

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, August 9, 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, August 9, 2022. Chair Erik Morganroth convened the meeting at 7:30 p.m.

2. Rollcall

Present: Chair Erik Morganroth; Vice-Chair Jason Canvasser; Board Members Charles Lillie, Kevin Hart, John Miller, Ron Reddy, Pierre Yaldo; Alternate Board Member Carl Kona (left 8:06 p.m.)

Absent: None

Administration:

Bruce Johnson, Building Official
Leah Blizinski, City Planner
Brooks Cowan, Senior Planner
Laura Eichenhorn, City Transcriptionist
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.

T# 08-50-22

4. Approval Of The Minutes Of The BZA Meetings Of July 12, 2022

Motion by VC Canvasser

Seconded by Mr. Reddy to accept the Minutes of the BZA meeting of July 12, 2022 as submitted.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

5. Appeals

T# 08-51-22

**1) 2647 Dorchester
Appeal 22-39**

VC Canvasser recused himself from this item citing previous work with the petitioner. VC Canvasser stepped out of the room.

Mr. Kona filled in on this item for VC Canvasser.

ABO Zielke presented the item, explaining that the owner of the property known as 2647 Dorchester was requesting the following variance to construct a new single-family home:

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 14.00 feet on the west side. The proposed is 12.23 feet. Therefore, a variance of 1.77 feet is being requested.

Staff answered informational questions from the Board.

Derek Babi, builder, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to Board inquiry, Mr. Babi explained:

- He could likely go to a 9.5 or ten foot driveway, which would reduce the amount of the requested variance; and,
- While the home could be built without the variance if the rooms were slightly reduced, the home were shifted to the east on the lot, and the driveway were brought down to nine feet, the client was highly prioritizing a larger driveway which requires at least some amount of variance.

Public Comment

Patrick Carolan, neighbor, spoke in support of granting the requested variance.

Paul Martin and Glen Harris, neighbors, spoke against granting the requested variance.

Mr. Lillie noted that an issue similar to this one occurs at least once on every block in Birmingham with small lots.

Chair Morganroth emphasized that this house could be ordinance-compliant if it were more narrow and shifted to the east, or could reduce the amount of the request if the width of the driveway was reduced.

Mr. Hart made a motion to approve, but there was no second.

Given the lack of a second for an approval, Mr. Miller asked if the appellant would be willing to propose a compromise to lessen the requested variance.

Mr. Babi proposed the house be shifted six inches to the east and that the driveway be ten feet.

Motion by Mr. Miller

Seconded by Mr. Lillie with regard to Appeal 22-39, 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 14.00 feet on the west side. The proposed is 12.23 feet. Therefore, a variance of 1.77 feet is being requested.

Mr. Miller moved to approve the variance and tied approval to the plans as submitted, with the understanding that the home would be moved six inches further to the east relative to the original variance request. This resulted in a modified variance request of 1.27 feet. Mr. Miller said he believed there was a practical difficulty because this lot was pinched relative to other lots on the block. He said this modified variance request reduces the impact on the home to the west while also acknowledging the practical difficulty faced by this lot.

The Chair noted that the driveway would be ten feet.

Mr. Yaldo said the compromise seemed fair and that he would support the motion.

The Chair noted that this home sits within the building envelope, and that if there were no homes on either side this proposal would not need a variance. He concurred with his colleagues that the compromise was reasonable and offered his support for the motion.

Mr. Lillie said it would not be fair to ask the appellant to reduce the width of the home in this case since the home otherwise complies with the ordinance and this issue arises at least once on every block with small lots in Birmingham. Mr. Lillie explained that this is not a self-created issue.

The Chair concurred, noting that the home was within the building envelope.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 08-52-22

**2) 111 E Merrill
Appeal 22-35**

Mr. Kona departed the meeting and VC Canvasser rejoined the meeting.

CP Blizinski presented the item, explaining that the owner of the property known as 111 E Merrill was requesting the following variance to install a wall-mounted projecting sign:

A. Chapter 1, Article 1, Table B of the Sign Ordinance requires wall-mounted projecting signs to be located at the sign band and no less than 8 feet above grade. The applicant has proposed a blade sign 8 feet above grade and 4.66 ft. below the sign band, therefore a dimensional variance of 4.66 ft. is being proposed.

Staff answered informational questions from the Board.

Steve Trombly, owner of Done Right Signs, 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. Trombly stated:

- His reading of the ordinance would allow the blade sign to be a minimum of eight feet from grade;
- Pedestrians walking west on Merrill would not be able to see the sign if it were placed in the sign band;
- It would not be aesthetically pleasing to place the sign under consideration in the sign band given the other signage already present in the band;
- The sign as proposed would still be higher than a number of other signs in the City when measured from grade; and,

- Visibility is the priority in pursuing this variance.

The Chair explained Staff interpreted the sign ordinance as allowing a blade sign in the sign band and also no lower than eight feet. He noted that was different from Mr. Trombly's interpretation. He noted that Mr. Trombly had not yet described anything unique about the property that would merit a variance from the ordinance.

BO Johnson noted that the sign band changes from building to building, which is why some blade signs on other buildings would be located lower than this proposed sign.

Mr. Hart said that if a pedestrian were heading east on the north side of Merrill, the extant canopy would obscure the blade sign if it were located in the sign band. He said he did not see sense in moving the blade sign up as a result.

Mr. Trombly concurred.

In reply to the Chair, CP Blizinski confirmed that signage on the doors would be permitted.

The Chair invited Pete Petrolla, representative of the landlord of the building, to make a brief comment.

Mr. Petrolla explained that the blade sign location was selected in order to best direct people into Schechter's door and not into other parts of the building.

Motion by Mr. Reddy

Seconded by Mr. Lillie with regard to Appeal 22-35, A. Chapter 1, Article 1, Table B of the Sign Ordinance requires wall-mounted projecting signs to be located at the sign band and no less than 8 feet above grade. The applicant has proposed a blade sign 8 feet above grade and 4.66 ft. below the sign band, therefore a dimensional variance of 4.66 ft. is being proposed.

Mr. Reddy moved to deny the variance request, explaining it would not unreasonably prevent the property owner from using the property for its permitted purpose, that there was no showing that compliance with the ordinance was unduly burdensome, a number of alternatives exist for the appellant and the problem is self-created.

Mr. Miller said the motion had his reluctant support. He said the proposed height worked best for the pedestrian scale of the downtown area. He concurred with the Planning Director's comment from the July 20, 2022 HDC meeting, where this sign was reviewed, that the sign ordinance needed to be updated. In granting a variance, however, Mr. Miller was concerned that the Board would be abandoning the sign ordinance altogether in this case and would risk creating a difficult precedent. He explained that he would support the motion as a result.

Motion carried, 6-1.

ROLL CALL VOTE

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

T# 08-53-22

**3) 680 Westwood
Appeal 22-36**

ABO Zielke presented the item, explaining that the owner of the property known as 680 Westwood was requesting the following variance to construct a deck:

A. Chapter 126, Article 2, Section 2.06.1 of the Zoning Ordinance states that the maximum lot coverage is 30% for any lot. The maximum for this property is 2754.00 SF (30%). The existing is 3048.00 SF (33.20%). The proposed is 3020.00 SF (32.89%). Therefore, a variance of 294.00 SF (2.89%) is being requested.

Staff answered informational questions from the Board.

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

The Board had no questions for Mr. Reznar.

Motion by VC Canvasser

Seconded by Mr. Lillie with regard to Appeal 22-36, A. Chapter 126, Article 2, Section 2.06.1 of the Zoning Ordinance states that the maximum lot coverage is 30% for any lot. The maximum for this property is 2754.00 SF (30%). The existing is 3048.00 SF (33.20%). The proposed is 3020.00 SF (32.89%). Therefore, a variance of 294.00 SF (2.89%) is being requested.

VC Canvasser moved to approve the requested variance, tying approval to the plans as submitted. He stated that strict compliance with the ordinance would render conformity unnecessarily burdensome, the variance would do substantial justice to the petitioner as well as other property owners in the area, the circumstances of this home were unique because it had complied with the ordinance when it was built and had become non-compliant with the ordinance, and preventing the owner from replacing the deteriorating deck would cause a safety hazard to the owners and their guests.

The Chair noted that the appellant was mitigating their request by replacing their larger deck with a smaller deck.

Mr. Miller spoke in support of the motion. He said that repairing a decaying deck should be seen as essential to the quality of Birmingham's neighborhoods. He said the Board would not want to discourage residents from repairing a dangerous condition.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 08-54-22

**4) 282 Greenwood
Appeal 22-34**

ABO Zielke presented the item, explaining that the owner of the property known as 282 Greenwood was requesting 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 answered informational questions from the Board.

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

In reply to VC Canvasser, Mr. Toby stated the remaining variance could not be further mitigated because of the existing wall.

The Chair stated that this was a better design than the previously approved design for the home. He clarified for Mr. Toby that the location of the water feature was not tied to these potential variances.

Motion by VC Canvasser

Seconded by Mr. Reddy with regard to Appeal 22-34, 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; and, 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.

VC Canvasser moved to approve variances A and B, tying approval to the plans as submitted. He stated that strict compliance with the ordinance would unreasonably prevent the petitioner from using the property for its intended purpose, the variances would do substantial justice to the petitioner as well as other nearby property owners, there are unique circumstances, and the problem was not self-created. VC Canvasser cited the topography of the lot and safety needs in terms of the staircase and exit as some of the unique circumstances. He noted that he would vote to approve despite having previously voted against the variances requested for this lot because these current plans included further mitigation versus the previous variances.

Mr. Lillie said that it would be inappropriate to vote against this motion since this request amounts to a small change relative to the previous appeal where the Board found the appellant had a practical difficulty. He said he would also be voting in favor because the petitioner reduced the requested variance.

The Chair said he would also be voting in favor, citing the park next door and the topography of the lot. He said that no other location on the lot would permit the deck. He also noted the mitigation of the variances requested as part of the reason for his support.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 08-55-22

**5) 34660 Woodward
Appeal 22-37**

SP Cowan presented the item, explaining that the owner of the property known as 34660 Woodward was requesting the following variance to have a mural painted on the side of their building:

A. Article 9, Section 9.02 Definitions of the Zoning Ordinance defines Wall Art as an artistic design applied to the exterior surface of a structure in a permanent or temporary manner. The location of wall art is limited to elevations of structures facing the side or rear lot line within the defined Rail District boundary, side elevations with a 0 foot setback in the Triangle District and Downtown Overlay District, and elevations facing a public or private alley, passage, or via in the Downtown Overlay and the Triangle District as specified in the Via Activation Overlay District. Wall art is only permitted in compliance with Chapter 126, the City of Birmingham Zoning Ordinance Article 7, Section 7.41 – 7.44. Wall art is not permitted on a building facing an alley, passage or via that any of which

abuts a single-family residential zoned property. The applicant is proposing a mural on the side elevation of their building facing Woodward Avenue which is setback 92 feet from the side lot line, therefore a dimensional variance of 92 feet is being requested.

Staff answered informational questions from the Board.

In reply to Mr. Miller, SP Cowan said it was his understanding that the Design Review Board recommended approval of the mural because of the position of the building on the lot, the age of the building, and the existence of the long blank wall. He noted the wall art ordinance was created to activate larger blank walls.

Sally Savoy, member of the Village Players, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to inquiry from the Board, Ms. Savoy stated:

- They would likely reface the surface where the mural would be located; and,
- The fact that the parking lot precedes the building makes the building difficult for patrons to locate.

In reply to Mr. Miller, SP Cowan said Staff would be looking at wall art proposals on a case-by-case basis.

It was noted that most buildings along Woodward front on Woodward, which would prevent them from having murals facing Woodward.

VC Canvasser said he was not particularly concerned about potentially setting precedent with this case since every proposal would be evaluated individually.

In reply to Mr. Miller, BO Johnson said the mural would have to remain, with the approved design, even if a new occupant were to enter the building unless the new owner received permission to modify the mural.

Motion by Mr. Hart

Seconded by Mr. Miller with regard to Appeal 22-37, A. Article 9, Section 9.02 Definitions of the Zoning Ordinance defines Wall Art as an artistic design applied to the exterior surface of a structure in a permanent or temporary manner. The location of wall art is limited to elevations of structures facing the side or rear lot line within the defined Rail District boundary, side elevations with a 0 foot setback in the Triangle District and Downtown Overlay District, and elevations facing a public or private alley, passage, or via in the Downtown Overlay and the Triangle District as specified in the Via Activation Overlay District. Wall art is only permitted in compliance with Chapter 126, the City of Birmingham Zoning Ordinance Article 7, Section 7.41 – 7.44. Wall art is not permitted on a building facing an alley, passage or via that any of which abuts a single-family residential zoned property. The applicant is proposing a mural on the side elevation of their building facing Woodward Avenue which is setback 92 feet from the side lot line, therefore a dimensional variance of 92 feet is being requested.

Mr. Hart made a motion to approve the variance and tied approval to the plans as submitted. He said the enhancement of the building would do substantial justice to the owner and to the neighboring properties. He said the building is obscured from view of Woodward by perhaps 30-40% for traffic heading in either direction on Woodward and that this mural would increase wayfinding and marketing. He said that the issue was not self-created. Mr. Hart stated that this approval would not set a precedent since there are multiple reviews any proposal would have to go through before even reaching the BZA.

Mr. Lillie asked to amend the motion to clarify that this approval was contingent upon only the approved mural being painted. He noted that any changes to the mural would be required to go through the entire wall art review process again, including seeking another variance.

Messrs. Hart and Miller accepted Mr. Lillie's amendment.

VC Canvasser echoed his previous comments regarding the lack of precedent being set by this approval. He said there was no ambiguity in the plain language of the ordinance, and that this approval met the four factors required. He said he would support the motion for those reasons.

The Chair said he would not support the motion because it was not his impression that the ordinance intended to have murals facing main roads. He said he believed that was why the Public Arts Board voted against the mural. He said that a practical difficulty had not been established and said the ordinance specifically disallows this mural because it did not meet the lot line or location requirements.

Motion carried, 4-3.

ROLL CALL VOTE

Yeas: Miller, Canvasser, Reddy, Hart

Nays: Morganroth, Yaldo, Lillie

T# 08-56-22

**6) 766 Chesterfield
Appeal 22-38**

ABO Zielke presented the item, explaining that the owner of the property known as 766 Chesterfield was requesting the following variances to construct a new single-family home:

A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average of homes within 200.00 feet in each direction. The required is 47.70 feet. The proposed is 40.00 feet, therefore, a variance of 7.70 feet is being requested.

B. Chapter 126, Article 4, Section 4.30(C)(1) of the Zoning Ordinance permits covered or uncovered porches to project into the required front open space for a maximum of 10.00 feet. The proposed is 16.70 feet, therefore, a variance of 6.70 feet is being requested.

Staff answered informational questions from the Board.

David Schmerin, developer, 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. Schmerin stated:

- The variances were being requested in an attempt to make the home align visually with the neighboring homes on the street; and,
- After the boundary and topographical surveys were completed he knew there was an issue, and the Building Department advised him to complete the plot plan in order to come before the BZA.

The Chair observed that the home would still fit in the building envelope and be ordinance-compliant if it were pushed back seven feet.

Motion by Mr. Lillie

Seconded by VC Canvasser with regard to Appeal 22-38, A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average of homes within 200.00 feet in each direction. The required is 47.70 feet. The proposed is 40.00 feet, therefore, a variance of 7.70 feet is being requested; and, B. Chapter 126, Article 4, Section 4.30(C)(1) of the Zoning Ordinance permits covered or uncovered porches to project into the required front open space for a maximum of 10.00 feet. The proposed is 16.70 feet, therefore, a variance of 6.70 feet is being requested.

Mr. Lillie moved to grant the variances and tied them to the plans as submitted. He said there was a showing of a practical difficulty and that making the petitioner comply with the ordinance would be unduly burdensome. He noted that a nearby home was skewing the front setbacks, and that the Board has taken similar circumstances into consideration when reviewing similar appeals in the past. He said the situation was not self-created, and said it was a fairly unique situation since almost all the homes on the block are about 40 feet from the front lot line and then one is twice the distance back.

Mr. Reddy said normally he was not in favor of variances for front setbacks, but thought in this case it would do substantial justice to both the owner and the neighboring property owners given the circumstances Mr. Lillie described. Consequently, Mr. Reddy offered his support for the motion.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

6. Correspondence

The Chair noted that one item of correspondence was provided to the Board and the relevant appellant.

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

T# 08-57-22

8. Adjournment

Motion by VC Canvasser

Seconded by Mr. Miller to adjourn the August 9, 2022 BZA meeting at 10:12 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None



Bruce R. Johnson, Building Official



Laura Eichenhorn

City Transcriptionist