

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, May 9, 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, May 9, 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 Richard Lilley, Ron Reddy, Pierre Yaldo; Alternate Board Member Carl Kona

Absent: Board Member John Miller

Staff: Building Official Johnson; Senior Planner Cowan, City Transcriptionist Eichenhorn, 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 April 11, 2023

T# 05-22-23

Motion by Mr. Lilley

Seconded by VC Canvasser to accept the minutes of the BZA meeting of April 11, 2023 as submitted.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

5. Appeals

T# 05-23-23

**1) 220 Hamilton Row
Appeal 23-06**

SP Cowan presented the item, explaining that the owner of the property known as 220 Hamilton Row was requesting the following variance:

- A. Chapter 126, Article 3, Section 3.04 (E)(1)** requires all buildings in the Downtown Overlay District to be constructed with at least 90% of the exterior finish material on all facades that face a street limited to the following: glass, brick, cut stone, cast stone, coarsely textured stucco, or wood. Dryvit or E.F.I.S is prohibited. The applicant is proposing to replace existing, non-conforming metal siding with new metal siding that is not a permitted material. Therefore, a dimensional variance of 1,210 square feet is requested.

Staff answered informational questions from the Board.

James Noecker, representative for the appellant, 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. Noecker explained:

- It would be very difficult to fabricate the rectangular frame to put in another panel;
- The system would be rainproof, would hold up better than stucco, and would be expected to last 40 to 50 years; and,
- The work would span over the two by three foot hole, would be supported properly, and none of the panels to be removed would be structural.

Motion by Mr. Hart

Seconded by Mr. Lilley with regard to Appeal 23-06, A. Chapter 126, Article 3, Section 3.04 (E)(1) requires all buildings in the Downtown Overlay District to be constructed with at least 90% of the exterior finish material on all facades that face a street limited to the following: glass, brick, cut stone, cast stone, coarsely textured stucco, or wood. Dryvit or E.F.I.S is prohibited. The applicant is proposing to replace existing, non-conforming metal siding with new metal siding that is not a permitted material. Therefore, a dimensional variance of 1,210 square feet is requested.

Mr. Hart moved to approve the variance request and tied approval to the plans as submitted. He said the appellant demonstrated the practical difficulty of repairing the structural and facade damage. He noted the matter was properly reviewed by other City Departments and the Historic District Commission.

The Chair supported the motion, saying that it was an attempt to repair with a similar product. He said the product was allowed and supported by the Historical District. He noted that the proposed material was a slightly more modern version than the present material. He said that even if an attempt to repair the present damage was made, much of the material has been worn. He said allowing the variance would allow the appellant to make repairs that would benefit the building's neighbors and the community.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 05-24-23

**2) 479 S Old Woodward
Appeal 23-16**

SP Cowan presented the item, explaining that the owner of the property known as 479 S Old Woodward was requesting the following variance:

- A. Chapter 126, Article 4, Section 4.46(A), Table A** of the Zoning Ordinance requires off-street parking to be based on land uses for the site. The applicant is required to provide 98 parking spaces on-site and is proposing 87 parking spaces on-site. Therefore, a variance of 11 parking spaces is requested.

Staff answered informational questions from the Board.

Stephen Estey, attorney, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to the Board, Mr. Estey explained:

- The City Commission might not grant the use of 11 parking spaces;
- A shared parking agreement was not a viable option at the present time;
- There would be no guarantee that a Special Land Use Permit (SLUP) would be granted for the site;
- Changing an additional floor's use to residential may not be economically viable;
- The practical difficulty existed whether there were other potential avenues for addressing the parking issue. The standard for demonstrating a practical difficulty is not that every other avenue has to be adjusted first;
- He was not sure what the next steps would be if the variance were not granted;

- The nearby parking structures have sufficient parking available for the project and nearby demands;
- The Planning Board supported the appellant appearing before the BZA with the variance request; and,
- The foundation issue is what necessitated a higher variance request than the one approved for this property in 2021.

Motion by Mr. Yaldo

Seconded by Mr. Hart with regard to Appeal 23-16, A. Chapter 126, Article 4, Section 4.46(A), Table A of the Zoning Ordinance requires off-street parking to be based on land uses for the site. The applicant is required to provide 98 parking spaces on-site and is proposing 87 parking spaces on-site. Therefore, a variance of 11 parking spaces is requested.

Mr. Yaldo moved to approve the variance request and tied approval to the plans as submitted. He noted that the appellant has made significant efforts to get to the present request. He noted that the previous variance request was for a much higher number of parking spaces than the present 11 space request. He recalled that the BZA previously recommended that the plans be revised to reduce the variance for the number of parking spaces and observed that the appellant had done so. He said 11 spaces should not prevent the appellant from moving forward.

Mr. Reddy concurred with Mr. Yaldo. He added the fact that this building is the only one zoned D4 and not included in the Parking Assessment District justified the variance for a relatively small number of spaces. He noted the applicant attempted to mitigate their variance requests over a number of meetings and deserved credit for their efforts. He said he would support the motion for those reasons.

VC Canvasser noted that based on actions in December 2022, it would be possible for the appellant to have the parking requirements waived by the City Commission through a SLUP. He explained that would allow the appellant to build the plans as-proposed without a variance. He noted that a shared parking agreement or a change of the proposed interior uses would also allow the building to be built without a variance. VC Canvasser suggested that the BZA should be the Board of last resort, and said that he might feel differently had all other options been exhausted. He said he would not support the motion for those reasons.

Mr. Kona concurred with VC Canvasser and stated could not support the motion at this time.

Mr. Hart said the appellant demonstrated how the building faced unique circumstances, that the appellant made a significant effort to mitigate prior variance requests with the present variance request, that approving the variance would do substantial justice to the owners and to the neighboring properties, and that the site is very difficult to develop. He offered his support for the motion for those reasons.

The Chair said he would not support the motion. He said while the request for 11 parking spots was not unreasonable, the building could be built as designed without a variance. He noted that a change of use of one floor to residential would allow the building to be built without a SLUP, variance, or parking agreement, and that the economic consequences of such a change were not part of the BZA's purview. He said he could not support a variance when he knew a variance was not required.

Motion carried, 4-3.

ROLL CALL VOTE

Yeas: Hart, Reddy, Lilley, Yaldo

Nays: Morganroth, Canvasser, Kona

**3) 185 Oakland
Appeal 23-17**

SP Cowan presented the item, explaining that the owner of the property known as 185 Oakland was requesting the following variances:

- A. Chapter 126, Article 3, Section 3.09(B)(1)** requires that no less than 70% of the storefront/ground floor façade between 1 and 8 feet above grade shall be clear glass panels and doorway. The applicant is proposing changes to the façade facing Oakland Ave that will result in a glazing percentage of 41% (256 square feet), therefore a variance of 167 square feet is being requested.
- B. Chapter 126, Article 3, Section 3.09(B)(1)** requires that no less than 70% of the storefront/ground floor façade between 1 and 8 feet above grade shall be clear glass panels and doorway. The applicant is proposing changes to the façade facing Ferndale Ave that will result in a glazing percentage of 53% (421 square feet), therefore a variance of 132 square feet is being requested.

Staff answered informational questions from the Board.

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

In reply to the Board, Mr. Hinkle said:

- While there are always different ways to address a building's issues, it was felt that this proposal did not significantly expand the present non-conformity;
- The mullions, windows, pilasters, and other features could potentially be changed to reduce the non-conformities; and,
- The new glazing on the first floor could likely approach the present levels, but would not likely reach 70%.

VC Canvasser and the Chair asked Mr. Hinkle whether he would prefer to postpone his request for a month to try and reduce the variance request or whether he would prefer the Board move

forward on voting on the present proposal. The Vice Chair and Chair explained that if the Board voted against the present proposal, the appellant would only be able to return with a substantially different request.

Mr. Hinkle confirmed that he would like the request postponed for to the June 13, 2023 meeting. The Board postponed the request to the June 13, 2023 meeting by unanimous consent.

The Board and Staff had a brief discussion about the difficulties some appellants face regarding complying with the energy code or complying with the City's glazing requirements.

The Chair noted that if the appellant faced a practical difficulty regarding the energy code and the glazing requirements, that could be presented as part of the future request.

T# 05-25-23

4) 1587 S Bates Appeal 23-18

ABO Zielke presented the item, explaining that the owner of the property known as 1587 S Bates 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 13.22 feet on the south side. Therefore, a variance of 0.78 feet is requested.

Staff answered informational questions from the Board.

Nadim Yahchouchi, owner and architect, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to the Board, Mr. Yahchouchi said the cladding would be four inches wide, and would bring the setback to five feet on the side requiring that.

The Chair addressed the letter received from the neighbor at 1607 S. Bates. The Chair noted that the property at 1587 S. Bates would be conforming if not for 1607 S. Bates' pre-existing nonconformity. The Chair noted that the variance request was in response to 1607 S. Bates' nonconformity.

Motion by Mr. Reddy

Seconded by Mr. Kona with regard to Appeal 23-18, 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 13.22 feet on the south side. Therefore, a variance of 0.78 feet is requested.

Mr. Reddy moved to approve the variance request and tied approval to the plans as submitted. He explained that this was a conforming design impacted by a nonconforming neighbor and that the Board has reviewed similar cases before.

Motion carried, 7-0.

ROLL CALL VOTE

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


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 9:14 p.m.



Bruce R. Johnson, Building Official



Laura Eichenhorn, City Transcriptionist