

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, July 26, 2022
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, July 26, 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, Charles Lillie, John Miller, Pierre Yaldo; Alternate Board Member Carl Kona

Absent: Board Member Ron Reddy

Administration:

Bruce Johnson, Building Official
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

The City continues to recommend the public wear masks while attending City meetings per CDC guidelines. The cases of COVID-19 are increasing in the area. 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.

4. Appeals

T# 07-41-22

**1) 338 Pilgrim
Appeal 22-21**

Citing a business relationship with the applicant, Mr. Hart recused himself from this item and stepped out of the room.

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 nonconforming home:

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 17.50 feet. The proposed 14.95 feet. Therefore, a variance of 2.55 feet is being requested.

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 17.50 feet on the north side. The proposed is 16.46 feet. Therefore, a variance of 1.04 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 south side. The proposed is 16.41 feet. Therefore, a variance of 1.09 feet is being requested.

Staff answered informational questions from the Board.

Chair Morganroth noted that this appeal was again before the Board since the appellant's appearance at the June 2022 meeting ended in a tie vote. He noted that the appeal also reduced the previous request.

John Fulgenzi, homeowner, reviewed the present variance requests and the mitigation efforts made since the previous variance requests.

In reply to Board inquiry, Mr. Fulgenzi stated:

- The most significant mitigation effort was in reducing the width of the requested garage;
- The home to the north is not in compliance with the ordinance, which impacted the Fulgenzis' request; and,
- Moving the garage to the rear of the lot would cause the home to exceed the allowable lot coverage.

Public Comment

Katherine Hayes and Eve Hadley, neighbors, spoke in favor of the appeal.

Motion by Mr. Miller

Seconded by VC Canvasser with regard to Appeal 22-21, 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 17.50 feet. The proposed 14.95 feet. Therefore, a variance of 2.55 feet is being requested; 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 17.50 feet on the north side. The proposed is 16.46 feet. Therefore, a variance of 1.04 feet is being requested; and, 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 south side. The proposed is 16.41 feet. Therefore, a variance of 1.09 feet is being requested.

Mr. Miller moved to approve variance requests A, B, and C and tied them to the plans as submitted.

Mr. Miller said the need for the variances was not self-created, but rather due to the existing home not being ordinance-conforming. He explained that 338 Pilgrim is not squared up to the property lines, which causes a difficulty, and that the non-conforming home to the north also causes a difficulty. He said the variance requests were also reasonable and minimal.

Mr. Lillie noted that the Board has criteria for determining whether an appeal should be approved, and that the Board does not grant or deny variance requests based on popularity.

Chair Morganroth said he would vote in support of the appeal given the appellant's mitigation efforts between the previous and present requests.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Miller, Morganroth, Canvasser, Lillie, Kona, Yaldo

Nays: None

T# 07-42-22

**2) 333 Ferndale
Appeal 22-26**

Mr. Hart rejoined the meeting.

ABO Morad presented the item, explaining that the owner of the property known as 333 Ferndale was requesting the following variance regarding the height of a masonry fence in the front open space:

A. Chapter 126, Article 4, Section 4.1(A)2 of the Zoning Ordinance requires that fences located in the front open space shall not exceed 3.00 feet in height. The wall installed varies in height. The maximum height is 3.92 feet. Therefore, a variance of 0.92 feet is being requested.

Staff answered informational questions from the Board.

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

The Chair stated he could recall at least two other instances where similar requests were before the Board and the Board required the appellants to adhere to the ordinance.

Mr. Hart noted that a previous variance request for a similar case was approved in part because the residential appellant was located next to a commercially-zoned area.

In reply to VC Canvasser, BO Johnson said that adding height to the grade would not change the grade if these measurements were being done for a building. He stated that the same text is not in the ordinance in regards to a fence but explained he thought allowing the grade to be filled in next to the fence would create a troublesome precedent.

In reply to Board inquiry, Mr. Brown stated four or five feet of the wall heading west is above three feet and four or five feet heading south is also above five feet.

Motion by Mr. Miller

Seconded by Mr. Hart with regard to Appeal 22-26, A. Chapter 126, Article 4, Section 4.1(A)2 of the Zoning Ordinance requires that fences located in the front open space shall not exceed 3.00 feet in height. The wall installed varies in height. The maximum height is 3.92 feet. Therefore, a variance of 0.92 feet is being requested.

Mr. Miller moved to approve the variance request and tied it to the plans as submitted.

Mr. Miller said the pivotal question for him was whether granting this variance would do substantial justice to both the property owner and other property owners in the area. He noted that this neighborhood has two names: Little San Francisco and Ravines, both of which refer to the radical grade changes in the area, and consequently there are likely dozens of homes in the neighborhood that do not comply as they currently sit. He noted that the grade on this lot slopes in two directions, which is typical of the challenges in the neighborhood. He said the less-than-a-foot variance request was small given the sloping lots in the neighborhood and that the appellant is adjacent to a commercial property. He said that this reasoning would not

apply generally in Birmingham, but that this neighborhood and this lot has unique circumstances.

Mr. Lillie concurred that this was an unusual situation, and noted that most of the wall was in compliance with the ordinance. He noted that one similar recent case mentioned by the Chair was denied because the fence was a uniform five feet. He noted that the case mentioned by Mr. Hart was different from this case because that case had the side yard of the home treated as the front yard, which is why the six-foot variance was granted. He noted that the Board has to be careful about setting precedent in granting variances. In this case, Mr. Lillie said the violation was de minimus and that there was a practical difficulty.

VC Canvasser said he would support the motion and noted that granting this variance would not set a precedent. He noted that the Board has encountered requests in the past from appellants who have already built a non-compliant structure and that the Board has required them to remove the structure. He advised residents not to conclude from this particular request that the Board will allow all non-compliant, already-built structures to remain.

The Chair said he would not support the motion since Mr. Brown stated during his presentation that both he and his contractor were aware the fence should be three feet. He continued that all lots have a slope since that is how water leaves the property. He said that request was only for .92 feet, relative to the three feet requirement, the fence is almost 30% too tall. He said, in his opinion, this decision does set precedent and that the fence was built too tall and could be modified.

Motion carried, 6-1.

ROLL CALL VOTE

Yeas: Miller, Canvasser, Lillie, Kona, Yaldo, Hart

Nays: Morganroth

T# 07-43-22

**3) 1165 Hillside
Appeal 22-27**

ABO Zielke presented the item, explaining that the owner of the property known as 1165 Hillside was requesting the following variances to construct a new home:

A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 53.20 feet. The proposed is 41.20 feet. Therefore, a 12.00 foot variance is being requested.

B. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each

direction. The required front yard setback is 53.20 feet. The proposed covered porch is 32.30 feet. Porches are permitted per article 4, section 4.30(C)(1) to project into the required front open space for 10.00 feet. Therefore, a 10.90 foot variance is being requested.

C. Chapter 126, Article 4, Section 4.75(A)(1) of the Zoning Ordinance requires that private, attached, single-family residential garages must be setback a minimum of 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The proposed is the garage is 9.71 feet in front of the furthest façade. Therefore, a variance of 14.71 feet is being requested.

Staff answered informational questions from the Board.

Paul Samartino, 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. Lillie, BO Johnson confirmed that if the appellant moved the garage to the rear and the mudroom to the front, and the mudroom were extended to the full width of the garage, that would be ordinance-compliant.

Mr. Samartino said he would get rid of the one-foot jog if he were to change the plans in that way.

In reply to VC Canvasser, BO Johnson said Staff could handle the elimination of the jog without the need for fully redone plans if the Board decided to proceed in that direction.

Public Comment

Christopher Fisher, neighbor, spoke about the rear setback and water runoff.

The Chair explained how rear setbacks work and advised Mr. Fisher to follow-up with Staff with any concerns about water runoff from the lot.

Matt Hutchins, neighbor, said the home would change the character of the neighborhood and echoed Mr. Fisher's concerns about water runoff.

The Chair noted for Messrs. Fisher and Hutchins that variance request A was only for 12 feet, and the rest of the 53.20 feet would be allowed by-right.

Motion by Mr. Lillie

Seconded by VC Canvasser with regard to Appeal 22-27, A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 53.20 feet. The proposed is 41.20 feet. Therefore, a 12.00 foot variance is being requested.

Mr. Lillie moved to approve variance request A and tied it to the plans as presented.

Mr. Lillie noted variance request A has been before the Board at least three times, and each time the distance has been the same and the Board has granted the front yard setback. He stated the facts have not changed, and said the previous appeals and this appeal have shown that it would be unduly burdensome for the petitioner to comply with the ordinance given the wide ranges of the setbacks of the neighboring houses, which creates the setback average. He stated the yard is unique in that it is not rectangular or square, and said the issue was not self-created.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 07-44-22

Motion by Mr. Lillie

Seconded by VC Canvasser with regard to Appeal 22-27, C. Chapter 126, Article 4, Section 4.75(A)(1) of the Zoning Ordinance requires that private, attached, single-family residential garages must be setback a minimum of 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The proposed is the garage is 9.71 feet in front of the furthest façade. Therefore, a variance of 14.71 feet is being requested.

Mr. Lillie moved to deny variance request C, noting that Mr. Samartino indicated a change could be made to comply with this aspect of the ordinance. He said there was no showing that requiring compliance with the ordinance would be unduly burdensome and said it would not do substantial justice to the neighbors to grant the variance. He said the request was also self-created.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 07-45-22

Motion by Mr. Lillie

Seconded by Mr. Kona with regard to Appeal 22-27, B. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 53.20 feet. The proposed covered porch is 32.30 feet. Porches are permitted per article 4, section 4.30(C)(1) to project into the required front open space for 10.00 feet. Therefore, a 10.90 foot variance is being requested.

Mr. Lillie moved to deny variance request B, stating that there had been no showing that compliance would be unduly burdensome or that granting the variance would do substantial justice to the neighbors. He said that while the lot is unique, the need for this particular variance is self-created.

Mr. Miller said he would not support the motion because he believes that the City promotes front porches. He said porches do not particularly obscure the views of neighbors since they are not solid walls and so should not be a significant concern. Adding a porch to this home would be a positive addition to the neighborhood and said it was a reasonable request for homeowners in Birmingham.

VC Canvasser said he would also not support the motion, stating that granting variance A but not this variance seemed somewhat odd. He said granting this variance would do substantial justice given the irregularly-shaped lot, which also impacted the Board's granting of variance A.

Chair Morganroth said he would not support the motion to deny.

Motion failed, 2-5.

ROLL CALL VOTE

Yeas: Lillie, Kona,

Nays: Canvasser, Hart, Miller, Morganroth, Yaldo

T# 07-46-22

Motion by VC Canvasser

Seconded by Mr. Hart with regard to Appeal 22-27, B. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 53.20 feet. The proposed covered porch is 32.30 feet. Porches are permitted per article 4, section 4.30(C)(1) to project into the required front open space for 10.00 feet. Therefore, a 10.90 foot variance is being requested.

VC Canvasser moved to approve variance request B and tied it to the plans as submitted. He referenced the reasons stated during discussion of motion 07-45-22 as his reasons for moving to approve.

Motion carried, 5-2.

ROLL CALL VOTE

Yeas: Canvasser, Hart, Miller, Morganroth, Yaldo

Nays: Lillie, Kona

T# 07-47-22

**4) 564 Ridgedale
Appeal 22-29**

ABO Zielke presented the item, explaining that the owner of the property known as 564 Ridgedale was requesting the following variance to construct a patio in the side yard:

A. Chapter 126, Article 4, Section 4.30(C)(3) of the Zoning Ordinance requires that patios may not project into a required side open space. A proposed patio is projecting into the east required side open space 5.03 feet; therefore, a variance of 5.03 feet is requested.

Staff answered informational questions from the Board.

Nicole Bedi, homeowner, 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, Ms. Bedi stated:

- This proposed area would be adjacent to the neighbor's utility area, and would not be near the neighbor's gathering area or within the sightline of any of the neighbor's windows;
- The patio furniture itself would also be appropriately distant from the property line; and,
- The requested five-foot variance makes a significant difference in terms of the patio's usability. Any other plan would sacrifice some part of the lawn without fixing the five-foot area of lawn that cannot grow grass because of the shade.

Mr. Miller summarized a description from Ms. Bedi's that if the patio door were further north it would better accommodate hosting, but since it is not the patio becomes somewhat pinched without the requested variance.

Ms. Bedi confirmed Mr. Miller's summary.

Motion by Mr. Lillie

Seconded by Mr. Kona with regard to Appeal 22-29, A. Chapter 126, Article 4, Section 4.30(C)(3) of the Zoning Ordinance requires that patios may not project into a required side open space. A proposed patio is projecting into the east required side open space 5.03 feet; therefore, a variance of 5.03 feet is requested.

Mr. Lillie moved to deny the variance request, stating that the petitioner showed no practical difficulty and did not demonstrate that it would be unduly burdensome to comply with the ordinance. He said granting the variance would do no justice to the neighbors, that there was nothing unique about the lot, and that the request was self-created. He noted that without the variance the patio would still be about 17 feet wide.

Mr. Miller said he would support the motion even though he had sympathy for the homeowner. He noted that sideyard setbacks are very important in the City, and that to set a precedent without a compelling hardship would be difficult to do.

The Chair said he would also support the motion. He noted that the appellant has a large rear yard that will accommodate gatherings in addition to the 17 foot wide patio area and so no practical difficulty was established.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 07-48-22

**5) 269 Southlawn
Appeal 22-30**

ABO Morad presented the item, explaining that the owner of the property known as 269 Southlawn was requesting the following variance to construct a new detached garage:

A. Chapter 126, Article 4, Section 4.03(B) of the Zoning Ordinance does not permit accessory building to be constructed closer to a principal building on an adjoining lot than the sum of the minimum required side setbacks as determined in Section 4.74. The required distance is 14.00 feet. The Proposed is 12.77 feet. Therefore, a variance of 1.23 feet is being requested.

Staff answered informational questions from the Board.

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

In reply to Mr. DePorre and the Chair, BO Johnson explained the ordinance regulates distances between accessory structures and principal structures on an adjoining lot, but does not regulate distances between principal structures and accessory structures on an adjoining lot.

Mr. DePorre said this difference in the ordinances was causing the issue in his case.

In response to the Chair, Mr. DePorre said DTE easements also restricted where the garage could be located on the lot.

Motion by Mr. Hart

Seconded by Mr. Lillie with regard to Appeal 22-30, A. Chapter 126, Article 4, Section 4.03(B) of the Zoning Ordinance does not permit accessory building to be constructed closer to a principal building on an adjoining lot than the sum of the minimum required side setbacks as determined in Section 4.74. The required distance is 14.00 feet. The Proposed is 12.77 feet. Therefore, a variance of 1.23 feet is being requested.

Mr. Hart moved to approve the variance request, and tied approval to the plans as submitted. Mr. Hart said the nature of the neighborhood, age of the home, and the

distances between existing structures combined to create unusual circumstances on this lot. The neighboring property to the east created an addition that was in compliance but caused Mr. DePorre's garage to become out-of-compliance. Mr. Hart noted Mr. DePorre's compliance with DTE's easements, said the request was minimal and reasonable, and that it would be built on the foundation of the extant garage.

Mr. Miller said he initially expected to not support the request, but upon hearing the constraints believed it would be appropriate to grant the request.

The Chair said he would also support the motion, noting that the non-conformity was not being expanded and was not self-created.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 07-49-22

**6) 2428 Northlawn
Appeal 22-32**

ABO Zielke presented the item, explaining that the owner of the property known as 2428 Northlawn was requesting the following variances to construct an addition to an existing non-conforming home:

A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 59.13 feet. The proposed is 58.10 feet. Therefore, a 1.03 foot variance is being requested.

B. Chapter 126, Article 4, Section 4.61(A)(1) of the Zoning Ordinance requires that a corner lot which has on its side street an abutting residential lot shall have a minimum setback from the side street equal to the minimum front setback for the zoning district in which such building is located. The required is 47.25 feet on the east side. The existing and proposed is 24.97 feet. Therefore, a variance of 22.28 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 27.37 feet on the west side. The existing and proposed is 26.40 feet. Therefore, a variance of 0.97 feet is being requested.

Staff answered informational questions from the Board.

Kent Johnston, homeowner, 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. Johnston stated variance A would allow the home to be more aesthetically pleasing than if that aspect of the home had to be ordinance-compliant. Allowing that variance would comply with the spirit of the ordinance since it would increase the aesthetic appeal of the front of the home. If the home were not set at an angle, he would not need to request variance A. He could still build the home without variance A if required.

Motion by Mr. Hart

Seconded by Mr. Yaldo with regard to Appeal 22-32, A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 59.13 feet. The proposed is 58.10 feet. Therefore, a 1.03 foot variance is being requested; B. Chapter 126, Article 4, Section 4.61(A)(1) of the Zoning Ordinance requires that a corner lot which has on its side street an abutting residential lot shall have a minimum setback from the side street equal to the minimum front setback for the zoning district in which such building is located. The required is 47.25 feet on the east side. The existing and proposed is 24.97 feet. Therefore, a variance of 22.28 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 27.37 feet on the west side. The existing and proposed is 26.40 feet. Therefore, a variance of 0.97 feet is being requested.

Mr. Hart moved to approve variances A, B, and C, and tied them to the plans as submitted. He said the appellant faced a number of challenges with the home given the way it is situated on the lot. He said the home being squared off to the street created difficult setback requirements on all four sides of the home. He said the requests were reasonable.

Mr. Miller said he would also support the motion, stating that variance A only was required because of the orientation of the house on the lot. He said that granting variance A also does not push that part of the home beyond the corner of the adjacent house, and so did not represent a detriment to the neighbor.

The Chair concurred with Mr. Miller.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

5. Correspondence

BO Johnson noted a letter regarding Appeal 22-27 and a letter regarding Appeal 22-21 were provided to the Board members and the relevant appellants.

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

T# 07-50-22

7. Adjournment

Motion by Mr. Kona


Seconded by VC Canvasser to adjourn the July 26, 2022 BZA meeting at 9:58 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None



Bruce R. Johnson, Building Official



Laura Eichenhorn

City Transcriptionist