

Birmingham Board of Zoning Appeals Proceedings
Tuesday, June 14, 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, June 14, 2022. Chair Erik 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 Charles Lillie

Administration:

Bruce Johnson, Building Official
Brooks Cowan, Senior Planner
Laura Eichenhorn, City Transcriptionist
Mike Morad, Assistant Building Official
Jeff Zielke, Assistant Building Official

Chair Morganroth welcomed those present and reviewed the meeting's procedures.

Chair Morganroth 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.

Chair Morganroth took rollcall of the petitioners. All petitioners were present.

3. Announcements

Per the CDC, Oakland County has a COVID-19 Community level and transmission level of HIGH. The City continues to highly recommend the public wear masks while attending City meetings per

CDC guidelines. These precautions are due to COVID-19 transmission levels remaining high in Oakland County that have led to an increase in infections of City employees and board members. All City employees, commissioners, and board members must wear a mask while indoors when 6-feet of social distancing cannot be maintained. This is to ensure the continuity of government is not affected by an exposure to COVID-19 that can be prevented by wearing a mask. The City continues to provide KN-95 respirators and triple-layered masks for all in-person meeting attendees.

T# 06-30-22

4. Approval Of The Minutes Of The BZA Meetings Of May 10, 2022

Motion by Mr. Reddy

Seconded by Vice-Chair Canvasser to accept the Minutes of the BZA meeting of May 10, 2022 as submitted.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

5. Appeals

T# 06-31-22

**1) 2225 E Fourteen Mile Rd
Appeal 22-16**

SP Cowan presented the item, explaining that the owner of the property known 2225 E Fourteen Mile, Our Shepherd Lutheran Church, was requesting the following variance to install three signs:

A. Chapter 1, Article 1, Table D of the Sign Ordinance permits religious institutions to have one sign at 20 square feet or less if less than 500 feet from occupied residential dwellings, or 40 square feet of signage if it is more than 500 feet from occupied residential dwelling units. The applicant is proposing three signs for a total of 104 square feet of signage, therefore a dimensional variance of 84 square feet is being proposed.

Mark Abanatha, architect, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to BZA inquiry, Mr. Abanatha explained:

- The sign on Melton would only be a 3.7 sq. ft. sign, which would be just enough to let visitors know there was an access point there;
- The end of that sign would be facing the residences, and not the long side of the sign;
- Much of the traffic would be entering the church parking lot at the northwest access;
- The access points are already extant, and the aim is to provide good wayfinding for those access points; and,
- The signs are scaled to the likely speeds of traffic passing the signs.

In response to Mr. Kona, Mr. Abanatha confirmed the font size for 'Lutheran Church' could be reduced on the sign in order to reduce the variance request.

Mr. Kona suggested the sign at the southeast corner could also be reduced since it would not be viewed by westbound traffic. He said if smaller signs were installed at the southeast and northeast corners, and the main sign at the southwest corner, it would also reduce the need for a variance.

Mr. Abanatha acknowledged that was possible but reiterated his contention that the signs as proposed were scaled appropriately to the traffic speeds, size of the property, and wayfinding needs.

Mr. Kona said the signs at the northeast and southeast corners are only about 400 feet apart and very substantial. He said when he drove the area he saw no need for two monument signs that close together. He said he also could not find another house of worship in Birmingham that has a similar sign condition.

Motion by Vice-Chair Canvasser

Seconded by Mr. Reddy with regard to Appeal 22-16, A. Chapter 1, Article 1, Table D of the Sign Ordinance permits religious institutions to have one sign at 20 square feet or less if less than 500 feet from occupied residential dwellings, or 40 square feet of signage if it is more than 500 feet from occupied residential dwelling units. The applicant is proposing three signs for a total of 104 square feet of signage, therefore a dimensional variance of 84 square feet is being proposed.

Vice-Chair Canvasser moved to deny the variance request, saying that the request variance was excessive and self-created. He said he would be willing to consider some amount of variance, but that the appellant did not demonstrate why they need three double-sided signs in the fonts proposed. He encouraged the appellant to work with the City to see if some of the goals could be accomplished with directional signs and/or with a reduced variance request.

Mr. Miller said he would support the motion, noting that two signs on 14 Mile Road were likely not needed because of the location and significant size of the church.

Mr. Kona said he would support the motion. He said if the font for 'Lutheran Church' were reduced and the two smaller signs were placed at the northeast and southeast corners the appellant would very nearly meet the requirements of the ordinance. He said there are ways to nearly meet the ordinance and to meet the needs of the church.

Chair Morganroth said he would support the motion. He noted that GPS reduces the need to rely on signage and that viable options were proposed during the discussion for reducing the variance request.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 06-32-22

**2) 1029 Lake Park
Appeal 22-17**

ABO Zielke presented the item, explaining that the owner of the property known as 1029 Lake Park was requesting the following variance to the required open space for the impervious surface and turf installed in the rear yard:

A. Chapter 126, Article 2.06.1 of the Zoning Ordinance requires that a minimum open space of a lot is to be 40% (8202.00 SF). The proposed is 35.30% (7234.00 SF). Therefore, a variance of 4.70% (968.00 SF) is being requested.

Amie Ackerman, representative for Sapphire Landscaping, 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 Canvasser, Ms. Ackerman said the appellant could explore ways of mitigating the 968 sq. ft. variance being requested.

Mr. Miller noted that the amount of impervious surface in the front yard could be reduced to increase the amount of turf that could remain in the rear yard.

In reply to Mr. Hart, Ms. Ackerman said it was likely that the turf was proposed partially because this lot has a lower elevation than the neighboring homes.

BO Johnson stated that the site had an approved drainage plan.

Ms. Ackerman noted that the property received an approved as-built.

In response to additional comment by Ms. Ackerman, the Chair explained that the definition of 'impervious' was already provided to the BZA and could not be changed in this case. He said Ms. Ackerman must establish why the appellant cannot meet the ordinance, not why she thinks the interpretation of the ordinance should be changed.

Motion by Mr. Reddy

Seconded by Mr. Miller with regard to Appeal 22-17, A. Chapter 126, Article 2.06.1 of the Zoning Ordinance requires that a minimum open space of a lot is to be 40% (8202.00 SF). The proposed is 35.30% (7234.00 SF). Therefore, a variance of 4.70% (968.00 SF) is being requested.

Mr. Reddy moved to deny the variance, stating that no special or unique circumstances were demonstrated. He said the need for the variance was self-

created. He also noted that there were a number of ways to mitigate the need for the variance.

Mr. Miller agreed that there were options for mitigation and said he also said granting the variance could establish a potentially difficult precedent for the future.

Vice-Chair Canvasser noted that this was not an appeal of interpretation and so the definition of 'impervious' is provided for the BZA in this case. He opined that turf was not clearly addressed in the open space definition, structure definition, or impervious definition of the ordinance. He said it would be beneficial for the Commission and Planning Board to create an ordinance that specifically addresses turf.

The Vice-Chair said that he supported the motion because there were mitigating options, but said the BZA does need guidance from the Commission on the issue.

The Chair noted that installation of the turf requires a compacting machine, which may impact how pervious or impervious the turf is.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 06-33-22

**3) 338 Pilgrim
Appeal 22-21**

Mr. Hart recused himself from the item at 8:41 p.m. citing a business relationship.

ABO Zielke presented the item, explaining that the owner of the property known as 338 Pilgrim was requesting the following variances to construct an addition to an existing non-conforming home:

It was determined that Variance A was no longer relevant.

B. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the combined total side yard is 14 feet or 25 percent of lot width, which is greater. The required is 17.50 feet. The proposed 13.96 feet. Therefore, a variance of 3.54 feet is being requested.

C. Chapter 126, Article 4, Section 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 total lot width, whichever is larger. The required is 17.50 feet on the north side. The proposed is 15.80 feet. Therefore, a variance of 1.70 feet is being requested.

D. Chapter 126, Article 4, Section 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 total lot width, whichever is larger. The required is 17.50 feet on the south side. The proposed is 16.08 feet. Therefore, a variance of 1.42 feet is being requested.

John VanBrouck, 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. VanBrouck stated:

- The request for Variance D stemmed from the need to maneuver a wheelchair around two vehicles and the need to be able to fit two vehicles in the garage;
- The neighbor is supportive of the requested variances; and,
- It would be difficult to move the garage to the south in order to achieve a garage of the desired size without a variance.

Mr. Miller said it seemed like there would be a way to eliminate the need for Variance D and still accomplish the appellant's main goals.

The Chair concurred.

Motion by Vice-Chair Canvasser

Seconded by Mr. Miller with regard to Appeal 22-21, B. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the combined total side yard is 14 feet or 25 percent of lot width, which is greater. The required is 17.50 feet. The proposed 13.96 feet. Therefore, a variance of 3.54 feet is being requested; C. Chapter 126, Article 4, Section 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 total lot width, whichever is larger. The required is 17.50 feet on the north side. The proposed is 15.80 feet. Therefore, a variance of 1.70 feet is being requested; and, D. Chapter 126, Article 4, Section 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 total lot width, whichever is larger. The required is 17.50 feet on the south side. The proposed is 16.08 feet. Therefore, a variance of 1.42 feet is being requested.

Vice-Chair Canvasser moved to approve Variances B, C, and D and tied them to the plans as submitted. He noted that part of the house is pre-existing non-conforming. He said the appellant describes efforts to mitigate the variance requests and that strict compliance with the ordinance would be unnecessarily burdensome in this situation. He said that other options may still require a variance and that it was not appropriate to trade one variance for another. He said granting these variances would do substantial justice to the appellant and the neighbors. He said it was a well-designed option for moving the garage forward while meeting the intent of the ordinance. He said there were unique circumstances on the lot and that the need for the variances was not self-created.

Motion failed, 3-3.

ROLL CALL VOTE

Yeas: Miller, Canvasser, Yaldo

Nays: Morganroth, Reddy, Kona

T# 06-34-22

**4) 310 E Maple
Appeal 22-22**

Mr. Hart rejoined the meeting at 9:13 p.m.

SP Cowan presented the item, explaining that the owner of the property known as 310 E Maple was requesting the following variance to enclose a portion of their outdoor dining to facilitate year round outdoor dining:

A. Chapter 126, Article 3, Section 3.04(C)(10)(i) of the Zoning Ordinance states "enclosures facilitating year round dining outdoors are not permitted." The applicant is proposing 767.25 square feet of isinglass to enclose 26 outdoor dining seats, therefore a dimensional variance of 767.25 square feet for an enclosure facilitating year round dining outdoors is being requested.

Kelly Allen, attorney, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet. Luciano DelSignore, owner, also answered a few technical questions.

In reply to the Chair, Ms. Allen stated protecting the restaurant's equipment was not before the BZA, but the enclosure was before the BZA. Without the enclosure and the eisenglass, equipment essential to the running of the business could be destroyed by the elements.

The Chair suggested a protective vestibule could be created without outside dining.

Mr. Hart said the vestibule was a major component of the restaurant's ability to function in Michigan weather. He noted the design being discussed was part of the Cafe Via's original design.

Mr. Kona asked how the owner of the restaurant planned to protect the equipment in the vestibule when he was made aware that he would have to take the eisenglass down.

Ms. Allen said Mr. DelSignore only took the eisenglass down and did not have an alternate plan for protecting the equipment.

Mr. Kona noted that did not coming up with a plan to protect the equipment in winter meant that the operator did not have a plan to comply with the City's requirements.

Ms. Allen said that Mr. DelSignore did comply because he took the eisenglass down.

The Chair posed Mr. Kona's question to Mr. DeSignore regarding whether there was a plan to protect the equipment when the eisenglass came down.

Mr. DeSignore said the intent was to not use the equipment in that area during the winter, and to just rely on the internal equipment. He said it became clear that was not working. He said removing the eisenglass also made it so that the via-side indoor dining could not be used in the winter because it became too cold.

In reply to Mr. Hart, BO Johnson explained that when Casa Pernoi reopened the Special Land Use Permit for the restaurant all aspects came under review.

Motion by Mr. Miller

Seconded by Mr. Hart with regard to Appeal 22-22, A. Chapter 126, Article 3, Section 3.04(C)(10)(i) of the Zoning Ordinance states "enclosures facilitating year round dining outdoors are not permitted." The applicant is proposing 767.25 square feet of isinglass to enclose 26 outdoor dining seats, therefore a dimensional variance of 767.25 square feet for an enclosure facilitating year round dining outdoors is being requested.

Mr. Miller moved to approve the variance and tied it to the plans as submitted. He said the uniqueness of the circumstances would prevent this approval from establishing an inappropriate precedent. He said the area in question was designed and approved as an integral part of the building, which makes the circumstances unique. He noted it is also on private property. He said the issue was not self-created and was due to the unique circumstances of the property. He said approving the variance would due substantial justice to the petitioner and to the area. He said denial would prevent the petitioner from using the property for its intended purpose by hindering the use, functioning, and mechanical systems of the building.

Mr. Reddy concurred with Mr. Miller. He added that the restaurant was purchased under one set of rules which changed after the purchase as another reason for his support.

Vice-Chair Canvasser concurred with Mr. Miller. He said approval would also prevent a somewhat absurd situation where a sealed off area would be kept vacant with no seats inside, which he said would benefit no one.

Mr. Yaldo concurred with Vice-Chair Canvasser.

Mr. Kona said he could not support the motion because he saw other ways to resolve the issue and said the issue was a business one, not a weather one.

Mr. Hart voiced his support for the motion, also citing the unique circumstances. He noted that making a vacant area could have safety and security impacts, and said the success of this business impacts the businesses in the area as well.

The Chair said that while a vestibule could be created that would allow functioning, he also agreed that this area was created as an integral part of the functioning of the restaurant. He also concurred with the Vice-Chair's comments. The Chair said he would support the motion.

Motion carried, 6-1.

ROLL CALL VOTE

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

Nays: Kona

T# 06-35-22

**5) 843 Tottenham
Appeal 22-23**

ABO Zielke presented the item, explaining that the owner of the property known as 843 Tottenham was requesting the following variances to reconstruct the existing front porch:

A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the combined total side yard is 14 feet or 25 percent of lot width, which is greater. The required is 16.25 feet. The existing and proposed 13.80 feet. Therefore, a variance of 2.45 feet is required.

B. Chapter 126, Article 4, Section 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 total lot width, whichever is larger. The required is 16.25 feet on the north side. The existing and proposed is 13.80 feet. Therefore, a variance of 2.45 feet is being requested.

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

Motion by Vice-Chair Canvasser

Seconded by Mr. Reddy with regard to Appeal 22-23, A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the combined total side yard is 14 feet or 25 percent of lot width, which is greater. The required is 16.25 feet. The existing and proposed 13.80 feet. Therefore, a variance of 2.45 feet is required; and, B. Chapter 126, Article 4, Section 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 total lot width, whichever is larger. The required is 16.25 feet on the north side. The existing and proposed is 13.80 feet. Therefore, a variance of 2.45 feet is being requested.

Vice-Chair Canvasser moved to approve the variance and tied the approval to the plans as submitted. He said it was not a self-created issue and that there would be no expansion of the existing non-conformity. He said allowing it was a safety issue,

would allow substantial justice to the petitioner, and that strict compliance would render conformity with the ordinance unnecessarily burdensome.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 06-36-22

**6) 843 Chestnut
Appeal 22-24**

ABO Zielke presented the item, explaining that the owner of the property known as 843 Chestnut was requesting the following variance to reconstruct the existing rear patio.

A. Chapter 126, Article 4, Section 4.30(C)5 of the Zoning Ordinance permits patios to project into the rear open space for a minimum distance of 15.00 feet. The provision shall not reduce the required rear setback to less than 15.00. The existing reduces the rear setback to 13.95 feet. Therefore, a variance of 1.05 feet is being requested.

Mark Vinckier, owner of the home, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to the Chair, Mr. Vinckier explained that mitigating the 1.05 feet was considered but given the already small size of the patio, the three young children, and a fixed gas fireplace making the patio any smaller could endanger members of the family.

Motion by Mr. Reddy

Seconded by Mr. Miller with regard to Appeal 22-24, A. Chapter 126, Article 4, Section 4.30(C)5 of the Zoning Ordinance permits patios to project into the rear open space for a minimum distance of 15.00 feet. The provision shall not reduce the required rear setback to less than 15.00. The existing reduces the rear setback to 13.95 feet. Therefore, a variance of 1.05 feet is being requested.

Mr. Reddy moved to approve the variance and tied it to the plans as submitted. He said the existing non-conformity was being reduced and granting the variance would do substantial justice to the petitioner.

The Chair noted that the fixed fireplace prevents the petitioner from eliminating the need for the variance.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 06-37-22

**7) 1511 E Maple
Appeal 22-25**

ABO Zielke presented the item, explaining that the owner of the property known as 1511 E Maple was requesting following variance to construct a rear addition to the existing non-conforming house:

A. Chapter 126, Article 4, Section 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 total lot width, whichever is larger. The required is 20.00 feet on the east side. The proposed is 19.20 feet. Therefore, a variance of 0.80 feet is being requested.

Jason Hurst, homeowner, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to the Chair, Mr. Hurst said mitigating the .8 feet was considered but having the plans redrawn would represent a financial burden and he preferred to leave a straight-run gutter on the rear to prevent backups.

Motion by Mr. Hart

Seconded by Vice-Chair Canvasser with regard to Appeal 22-25, A. Chapter 126, Article 4, Section 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 total lot width, whichever is larger. The required is 20.00 feet on the east side. The proposed is 19.20 feet. Therefore, a variance of 0.80 feet is being requested.

Mr. Hart moved to approve the variance and tied the approval to the plans as submitted. He said the appellant demonstrated the unique aspects of the property and that strict compliance to the ordinance would unreasonably prevent the petitioner from using the property for its permitted use and would create an undue burden. He said granting the variance would do substantial justice to the appellant and the neighboring properties and that the problem was not self-created.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

6. Correspondence

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

T# 06-37-22

8. Adjournment

Motion by Vice-Chair Canvasser

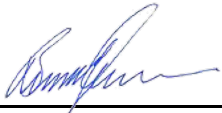
Seconded by Mr. Reddy to adjourn the June 14, 2022 BZA meeting at 10:35 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None



Bruce R. Johnson, Building Official



Laura Eichenhorn

City Transcriptionist