

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, November 14, 2023
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, November 14, 2023. The meeting was convened at 7:30 p.m.

2. Rollcall

Present: Board Members Kevin Hart, Richard Lilley, John Miller, Pierre Yaldo; Alternate Board Member Carl Kona

Absent: Chair Erik Morganroth; Board Member Ron Reddy

Staff: Building Official Johnson; Senior Planner Cowan, City Transcriptionist Eichenhorn, Assistant Building Official Zielke

T# 11-52-23

Motion by Mr. Miller

Seconded by Mr. Lilley to nominate Mr. Hart to serve as the chairperson for the meeting.

Motion carried, 5-0.

VOICE VOTE

Yeas: Lilley, Miller, Yaldo, Kona, Hart

Nays: None

Acting Chair Hart 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.

Acting Chair Hart took rollcall of the petitioners. All petitioners were in attendance. It was noted that Appeal 23-40 for 490 Berwyn would be postponed to the following meeting.

The appellants for Appeal 23-38 for 1285 Ruffner were given the option to postpone their appeal to the following meeting given that there were only five Board members in attendance. The appellants for Appeal 23-38 elected to move forward with their appeal during the present meeting.

3. Announcements

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

4. Approval Of The Minutes Of The BZA Meetings Of October 10, 2023

T# 11-53-23

Motion by Mr. Lilley

Seconded by Mr. Yaldo to approve the minutes of the BZA meeting of October 10, 2023 as submitted.

Motion carried, 5-0.

VOICE VOTE

Yeas: Lilley, Miller, Yaldo, Kona, Hart

Nays: None

5. Appeals

T# 11-54-23

1) 1285 Ruffner Appeal 23-38

ABO Zielke presented the item, explaining that the owner of the property known as 1285 Ruffner was requesting the following variance to construct a second floor addition:

A. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that no side yard setback shall be less than 5.00 feet. The existing is 4.80 feet. The proposed is 4.80 feet. Therefore, a variance of 0.20 feet is being requested.

Staff answered informational questions from the Board.

William Currier, 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.

Motion by Mr. Lilley

Seconded by Mr. Yaldo with regard to Appeal 23-38, A. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that no side yard setback shall be less than 5.00 feet. The existing is 4.80 feet. The proposed is 4.80 feet. Therefore, a variance of 0.20 feet is being requested.

Mr. Lilley moved to approve to allow the addition tied to the plans.

Mr. Yaldo seconded the motion, stating that strict compliance with the ordinance would be unnecessarily burdensome. He stated that the building's location on the property and nonconformance resulted in a plight unique to the property owner and would not be shared by similar properties in the same zone. He stated that granting the variance would result in substantial justice to the appellant and neighbors and would not be contrary to the spirit or intent of the ordinance.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Lilley, Miller, Yaldo, Kona, Hart

Nays: None

T# 11-55-23

**2) 34745 Woodward
Appeal 23-41**

SP Cowan presented the item, explaining that the Honorable Kwame Rowe of the Circuit Court for the County of Oakland has ordered that the City of Birmingham's Board of Zoning Appeals' December 13, 2022 decision finding that Jax' proposed site plan constitutes a "parking facility" within the meaning of Chapter 126, Article 4, Section 4.54(C)(3) of the City's ordinances is REVERSED;

It is further ordered that the City of Birmingham's Board of Zoning Appeals' requirement that a screening wall be installed pursuant to Chapter 126, Article 4, Section 4.54(C)(3) of the City's ordinances is therefore REVERSED;

It is further ordered that this matter is remanded to the City of Birmingham's Board of Zoning Appeals for entry of a decision on the proposed site plan, within 60 days of the Opinion and Order (September 14th, 2023), that comports with this Court's rulings herein.

Staff answered informational questions from the Board.

Nicholas Carmago, attorney for Jax Kar Wash, spoke on behalf of the appellant and answered informational questions from the Board.

**Motion by Mr. Yaldo
Seconded by Mr. Kona with regard to Appeal 23-41.**

Mr. Yaldo moved to reverse the Board of Zoning Appeals December 13, 2022 decision finding that Jax's proposed site plan constitutes a "parking facility" within the meaning of Chapter 126, Article 4, Section 4.54(C)(3) of the City's ordinances, and to the extent that it is within the Board of Zoning Appeals' jurisdiction and required by the Circuit Court, to also decide affirmatively on the site plan proposed by the appellants,

And

To reverse the City of Birmingham's Board of Zoning Appeals' requirement that a screening wall be installed pursuant to Chapter 126, Article 4, Section 4.54(C)(3) of the City's ordinances.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Lilley, Miller, Yaldo, Kona, Hart

Nays: None

- 6. Correspondence**
- 7. Open To The Public For Matters Not On The Agenda**
- 8. Adjournment**

No further business being evident, the Board motioned to adjourn at 7:58 p.m.



Bruce R. Johnson, Building Official



Laura Eichenhorn, City Transcriptionist