

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, December 12, 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, December 12, 2023. The meeting was convened at 7:30 p.m.

2. Rollcall

Present: Chair Erik Morganroth; Board Members Kevin Hart (arrived after Appeal 23-40), John Miller, Ron Reddy, Pierre Yaldo; Alternate Board Member Carl Kona

Absent: Board Member Richard Lilley

Staff: Building Official Johnson; 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 November 14, 2023

T# 12-56-23

Motion by Mr. Yaldo

Seconded by Mr. Kona to approve the minutes of the BZA meeting of November 14, 2023 as submitted.

Motion carried, 5-0.

VOICE VOTE

Yeas: Reddy, Miller, Yaldo, Kona, Morganroth

Nays: None

5. Appeals

T# 12-57-23

**1) 490 Berwyn
Appeal 23-40**

ABO Zielke presented the item, explaining that the owner of the property known as 490 Berwyn was requesting the following variance to construct a rear addition:

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 36.53 feet. The proposed is 26.46 feet on the north side. Therefore, a variance of 10.07 feet is being requested.

Staff answered informational questions from the Board.

A representative from Kevin D. Hart Architects reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

Motion by Mr. Reddy

Seconded by Mr. Miller with regard to Appeal 23-40, 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 36.53 feet. The proposed is 26.46 feet on the north side. Therefore, a variance of 10.07 feet is being requested.

Mr. Reddy moved to approve and tied approval to the plans, noting that this was a pre-existing non-conforming structure, that the non-conformity would not be expanded, that it would pose some difficulty to the owner not to allow the addition.

Mr. Miller seconded the motion, explaining that while 10 feet may seem like a large variance, being unable to update a home built in 1929 would represent an unnecessary hardship. He said granting the variance would result in substantial justice to the neighborhood since it would allow the improvement of the older home without an increase in the pre-existing non-conformity.

Mr. Reddy concurred with Mr. Miller's comments as well.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Reddy, Miller, Yaldo, Kona, Morganroth

Nays: None

T# 12-58-23

**2) 612 Davis
Appeal 23-37**

ABO Zielke presented the item, explaining that the owner of the property known as 612 Davis 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 4.67 and the proposed is 4.67 feet with an overhang of 1.67 feet. Therefore, a variance of 0.33 feet for the addition and a 1.17 foot for the overhang 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 14.00 feet. The existing and proposed is 13.49 feet on the east side. Therefore, a variance of 0.51 feet is being requested.

Staff answered informational questions from the Board.

Bert Koseck, architect, reviewed the letter describing why these variances were being sought and answered informational questions from the Board. The letter was included in the evening's agenda packet.

It was noted by a Board member that the appellant's explanation of why alternative proposals were not pursued was helpful.

Public Comment

Sam Shabrang, neighbor, voiced his support for the requested variances.

Motion by Mr. Miller

Seconded by Mr. Hart with regard to Appeal 23-37, 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 4.67 and the proposed is 4.67 feet with an overhang of 1.67 feet. Therefore, a variance of 0.33 feet for the addition and a 1.17 foot for the overhang is being requested, 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 14.00 feet. The existing and proposed is 13.49 feet on the east side. Therefore, a variance of 0.51 feet is being requested.

Mr. Miller moved to approve the variances, tying them to the plans as submitted, and explaining that the nonconformity was due to the relationship between the time of the ordinance's implementation and the age of the house. He stated that building over the attached garage would mitigate the undesirable look of the present garage. He

said it would do substantial justice to the neighborhood and be within the spirit of the ordinance.

Mr. Kona opined that the house's positioning on the lot amounted to a hardship.

The Chair said he liked the home's positioning on the lot because it added character. He stated that granting the variances would improve the pre-existing non-conformities and noted that the pre-existing non-conformities would not be increased.

Mr. Hart voiced support for the motion, and said the appellant's presentation should be used as a model for future appellant presentations to the Board. He stated that these plans were a positive solution to the challenges of the site, whereas a conforming improvement to the house would likely be a lot more obtrusive to the neighbors.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

The Chair asked Staff to provide this presentation as an example of a complete and thorough presentation for future prospective appellants.

**3) 631 Ruffner
Appeal 23-39**

No action was taken on this appeal. It was determined that an additional variance would be required for the changing location of the front door. The appeal will return during a future meeting.

T# 12-59-23

**4) 2428 Northlawn
Appeal 23-42**

ABO Zielke presented the item, explaining that the owner of the property known as 2428 Northlawn was requesting the following variance to construct a new home:

A. 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 interior 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 proposed is 24.97 feet. Therefore, a variance of 22.28 feet is being requested.

Staff answered informational questions from the Board.

Kent Johnston, 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.

Public Comment

Doug Krizanic, neighbor, offered his support for the requested variance.

Motion by Mr. Yaldo

Seconded by Mr. Kona with regard to Appeal 23-42, A. 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 interior 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 proposed is 24.97 feet. Therefore, a variance of 22.28 feet is being requested.

Mr. Yaldo moved to approve the variance and tied approval to the plans. He noted that the appellant had demonstrated a number of times that there were special conditions applicable to the property. He noted that some of the appellant's previous variance requests were eliminated from the present appeal. He continued that strict enforcement of the ordinance would result in an unnecessary hardship in this case, and that granting the variance would not be contrary to the spirit or intent of the ordinance.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

6. Correspondence

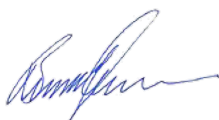
7. Open To The Public For Matters Not On The Agenda

The Board briefly discussed the criteria for approving different types of variances. It was noted that Staff would explore the process for adding additional use variance criteria to the zoning ordinance and for distinguishing between dimensional and use variances in the zoning ordinance.

The Board briefly discussed its present vacancies and it was determined that a temporary Vice Chair would be voted on at the January meeting.

8. Adjournment

No further business being evident, the Board motioned to adjourn at 8:41 p.m.



Bruce R. Johnson, Building Official



Laura Eichenhorn, City Transcriptionist