Front Open Space (65% or more needed)

40.23%
29.40%

40.23%
41.41%

40.23%
35.81%

Increase in open space
5.6% / 409.0 sq ft

Increase in open space
0.99% / 15.1 sq ft

**Birmingham Board Of Zoning Appeals Proceedings
Tuesday, August 10, 2021
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, August 10, 2021. Vice-Chair Jason Canvasser convened the meeting at 7:30 p.m.

2. Rollcall

Present: Vice-Chair Jason Canvasser; Board Members Kevin Hart, John Miller, Francis Rodriguez, Richard Lilley, Erik Morganroth (attended virtually, located in Birmingham MI); Alternate Board Member Ron Reddy

Absent: Chair Charles Lillie; Alternate Board Member Erin Rodenhouse

Administration:

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

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.

Vice-Chair Canvasser took rollcall of the petitioners. All petitioners were present.

T# 08-43-21

3. Approval Of The Minutes Of The BZA Meeting Of June 8, 2021 and July 13, 2021

Motion by Mr. Miller

Seconded by Mr. Rodriguez to accept the Minutes of the BZA meeting of June 8, 2021 as submitted.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Hart, Morganroth, Canvasser, Rodriguez, Miller

Nays: None

Abstain: Reddy, Lilley

With Vice-Chair Canvasser and Messrs. Hart, Miller, and Rodriguez abstaining due to their absences from the July 13, 2021 meeting the Board did not have a quorum for a vote on the July 13, 2021 minutes.

The July 13, 2021 minutes will be voted on along with the August 10, 2021 minutes at the September 2021 meeting.

T# 08-44-21

4. Appeals

**1) 689 Westwood
Appeal 21-29**

ABO Zielke presented the item, explaining that the owner of the property known as 689 Westwood was requesting the following variance to construct an addition to an existing non-conforming single-family 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 22.47 feet. The proposed is 18.82 feet. Therefore a variance of 3.65 feet was being requested.

ABO Zielke continued that the applicant was denied their initial request by the Board in May 2021, asked that their request be tabled at the July 2021 meeting, and was now requesting a lesser variance to construct an addition to the home. This property is zoned R1– Single Family Residential.

Mari MacKenzie, owner, and Glenda Meads, architect, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In discussion a number of Board members expressed concern that granting this variance might adversely impact the neighbor to the north. Because the submitted documents did not provide the distance between the neighbor to the north and that neighbor's northern neighbor, the Board could not say whether granting this variance might prevent 689 Westwood's northern neighbor from building to the maximum width allowed on their lot in the future if desired.

After discussion, Staff stated the City would help the appellant get the requisite information and return for future review if desired by the Board.

Motion by Mr. Reddy

Seconded by Mr. Miller with regard to Appeal 21-29, 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 22.47 feet. The proposed is 18.82 feet. Therefore a variance of 3.65 feet was being requested.

Mr. Reddy moved to adjourn Appeal 21-29 to the September 2021 meeting, citing the need for additional information in order for the Board to complete its review.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Reddy, Miller, Lilley, Hart, Morganroth, Canvasser, Rodriguez

Nays: None

BO Johnson advised the Board to retain their documents for Appeal 21-29.

**2) 282 Greenwood
Appeal 21-30**

ABO Zielke presented the item, explaining that the owner of the property known as 282 Greenwood was requesting the following variances to re-construct an existing deck and impervious areas of an existing non-conforming single-family home:

A. Chapter 126, Article 4.30(C)(5) of the Zoning Ordinance allows a deck and/or steps may project into the rear open space for a maximum distance of 15.00 feet. This provision shall not reduce the required rear setback to less than 15.00 feet. The proposed it reduce the rear yard setback to 5.00 feet. Therefore a variance of 10.00 feet was being requested.

B. Chapter 126, Article 4.31(A) of the Zoning Ordinance requires that a minimum of 65% (998.53 feet) of the front open space in all single family districts shall be free of paved surfaces. The existing is 43.19% (663.50 SF) and the proposed is 56.44% (867.00 SF). Therefore a variance of 8.56% (131.53 SF) was being requested.

ABO Zielke continued that this appeal was tabled from the July 2021 meeting and that there was a change to the variance A request.

Steve Ahejew, architect, and Robert Jacobs, owner, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

After discussion between Mr. Morganroth and Mr. Ahejew, Mr. Ahejew acknowledged that either a deck without a staircase, a staircase without a deck, or a staircase with a smaller deck could be built either within the ordinance or with a smaller variance request.

In reply to Board inquiry, Mr. Ahejew stated that while a spiral staircase was considered, the owner had concerns about a spiral staircase's safety especially for aging users. He also expressed concerns about potential egress issues if no stairs were provided.

Mr. Morganroth noted the proposed plans were likely better designed than the other options, but that the circumstances on the lot did not constitute a hardship. He expressed fewer reservations regarding variance B than variance A.

Motion by Mr. Hart

Seconded by Mr. Lilley with regard to Appeal 21-30, A. Chapter 126, Article 4.30(C)(5) of the Zoning Ordinance allows a deck and/or steps may project into the rear open space for a maximum distance of 15.00 feet. This provision shall not reduce the required rear setback to less than 15.00 feet. The proposed it reduce the rear yard setback to 5.00 feet. Therefore, a variance of 10.00 feet is being requested; and, B. Chapter 126, Article 4.31(A) of the Zoning Ordinance requires that a minimum of 65% (998.53 feet) of the front open space in all single family districts shall be free of paved surfaces. The existing is 43.19% (663.50 SF) and the proposed is 56.44% (867.00 SF). Therefore a variance of 8.56% (131.53 SF) is being requested.

Mr. Hart moved to approve the variance requests and tied them to the plans as submitted. He noted that the request mitigated some of the excess lot coverage in the front of the home. He continued that the stair placement in the rear presented challenges that amounted to a practical difficulty in terms of the staircase going in front of glass. The stairs allow for proper functioning and exterior egress in the rear. He noted there would be no adverse effect on neighboring properties, that the landing would be situated lower than the retaining wall, and that the staircase would be placed not to obscure neighbors' views. He opined that substantial justice would be done to the owners and neighbors.

Mr. Miller said he found variance B reasonable, and variance A a bit more difficult to decide on. Ultimately he found that the radical topography, the retaining wall separation with the neighbor to the north, and the lack of a neighbor to the rear made this existing non conforming home unique. He stated that substantial justice would be done if the variances were permitted.

Mr. Morganroth said he would not support the motion. He expressed appreciation for the design, but said the problem was being caused by wanting a deck in the rear and a patio in the front both of which exceed what the ordinance would allow. He said that given the request for both he was unable to find a hardship.

Vice-Chair Canvasser said he would also not support the motion, noting that the appellant acknowledged that there were a number of possible configurations that

would either mitigate or eliminate the need for a variance. He also noted that once the impervious surface is removed in the front, requesting to replace it in an amount that still exceeds the ordinance becomes an issue of self-creation. He stated that strict compliance would not restrict owner from using the property for its permitted purpose.

Mr. Rodriguez concurred with Mr. Morganroth and Vice-Chair Canvasser.

Motion carried, 4-3.

ROLL CALL VOTE

Yeas: Reddy, Miller, Lilley, Hart

Nays: Morganroth, Canvasser, Rodriguez

**3) 1135 Maryland
Appeal 21-34**

ABO Zielke presented the item, explaining that the owner of the property known as 1135 Maryland was requesting the following variances to construct an addition to an existing non-conforming single-family home:

A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 43.03 feet. The existing and proposed is 40.20 feet. Therefore; a variance of 2.83 feet is being requested.

B. Chapter 126, Article 4.30(C)(1) of the Zoning Ordinance allows covered or uncovered porches and/or steps to project into the required front open space for a maximum distance of 10.00 feet. The proposed is 13.50 feet, Therefore; a variance of 3.50 feet is being requested.

ABO Zielke continued that the original home was constructed in 1941. There was an addition constructed to the home in 1996.

Chris Morgan, builder, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

Motion by Mr. Miller

Seconded by Mr. Lilley with regard to Appeal 21-34, A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 43.03 feet. The existing and proposed is 40.20 feet. Therefore; a variance of 2.83 feet is being requested; and, B. Chapter 126, Article 4.30(C)(1) of the Zoning Ordinance allows covered or uncovered porches and/or steps to project into the required front open space for a maximum distance of 10.00 feet. The proposed is 13.50 feet, Therefore; a variance of 3.50 feet is being requested.

Mr. Miller moved to approve the variances and tied them to the plans as submitted. He explained that both variance requests stemmed from the existing home not being in the zoning envelope. He stated that granting the variances would do substantial justice to the neighborhood.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Miller, Lilley, Hart, Morganroth, Canvasser, Rodriguez, Reddy

Nays: None

**4) 375 Lakepark
Appeal 21-36**

ABO Zielke presented the item, explaining that the owner of the property known as 375 Lakepark was requesting the following variances to construct an addition to an existing non-conforming single-family home:

A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 45.50 feet. The proposed is 43.60 feet. Therefore; a variance of 1.90 feet is being requested.

B. Chapter 126, Article 4.75(B)(1) of the Zoning Ordinance required that no individual dormer may exceed 8.00 feet in width as measured to the interior dimension. The existing is 16.75 feet. The proposed 11.33 feet, Therefore; a variance of 3.33 feet is being requested.

ABO Zielke continued that the original home was constructed in 1926 and had an addition in 2003. The applicant was in front of the board in July 2021 (see draft minutes from July). The applicant reworked the existing plan due to the denial of the previous appeal.

Ben Heller, builder, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

Motion by Mr. Reddy

Seconded by Mr. Morganroth with regard to Appeal 21-36, A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 45.50 feet. The proposed is 43.60 feet. Therefore; a variance of 1.90 feet is being requested; and, B. Chapter 126, Article 4.75(B)(1) of the Zoning Ordinance required that no individual dormer may exceed 8.00 feet in width as measured to the interior dimension. The existing is 16.75 feet. The proposed 11.33 feet, Therefore; a variance of 3.33 feet is being requested.

Mr. Reddy moved to approve the variance and tied them to the plans as submitted. He offered that asking the appellant to comply with the ordinances in this case would be unnecessarily burdensome. He noted that the home was built before the current zoning requirements. He also noted that variance request B would reduce the existing nonconformity.

Mr. Morganroth stated that the architect took the Board's prior feedback and made a porch that the ordinance allows for. He said that the widening of the front does not increase the non-conformity. He continued that due to the condition of the lot, the neighbors, and the age of the home, expanding laterally makes sense for this home. He noted that the current dormer was larger than permitted by current ordinance, and that these plans would reduce the dormer and would fix a maintenance issue at the same time. He said it would do substantial justice to the homeowner and was a reasonable request.

Mr. Miller stated that there would be no negative impacts from this plan to the neighbors or neighborhood. He said it would do substantial justice to neighborhood.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Reddy, Morganroth, Canvasser, Rodriguez, Miller, Lilley, Hart

Nays: None

T# 08-45-21

5. Correspondence

Included in the agenda packet.

T# 08-46-21

6. General Business

T# 08-47-21

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

None.

T# 08-48-21

8. Adjournment

Motion by Mr. Lilley

Seconded by Vice-Chair Canvasser to adjourn the August 10, 2021 BZA meeting at 9:27 p.m.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Hart, Morganroth, Canvasser, Rodriguez, Miller, Reddy, Lilley

Nays: None



Bruce R. Johnson, Building Official