

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, September 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, September 12, 2023. Chair Morganroth convened the meeting at 7:30 p.m.

2. Rollcall

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

Absent: Vice Chair Jason Canvasser; Board Member Ron Reddy

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 August 8, 2023

T# 09-38-23

Motion by Mr. Lilley

Seconded by Mr. Kona to approve the minutes of the BZA meeting of August 8, 2023 as submitted.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

5. Appeals

T# 09-39-23

**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 and proposed is 30.29% (3562.43 SF). Therefore, a variance of 9.71% (1142.57 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.

Board comments were as follows:

- While the proposed impervious elements might benefit the owner, the lot did not allow for the amount of impervious surface proposed;
- The applicant could reduce the amount of impervious surface proposed;
- The east side of the original driveway was replaced with pervious surface. The applicant should submit updated documents to the Board indicating the amount of impervious surface that was replaced with pervious surface;
- If the applicant did not intend to implement the plans exactly as presented, the Board could not vote on the plans;
- Since the applicant would be having a professional do the plans for a resubmission, the professional might advise on ways of further reducing the impervious surface in order to reduce the requested variance, which would increase the chances of approval;
- Removing the bricks inside the curved driveway would reduce the amount of impervious surface on the lot; and,
- The amount of pavement required for an entry into a rear-facing garage can make reducing impervious surfaces on a lot challenging.

Mr. Grabel elected to table the item and to return with more precise plans.

Motion by Mr. Miller

Seconded by Mr. Lilley with regard to Appeal 23-27, a motion to postpone to October 10, 2023.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

T# 09-40-23

**2) 1340 Puritan
Appeal 23-28**

ABO Zielke presented the item, explaining that the owner of the property known as 1340 Puritan was requesting the following variance for a second floor rear addition:

A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the total combined setbacks are 14.00 feet or 25% of total lot width, whichever is larger. The required is 20.00 feet. The proposed is 18.80 feet. Therefore, a variance of 1.20 feet is being requested.

Staff answered informational questions from the Board.

Eric Heiderer of Polyarch Inc., representing the owners, 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.

Board comments were as follows:

- If the house did not have an overhang, a variance would still be required; and,
- The planned main bedroom is large, and based on the applicant's response the extra foot of the cantilever would not be required and only added an additional nonconformity.

Motion by Mr. Yaldo

Seconded by Mr. Miller with regard to Appeal 23-28, A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the total combined setbacks are 14.00 feet or 25% of total lot width, whichever is larger. The required is 20.00 feet. The proposed is 18.80 feet. Therefore, a variance of 1.20 feet is being requested.

Mr. Yaldo moved to approve variance request, tied to the plans as submitted, on the condition that it be pulled back about a foot with respect to the main bedroom and that revised plans be submitted.

The Chair clarified that the cantilever would be removed.

Mr. Yaldo confirmed.

It was confirmed that Staff could administratively approve that change.

Mr. Miller said the need for the variance was due to the unique existing circumstances of the house, was not self-created, and that it was very reasonable to create an addition like the one proposed. He said that conformity to the ordinance would be

unnecessarily burdensome in this case. He voiced his support for the elimination of the overhang as well.

The Chair offered his support for the motion. He noted that while the Board aims to not increase existing nonconformities, in specific situations the Board allows for existing nonconformities to be maintained so as not to penalize the owner.

In reply to Staff, the Chair clarified that the roof overhang could be allowed, and that the second floor overhang would need to be removed per the motion. He clarified that would allow the applicant to build within the present nonconformity, but not to expand the existing nonconformity.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

T# 09-41-23

**3) 1450 Bird
Appeal 23-29**

ABO Zielke presented the item, explaining that the owner of the property known as 1450 Bird was requesting the following variances to reconstruct 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 existing is 32.60% (1565 SF). The proposed is 31.00% (1490.00 SF). Therefore, a variance of 1.00% (50.00 SF) is being requested.

B. Chapter 126, Article 4, Section 4.03(G)(1)(C) of the Zoning Ordinance requires that the maximum building height of an accessory structure in the R3 zoning shall not exceed 14.50 feet to the mid-point. The proposed is 15.50 feet. Therefore, a variance of 1.00 feet is being requested.

Staff answered informational questions from the Board.

Timothy Chak, 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.

Board comments were as follows:

- The plans reduced the nonconformity to an extent and would be taken into account;
- The desire for a fan would not be considered a practical difficulty. Adding a fan because the applicant did not want to add a different mechanism for heating the space would also not amount to a practical difficulty;

- The challenge facing the applicant was common to every property owner in an R3 district. The variance would then be disregarding the ordinance in this case. A variance should be granted based on the unique circumstances of the property;
- Whether the variance request was impacted by the fact that the structure was still partially standing could be a point of discussion for the Board;
- There were some options for reducing the extent of the variance being requested; and,
- While Variance B would have been more difficult to approve, Variance A was a more reasonable request.

In reply to Board comment, Mr. Chak stated he would be willing to only pursue Variance A and to eliminate his request for Variance B.

Motion by Mr. Hart

Seconded by Mr. Lilley with regard to Appeal 23-29, 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 existing is 32.60% (1565 SF). The proposed is 31.00% (1490.00 SF). Therefore, a variance of 1.00% (50.00 SF) is being requested.

Mr. Hart moved to approve Variance A only and tied approval to the plans. He said it was a reasonable request to keep the footprint relatively the same in terms of the garage that was damaged, that the percentage of lot coverage would be a minimal amount, and that it would have minimal impact on the neighboring properties. He said allowing Variance A would do substantial justice to the owner and the neighbors.

In regards to Variance B, Mr. Hart said that minor modifications to the structure could allow for the requested building heights and usage that the applicant would prefer.

The Chair noted that the plans reduced the necessary variance because of the addition of the staircase.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

T# 09-42-23

Motion by Mr. Yaldo

Seconded by Mr. Miller with regard to Appeal 23-29, Chapter 126, Article 4, Section 4.03(G)(1)(C) of the Zoning Ordinance requires that the maximum building height of an accessory structure in the R3 zoning shall not exceed 14.50 feet to the mid-point. The proposed is 15.50 feet. Therefore, a variance of 1.00 feet is being requested.

Mr. Yaldo moved to deny Variance B. He stated that the challenge facing the applicant was not due to the unique circumstances of the property and would be shared by all

other property owners within the R3 zone, which resulted in there being no basis on which to grant Variance B.

The Chair voiced his support for the motion and noted that the appellant agreed to remove the request for Variance B.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

T# 09-43-23

**4) 2649 Yorkshire
Appeal 23-31**

ABO Zielke presented the item, explaining that the owner of the property known as 2649 Yorkshire was requesting the following variance 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 16.00 feet. Therefore, a variance of 2.75 feet is being requested.

Staff answered informational questions from the Board.

Eli Nakhleh, 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.

Board comments were as follows:

- If any part of the future engineering documents indicate the need for a variance greater than 2.75 feet, the applicant would have to return for a new variance;
- The variance request would add to the existing garage in the back, but would not change the outside wall or the existing distance between the two homes;
- Compared to the applicant's previous request, the present request was much more reasonable; and,
- Since the foundations would be new, they could be poured in line with the variance.

Motion by Mr. Hart

Seconded by Mr. Lilley with regard to Appeal 23-31, 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 16.00 feet. Therefore, a variance of 2.75 feet is being requested.

Mr. Hart moved to approve the variance request and tied approval to a maximum variance of 2.75 feet and to the plans other than that. He said the applicant had done a good job of mitigating the issues that were raised during the previous presentation to the Board.

The Chair noted that the applicant's engineer would have to confirm that the plans would result in a variance no greater than 2.75 feet, and that the surveyor would have to verify that the dimensions of 4.9 feet and 11.1 feet were consistent.

Mr. Miller voiced his support for the motion. He said the quality of the addition would do substantial justice not only to the applicant, but to the neighboring property owners as well.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

T# 09-44-23

**5) 220 Park
Appeal 23-32**

SP Cowan presented the item, explaining that the owner of the property known as 220 Park was requesting the following variance to remove one directly accessible storefront from the public sidewalk facing Hamilton Row:

A. Chapter 126, Article 3, Section 3.04(E) of the Zoning Ordinance requires that storefronts be directly accessible from public sidewalks. The applicant is proposing a building frontage along Hamilton Row without a directly accessible entrance facing the street's frontage line at the first story. Therefore, a variance of one directly accessible storefront from the public sidewalk is being requested.

Staff answered informational questions from the Board.

John Hindo, President of Boji Group, 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.

Board comments were as follows:

- An ordinance-compliant entrance could be maintained with a card swipe or buzzer so it would not be accessible at all times;
- There was some concern about setting a precedent where a window, rather than a door, would be facing a street in the downtown area;
- It could be argued that the side of the building facing Hamilton was not a storefront area or part of the core downtown area;
- When a bank occupied this building, one of the doors required that visitors be buzzed in for entry;

- The Hamilton facade was not required to be a commercial storefront and did not have the same glazing requirements as other parts of the downtown overlay. Since this building was permitted to have a first floor office use, the ordinance requiring a door off Hamilton may not apply to this building;
- Creating a door into a private office space seemed to contradict the purpose of the ordinance; and,
- WeWork did not have a door on the Oakland facade.

Mr. Hindo committed to creating an ordinance-compliant door if the tenant left at the end of their 15-year lease.

Motion by Mr. Lilley

Seconded by Mr. Kona with regard to Appeal 23-32, Chapter 126, Article 3, Section 3.04(E) of the Zoning Ordinance requires that storefronts be directly accessible from public sidewalks. The applicant is proposing a building frontage along Hamilton Row without a directly accessible entrance facing the street’s frontage line at the first story. Therefore, a variance of one directly accessible storefront from the public sidewalk is being requested.

Mr. Lilley moved to approve the variance request and tied approval to the plans because otherwise a door would be leading into a private office. The purpose of the ordinance might require a door on every side of a large building if there were retail involved, but those circumstances were not present in this case.

In reply to the Chair, Mr. Lilley confirmed his motion would also require that the applicant add the door in the future if the use were to change.

The Chair clarified that requirement would apply if the tenant elected not to renew their lease or if the tenant were to change, and if the space were to become a more public one. He noted the City would be able to require that a door be added onto the Hamilton facade either at the expense of the tenant or the owner, depending on their lease.

Mr. Miller said he had been concerned about setting precedent. While he noted that maintaining activity on the streets in the downtown area was important to Birmingham, he added that the unique condition of this building warranted support for the motion.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Lilley, Morganroth, 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 9:25 p.m.

A handwritten signature in blue ink, appearing to read "Bruce R. Johnson".

Bruce R. Johnson, Building Official

A handwritten signature in black ink, appearing to read "Laura Eichenhorn".

Laura Eichenhorn, City Transcriptionist