

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, August 8, 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, August 8, 2023. Chair Morganroth convened the meeting at 7:30 p.m.

2. Rollcall

Present: Chair Erik Morganroth; Board Members Kevin Hart (arrived 8:49 p.m.), Richard Lilley, John Miller, Ron Reddy; Alternate Board Member Carl Kona

Absent: Vice Chair Jason Canvasser; Board Member Pierre Yaldo

Staff: Building Official Johnson; 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 and gave them the option to postpone since there were only five BZA members in attendance.

All petitioners were in attendance and elected to proceed with having their appeals heard 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 July 11, 2023

T# 08-31-23

**Motion by Mr. Lilley
Seconded by Mr. Reddy to approve the minutes of the BZA meeting of July 11, 2023
as submitted.**

Motion carried, 5-0.

VOICE VOTE

Yeas: Lilley, Morganroth, Miller, Reddy, Kona

Nays: None

5. Appeals

T# 08-32-23

**1) 440 Lakeside
Appeal 23-21**

ABO Zielke presented the item, explaining that the owner of the property known as 440 Lakeside 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 23.75 feet on the north side. The proposed is 14.63 feet. Therefore, a variance of 9.12 feet is being requested.

Staff answered informational questions from the Board.

Patrick Howe, attorney, 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. Howe explained:

- The property to the north would only be negatively impacted by the requested variance if the home on said property were torn down. Since the home to the north was very new, that would be an unlikely occurrence in the near future;
- The design was done with consideration of 470 Lakeside;
- If these plans were not approved, a new plan would be drawn that might be less preferable for 470 Lakeside. It would bring the footprint out to the front lot line;
- 470 Lakeside is a non-conforming structure, and had it been conforming the appellant would not need to request a variance. The variance would grant relief from the hardship the appellant faces being adjacent to a non-conforming structure;
- The variance would be beneficial because it aligns with the layout of Lakeside. If Lakeside were perpendicular to the lot line, only a variance of a foot would likely be necessary; and,
- The ordinance does not account for streets that are not perpendicular to the lot lines, except for by increasing the minimum setback from an adjacent structure.

Board comments were as follows:

- The BZA has to take the next buyers of homes into consideration when deciding variances. Granting variances because of neighbor support would make the ordinance useless and could negatively impact future property owners; and,

- If 470 Lakeside were a conforming structure, the appellant would still need a four foot variance to build the plans as proposed. The requested variance would be greater than the existing non-conformity.

Public Comment

Dr. Obeid, owner of 470 Lakeside, offered support for the variance request.

Motion by Mr. Reddy

Seconded by Mr. Lilley with regard to Appeal 23-21, 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 23.75 feet on the north side. The proposed is 14.63 feet. Therefore, a variance of 9.12 feet is being requested.

Mr. Reddy moved to approve the variance request and tied approval to the plans. He stated that there were a number of unique circumstances in the appeal, including a uniquely-shaped lot and a pre-existing non-conforming structure to the north.

Mr. Miller offered support for the motion, noting that there were non-conforming houses on both sides which was an extremely unusual circumstance. He said that circumstance exacerbated the hardship faced by the appellant, as did the radical geometry of the front of the appellant's lot. He added that the plans for the appellant's property were very reasonable given the hardships.

The Chair supported the motion, commenting on the lot's unique shape, the impact on the appellant of taking the averages of the adjacent properties which are different sizes, the measurement of the angle because the street is at an angle to the lot, and the two non-conformities. Future homes on the adjacent properties would likely be able to build substantially within their lot parameters without the appellant's home significantly impacting those properties.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Lilley, Morganroth, Miller, Reddy, Kona

Nays: None

T# 08-33-23

**2) 307 Westchester Way
Appeal 23-22**

ABO Zielke presented the item, explaining that the owner of the property known as 307 Westchester Way was requesting the following variance to construct a new detached garage:

- A. Chapter 126, Article 4, Section 4.03(B)** of the Zoning Ordinance requires the distance between an accessory building is not permitted closer to a principal residential buildings on an adjoining lot than the sum of the minimum required side setbacks of 14.00 feet or

25% of total lot width, whichever is larger. The required is 22.50 feet. The proposed is 18.00 feet. Therefore, a variance of 4.50 feet is being requested.

Staff answered informational questions from the Board.

Robert Naegaert of Lunar Construction 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. Naegaert explained:

- The garage would be kept to the left side near the fence in order to enable egress and ingress;
- Changing the depth of the garage would not make the garage more accessible;
- The proposed depth of the garage was necessary to accommodate the storage trusses with the stairway; and,
- It would be reasonable for the face of the garage with the doors could be pushed back to 20 feet, and the portion with the stairs could remain at 24 feet in order for the garage to be ordinance compliant.

Board comments were as follows:

- The requested variance was larger than necessary in order to accommodate the storage truss, which does not represent a practical difficulty;
- Putting the face of the garage at 20 feet and the portion with the interior stairs at 24 feet would create more maneuverability for garage ingress and egress; and,
- There would be alternate plans that would allow this garage to be added to the property without either requiring the same amount of variance or possibly without requiring a variance at all.

Motion by Mr. Miller

Seconded by Mr. Kona with regard to Appeal 23-22, Chapter 126, Article 4, Section 4.03(B) of the Zoning Ordinance requires the distance between an accessory building is not permitted closer to a principal residential buildings on an adjoining lot than the sum of the minimum required side setbacks of 14.00 feet or 25% of total lot width, whichever is larger. The required is 22.50 feet. The proposed is 18.00 feet. Therefore, a variance of 4.50 feet is being requested.

Mr. Miller moved to deny the present request because there were other options. While the appellant faced some hardship in terms of maneuvering vehicles into the garage, if a portion of the face of the garage were revised, either no or minimal variance would be required.

The Chair supported the motion, stating there were multiple options to mitigate or eliminate the variance. He noted that there was already an extant, functional garage on the property.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Lilley, Morganroth, Miller, Reddy, Kona

Nays: None

T# 08-34-23

**3) 1002 Pilgrim
Appeal 23-23**

ABO Zielke presented the item, explaining that the owner of the property known as 1002 Pilgrim was requesting the following variance to construct a second floor addition to the existing home:

- A. Chapter 126, Article 2, Section 2.04.2** of the Zoning Ordinance requires that the minimum total side yard setbacks of 14.00 feet or 25% of total lot width, whichever is larger. The required is 20.00 feet. The proposed is 16.34 feet. Therefore, a variance of 3.66 feet is being requested.

Staff answered informational questions from the Board.

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

One Board member shared appreciation that the appellant noted their attempts to mitigate the variance request.

Motion by Mr. Miller

Seconded by Mr. Lilley with regard to Appeal 23-23, Chapter 126, Article 2, Section 2.04.2 of the Zoning Ordinance requires that the minimum total side yard setbacks of 14.00 feet or 25% of total lot width, whichever is larger. The required is 20.00 feet. The proposed is 16.34 feet. Therefore, a variance of 3.66 feet is being requested.

Mr. Miller moved to approve the variance request and tied approval to the plans as submitted. He noted the need for the variance was not self-created, and resulted from the home being an older one with a pre-existing non-conformity. He noted that strict compliance with the ordinance would prevent the appellant from building a very reasonable second-story addition. He added that there would be no concerning impact for either the neighbor or the neighborhood.

The Chair offered his support for the motion. He explained that the appellant identified other options that would have increased the variance or would have rendered the proposed changes non-functional. He noted that there was an existing non-conformity, and that the appellant did not increase the non-conformity.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Lilley, Morganroth, Miller, Reddy, Kona

Nays: None

T# 08-35-23

4) 2649 Yorkshire

Appeal 23-24

ABO Zielke presented the item, explaining that the owner of the property known as 2649 Yorkshire was requesting the following variances to construct an addition to the existing 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 18.75 feet on the west side. The proposed is 14.20 feet. Therefore, a variance of 4.55 feet is being requested.
- B. Chapter 126, Article 4, Section 4.75(A)(1)** of the Zoning Ordinance requires that attached garages must be setback a minimum of 5.00 feet from the portion of the front façade on the first floor of a principal residential building that is furthest setback from the front property line. The proposed is 1.00 feet. Therefore, a variance of 4.00 feet is being requested.

Staff answered informational questions from the Board.

Zach Ostroff, builder, 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. Ostroff explained:

- 24 feet would be the inside measurement of the garage, and there would also be wall thickness and brick to consider;
- Steps would need to be added internally to the garage due to grade differences between the garage and the house;
- Everything could be pushed back four feet in order to eliminate Variance B;
- The steps would be less relevant to only Variance A;
- The purpose of this request would be to provide shelter for older visitors who would be parking and then entering the house; and,
- Portions of the deck would have to be removed and reinstalled in order to complete the project.

Board comment was as follows:

- The property was non-conforming, and the proposed plans would increase the non-conformity;
- The appellant's presentation did not indicate why the ordinance could not be met;
- The appellant's request was for a larger garage than many people that submit appeals to the BZA;
- Variance A was challenging for the BZA since it would be expanding the pre-existing non-conformity;
- If the interior garage steps were to be presented as part of the appellant's hardship, those would need to be represented in the submitted documentation.

Motion by Mr. Kona

Seconded by Mr. Reddy with regard to Appeal 23-24, 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 18.75 feet on the west side. The proposed is 14.20 feet. Therefore, a variance of 4.55 feet is being requested.

Mr. Kona moved to deny Variances A and B. He noted there would be several alternative options, and there was insufficient information provided regarding the steps.

Mr. Miller supported the motion since the appellant had other options. He said the proposal and functions could largely be built while respecting the required setbacks.

The Chair said that reducing the width of the proposed garage would somewhat mitigate the variance request, and allow the garage to be substantially as functional. He said changing the depth of the garage would not change the usability of the garage, and that the mudroom could be reconfigured to add more depth to the garage if desired. The Chair agreed that there were likely other options that would mitigate the need for a variance. He said he did not see a practical difficulty necessitating the variances.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

T# 08-36-23

**5) 508 W. Lincoln
Appeal 23-25**

ABO Zielke presented the item, explaining that the owner of the property known as 508 W Lincoln was requesting the following variance to construct an in-ground pool:

- A. Chapter 126, Article 4, Section 4.03(D)** of the Zoning Ordinance requires that a swimming pool shall not be closer than 10.00 feet to the principal building located on the same lot. The proposed is 8.00 feet. Therefore, a variance of 2.00 feet is being requested.

Staff answered informational questions from the Board.

Richard Scheck, contractor, 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. Scheck explained:

- The two feet variance being requested would make a difference for the usage of the pool;
- His understanding of the ordinance was that it was to keep the pool out of the area of influence of the foundation; and,
- The pool could be moved further north per the ordinance.

Board comment was as follows:

- The ordinance and the lot would not allow for a 12 foot pool;
- There are many elements allowed on the sides of a foundation; and,

- Regardless of the purpose of the ordinance, the BZA would need to hear why the ordinance could not be adhered to.

Motion by Mr. Reddy

Seconded by Mr. Kona with regard to Appeal 23-25, Chapter 126, Article 4, Section 4.03(D) of the Zoning Ordinance requires that a swimming pool shall not be closer than 10.00 feet to the principal building located on the same lot. The proposed is 8.00 feet. Therefore, a variance of 2.00 feet is being requested.

Mr. Miller moved to deny the variance. He said that while he originally thought the location of the pool was limited by the power lines, since that was not ultimately the case, the request seemed to be self-created. He stated that the request was not due to unique circumstances of the property, and that adhering to the ordinance in this case would not be unnecessarily burdensome.

Mr. Reddy concurred with Mr. Miller.

The Chair supported the motion. He said there were a number of options available for mitigating the ordinance.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

T# 08-37-23

**6) 1115 Chapin
Appeal 23-26**

ABO Zielke presented the item, explaining that the owner of the property known as 1115 Chapin was requesting the following variances to construct a new 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.
- B. Chapter 126, Article 4, Section 4.03(G)(1)(C)** of the Zoning Ordinance requires that the minimum building height on an accessory structure in the R3 zoning shall not exceed 14.50 feet to the mid-point. The proposed is 15.25 feet. Therefore, a variance of 0.75 feet is being requested.

Staff answered informational questions from the Board.

Frank Colasanti Jr., co-owner, 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. Colasanti explained that the appellants were advised that the structure could accommodate two vehicles, especially since one of the vehicles was smaller.

Board comments were as follows:

- The lot is limited by its size and the ordinances, and the BZA's decision could not be impacted by the amount of storage desired by the appellant;
- Since most or all of the structure would be used for storage, the width could be reduced by two feet in order to mitigate the need for a variance;
- A different style roof may change where the peak would be measured from. Reducing the width of the garage would also lower where the peak would be measured from; and,
- It would be difficult for the garage to accommodate two vehicles given the stairs.

Motion by Mr. Reddy

Seconded by Mr. Miller with regard to Appeal 23-26, 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; and, Chapter 126, Article 4, Section 4.03(G)(1)(C) of the Zoning Ordinance requires that the minimum building height on an accessory structure in the R3 zoning shall not exceed 14.50 feet to the mid-point. The proposed is 15.25 feet. Therefore, a variance of 0.75 feet is being requested.

Mr. Reddy moved to deny the variances. He said slight modifications to the design would minimize or eliminate the requested variances. He noted that the modifications might also benefit the appellant.

Mr. Hart said there was hardship faced by the appellant in terms of the size of the garage. He said the appellant also tried to mitigate the extent of the variance. He said the garage could not be much smaller, and therefore represented a reasonable request. He said he would not support the motion.

Motion carried, 5-1.

ROLL CALL VOTE

Yeas: Lilley, Morganroth, Miller, Reddy, Kona

Nays: Hart

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 9:44 p.m.



Bruce R. Johnson, Building Official



Laura Eichenhorn, City Transcriptionist