

**Birmingham Board Of Zoning Appeals Proceedings**  
**Tuesday, October 10, 2023**  
**City Commission Room**  
**151 Martin Street, Birmingham, Michigan**

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**1. Call To Order**

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, October 10, 2023. Chair Morganroth convened the meeting at 7:30 p.m.

**2. Rollcall**

**Present:** Chair Erik Morganroth; Board Members Richard Lilley, John Miller, Ron Reddy, Pierre Yaldo; Alternate Board Member Carl Kona

**Absent:** Board Member Kevin Hart

**Staff:** Building Official Johnson; Senior Planner Cowan, City Transcriptionist Eichenhorn, Assistant Building Official Morad, 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 in attendance.

**3. Announcements**

Announcements can be found in the evening's agenda packet.

**4. Approval Of The Minutes Of The BZA Meetings Of September 12, 2023**

**T# 10-45-23**

**Motion by Mr. Lilley**

**Seconded by Mr. Reddy to approve the minutes of the BZA meeting of September 12, 2023 as submitted.**

**Motion carried, 6-0.**

VOICE VOTE

Yeas: Lilley, Morganroth, Miller, Yaldo, Kona, Reddy

Nays: None

**5. Appeals**

**T# 10-46-23**

**1) 680 Fairfax  
Appeal 23-27**

ABO Zielke presented the item, explaining that the owner of the property known as 680 Fairfax was requesting the following variance to replace the existing pool deck and patio:

**A. Chapter 126, Article 2, Section 2.06.1** of the Zoning Ordinance requires that the minimum open space required is 40% (4705.00 SF). The existing is 30.29% (3562.43 SF). The proposed is 33.05% (3888.53 SF). Therefore, a variance of 6.95% (816.47 SF) is being requested.

Staff answered informational questions from the Board.

Todd Grabel, owner, reviewed the letter describing why this variance was being sought and answered informational questions from the Board. The letter was included in the evening's agenda packet.

The Board's discussion included the following topics:

- When the minimum open space of a lot was not met, wanting additional surface around an existing pool beyond functional surface did not inherently constitute a practical difficulty;
- Budgetary difficulties could not be used to constitute a practical difficulty;
- There was additional surface around the north side of the pool that could be eliminated to mitigate the variance request; and,
- The lack of dimensions on the plans made the review challenging.

**Motion by Mr. Miller**

**Seconded by Mr. Kona with regard to Appeal 23-27, A. Chapter 126, Article 2, Section 2.06.1 of the Zoning Ordinance requires that the minimum open space required is 40% (4705.00 SF). The existing is 30.29% (3562.43 SF). The proposed is 33.05% (3888.53 SF). Therefore, a variance of 6.95% (816.47 SF) is being requested.**

**Mr. Miller said this appeal was challenging because it was beneficial that the appellant was mitigating a pre-existing non-conforming condition. He noted that without dimensions it was difficult to determine whether the mitigation could be increased. He added that some mitigation on the driveway could also likely occur to increase the open space of the lot, and that not doing so involved self-creation. He said those two aspects informed the fact that he was moving to deny the appeal.**

Mr. Yaldo noted that mitigation had occurred, and that it was difficult to know whether more could be done because of the lack of dimensions on the plans. He noted that the plan to replace the dilapidated structure on the lot would be beneficial.

The Chair noted a few aspects of the plan for the rear yard that could likely yield further open space if changed. He explained that since the Board has to make these decisions for many lots in the City it was important to be consistent in the evaluations. He echoed the fact that the lack of dimensions on the plans made it more difficult to determine whether more mitigation could occur. He noted that the extensive pre-existing non-conforming lot coverage made it difficult to permit further lot coverage. He added that since the area around the pool would be completely repoured starting from a blank slate, that would allow for ways of reducing the variance request.

Mr. Kona echoed his colleagues' statements that the lack of dimensions was a challenge, and added that the lack of topography also made evaluation more difficult. He said he appreciated the proposed mitigation, but that the information provided was not sufficient to indicate that more mitigation could not occur.

**Motion carried, 6-0.**

ROLL CALL VOTE

Yeas: Lilley, Morganroth, Miller, Yaldo, Kona, Reddy

Nays: None

**T# 10-47-23**

**2) 1395 Northlawn  
Appeal 23-33**

BO Johnson presented the item, explaining that the owner of the property known as 1395 Northlawn was requesting the following variance for a house currently under construction:

**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 15.50 feet. The proposed is 14.59 feet on the east side. Therefore, a variance of 0.91 feet is requested.

Ben Templeton, builder, reviewed the letter describing why this variance was being sought and answered informational questions from the Board. The letter was included in the evening's agenda packet.

Public Comment

In reply to Anurag Newatia, the Chair recommended that Mr. Newatia meet with the builder for 1395 Northlawn.

**Motion by Mr. Reddy**

**Seconded by Mr. Lilley with regard to Appeal 23-33, 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 15.50 feet. The proposed is 14.59 feet on the east side. Therefore, a variance of 0.91 feet is requested.

Mr. Reddy moved to grant the variance and tied approval to the plans as submitted. He stated that unusual circumstances existed in this appeal including the City's prior, mistaken approval and the shape of the lot. He said that denying the variance would be substantially unjust.

The Chair noted that the Board was separate from the City administration, and that the Board should not approve a variance solely because the City made an error. While that was the case, he explained that in evaluating this particular appeal, it was clear this property was unique, that a narrow house on a narrow lot was being proposed, and that a practical difficulty was established. He noted that the plans met all the ordinances necessary to be on the lot and that since it neighbored a country club, it would not impact the neighbor.

**Motion carried, 6-0.**

ROLL CALL VOTE

Yeas: Lilley, Morganroth, Miller, Yaldo, Kona, Reddy

Nays: None

**T# 10-48-23**

**3) 1195 Chapin  
Appeal 23-34**

ABO Zielke presented the item, explaining that the owner of the property known as 1115 Chapin was requesting the following variance to construct a detached garage:

**A. Chapter 126, Article 2, Section 2.10.1** of the Zoning Ordinance limits the lot coverage to a maximum of 30% of the lot. The required 30% is 1440.00 SF. The proposed is 32.95% (1581.90 SF). Therefore, a variance of 2.95% (141.90 SF) is being requested.

Frank Colosanti, Jr., owner, reviewed the letter describing why this variance was being sought and answered informational questions from the Board. The letter was included in the evening's agenda packet.

The Board's discussion included the following topics:

- A 20x20 ft. garage would be functional for two vehicles, although small;
- The appellant was very close to not needing a variance;
- In the Board's history, many garages have been reduced to their minimum usable and feasible size, which would be smaller than the present request; and,
- There would be a smaller garage that could work for the appellant and would not need a variance.

**Motion by Mr. Miller**

**Seconded by Mr. Kona with regard to Appeal 23-34, A. Chapter 126, Article 2, Section 2.10.1 of the Zoning Ordinance limits the lot coverage to a maximum of 30% of the**

lot. The required 30% is 1440.00 SF. The proposed is 32.95% (1581.90 SF). Therefore, a variance of 2.95% (141.90 SF) is being requested.

**Mr. Miller moved to deny the appeal. He noted that the ordinance would not preclude a smaller garage than proposed from being built. He said the matter was self-created, and that approval would set a difficult precedent for similar appeals in the future.**

**Motion carried, 6-0.**

ROLL CALL VOTE

Yeas: Lilley, Morganroth, Miller, Yaldo, Kona, Reddy

Nays: None

**T# 10-49-23**

**4) 321 Lake Park  
Appeal 23-35**

ABO Zielke presented the item, explaining that the owner of the property known as 321 Lake Park was requesting the following variance to construct a circle driveway in the front open space:

**A. Chapter 126, Article 4, Section 4.31(A)1** of the Zoning Ordinance requires that The minimum open space of 65% of the front open space in all single-family Districts shall be free of paved surfaces. The required is 2749.50 SF. The proposed is 54% (2283.00 SF). Therefore, a variance of 11% (466.50 SF) is being requested.

Staff answered informational questions from the Board.

Fritz Carlson, owner, reviewed the letter describing why this variance was being sought and answered informational questions from the Board. The letter was included in the evening's agenda packet.

The Board's discussion included the following topics:

- There would be ways that this variance request could be mitigated, even to the extent of not requiring a variance;
- The appellant did not describe a practical difficulty during his presentation; and,
- While the design of the driveway was aesthetically pleasing, it did not comply with the ordinance.

**Motion by Mr. Reddy**

**Seconded by Mr. Kona with regard to Appeal 23-35, A. Chapter 126, Article 4, Section 4.31(A)1 of the Zoning Ordinance requires that The minimum open space of 65% of the front open space in all single-family Districts shall be free of paved surfaces. The required is 2749.50 SF. The proposed is 54% (2283.00 SF). Therefore, a variance of 11% (466.50 SF) is being requested.**

**Mr. Reddy moved to deny the appeal. He reiterated that the extent of the variance could be mitigated or eliminated entirely without impacting the design concept. He noted that a u-shaped driveway was also not necessary for the house to function.**

**Motion carried, 6-0.**

ROLL CALL VOTE

Yeas: Lilley, Morganroth, Miller, Yaldo, Kona, Reddy

Nays: None

**T# 10-50-23**

**5) 604 Hanna  
Appeal 23-36**

ABO Zielke presented the item, explaining that the owner of the property known as 604 Hanna was requesting the following variance to construct an attached pergola:

**A. Chapter 126, Article 2, Section 2.08.1** of the Zoning Ordinance limits the lot coverage to a maximum of 30% of the lot. The required 30% is 11963.50 SF. The existing is 29.29% (1917.10 SF). The proposed is 32.38% (2119.40 SF). Therefore, a variance of 2.38% (155.90 SF) is being requested.

Staff answered informational questions from the Board.

Matt DeLapp of Singh Homes reviewed the letter describing why this variance was being sought and answered informational questions from the Board. The letter was included in the evening's agenda packet.

The Board noted that, as stated during Appeal 23-36, the Board does not automatically grant variances in cases where the City may have made an approval in error.

**Motion by Mr. Miller**

**Seconded by Mr. Reddy with regard to Appeal 23-36, A. Chapter 126, Article 2, Section 2.08.1 of the Zoning Ordinance limits the lot coverage to a maximum of 30% of the lot. The required 30% is 11963.50 SF. The existing is 29.29% (1917.10 SF). The proposed is 32.38% (2119.40 SF). Therefore, a variance of 2.38% (155.90 SF) is being requested.**

**Mr. Miller moved to deny the appeal. He noted that while the pergola had received a erroneous approval on the initial plans, the Board was not bound to grant variances based on erroneous approvals. He noted that the Board had even required inappropriately built pergolas to be torn down in the past. He stated that the matter was self-created since it did not stem from a condition of the property itself. He explained that while a pergola would be a nice amenity, its absence would not limit the use of the property. He said the Board had not been presented with a reason to approve the variance request.**

**The Chair voiced support for motion. He noted that while many people would likely appreciate a pergola, many would also not be able to build one due to lot coverage constraints. He noted that if residents thought the ordinance should be changed, they could raise the issue with the City Commission.**

**Motion carried, 6-0.**

ROLL CALL VOTE

Yeas: Lilley, Morganroth, Miller, Yaldo, Kona, Reddy

Nays: None

**T# 10-51-23**

**6) 660 Mohegan  
Appeal 23-37**

ABO Zielke presented the item, explaining that the owner of the property known as 660 Mohegan was requesting the following variance to construct an addition to square the rear corner of the home:

**A. Chapter 126, Article 2, Section 2.06.2** of the Zoning Ordinance requires a minimum rear yard setback of 30.00 feet. The proposed is 28.34 feet. Therefore, a variance of 1.66 feet is being requested.

Staff answered informational questions from the Board.

Glenn DesRosiers, owner, reviewed the letter describing why this variance was being sought and answered informational questions from the Board. The letter was included in the evening's agenda packet.

The Board's discussion included the following topics:

- Even with the requested variance, the southwest corner of the garage would be smaller than a standard garage;
- The design of the home was intentional. The lot was a unique shape, and the home filled the building envelope;
- As a result, there were not many options regarding the garage, since the house was designed to maximize its footprint on the lot;
- The request seemed minimal and reasonable given that the garage would not fit a car and that the appellant was permitted to have a garage;
- The southwest portion of the garage could have been intended as a storage area; and,
- The Board would have to consider setting a potential precedent if this variance were to be approved.

**Motion by Mr. Yaldo**

**Seconded by Mr. Lilley with regard to Appeal 23-37, A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires a minimum rear yard setback of 30.00 feet. The proposed is 28.34 feet. Therefore, a variance of 1.66 feet is being requested.**

**Mr. Yaldo moved to approve the variance and tied approval to the plans as submitted. He said that while concerns were raised about setting a precedent, the unique structure of the house made that unlikely. He commented that the request was minimal in light of the desire to have a functional three car garage.**

**Mr. Reddy voiced support for the motion. He acknowledged the concerns regarding precedent, and continued that each variance request was evaluated on its own merits. He said the lot was very unique and that the request was minimal.**

**Mr. Miller said that while he was somewhat conflicted about precedent, he would ultimately support the motion as well. He noted that the unique layout of the house would not likely be similar to any other variance request, that there would be a minimal intrusion into the backyard setback, and that the variance would not have a negative impact on the neighbors.**

**The Chair said the original designer of the home focused on designing a unique home while staying within all the setbacks required by the City. He said that to take a conforming home and to create a variance in this case would contradict the charge of the Board. Consequently, the Chair said he would not support the motion.**

**Motion carried, 4-2.**

ROLL CALL VOTE

Yeas: Lilley, Miller, Yaldo, Reddy

Nays: Morganroth, Kona

- 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 9:50 p.m.



Bruce R. Johnson, Building Official



Laura Eichenhorn, City Transcriptionist