

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, June 13, 2023
City Commission Room
151 Martin Street, Birmingham, Michigan

1. Call To Order

Minutes of the special meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, June 13, 2023. Chair Morganroth convened the meeting at 7:30 p.m.

2. Rollcall

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

Absent: None

Staff: Building Official Johnson; Senior Planner Cowan, City Transcriptionist Eichenhorn, 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 present.

3. Announcements

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

4. Approval Of The Minutes Of The BZA Meetings Of May 9, 2023

T# 06-26-23

Motion by Mr. Lilley

Seconded by Mr. Yaldo to approve the minutes of the BZA meeting of May 9, 2023 as submitted.

Motion carried, 7-0.

VOICE VOTE

Yeas: Hart, Canvasser, Miller, Reddy, Lilley, Morganroth, Yaldo

Nays: None

5. Appeals

T# 06-27-23

**1) 185 Oakland
Appeal 23-17**

SP Cowan presented the item, explaining that the owner of the property known as 185 Oakland Ave was requesting the following variances:

- A. Chapter 126, Article 3, Section 3.09(B)(1)** requires that no less than 70% of the storefront/ground floor façade between 1 and 8 feet above grade shall be clear glass panels and doorway. The applicant is proposing changes to the façade facing Oakland Ave that will result in a glazing percentage of 51.5% (300.29 square feet); therefore, a variance of 18.5% (107.81 square feet) is being requested.
- B. Chapter 126, Article 3, Section 3.09(B)(1)** requires that no less than 70% of the storefront/ground floor façade between 1 and 8 feet above grade shall be clear glass panels and doorway. The applicant is proposing changes to the façade facing Ferndale Ave that will result in a glazing percentage of 59.5% (472.89 square feet), therefore a variance of 10.5% (83.4 square feet) is being requested.

Staff answered informational questions from the Board.

Russ Hinkle, architect, 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. Hinkle explained:

- Since the glazing would be changing, it would more beneficial to leave the sill as-is in order to avoid exposing the backs of the desks to the sun; and,
- The landlord was undertaking the project and was attempting impact the tenant as little as possible. The landlord was aiming to avoid asking the tenant to change the interior layout of the office.

Motion by Mr. Reddy

Seconded by Mr. Lilley with regard to Appeal 23-17, Chapter 126, Article 3, Section 3.09(B)(1) requires that no less than 70% of the storefront/ground floor façade between 1 and 8 feet above grade shall be clear glass panels and doorway. The applicant is proposing changes to the façade facing Oakland Ave that will result in a glazing percentage of 51.5% (300.29 square feet); therefore, a variance of 18.5% (107.81 square feet) is being requested; and, B. Chapter 126, Article 3, Section 3.09(B)(1) requires that no less than 70% of the storefront/ground floor façade between 1 and 8 feet above grade shall be clear glass panels and doorway. The

applicant is proposing changes to the façade facing Ferndale Ave that will result in a glazing percentage of 59.5% (472.89 square feet), therefore a variance of 10.5% (83.4 square feet) is being requested.

Mr. Reddy moved to approve the variance requests for both A and B and tied approval to the plans. He said the appellant articulated straightforward reasons explaining why it would be an unreasonable burden to modify the windowsills. He noted the building was pre-existing non-conforming and that the appellant made efforts to increase compliance with the ordinance.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Hart, Canvasser, Miller, Reddy, Lilley, Morganroth, Yaldo

Nays: None

T# 06-28-23

**2) 1511 E. Maple Road
Appeal 23-19**

ABO Zielke presented the item, explaining that the owner of the property known as 1511 E. Maple Road was requesting the following variance to construct a rear addition to the existing nonconforming house:

- 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 20.00 feet on the east side. The proposed is 17.20 feet. Therefore, a variance of 2.80 feet is being requested.

Staff answered informational questions from the Board.

Jason Hurst, co-owner, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to the Board, Mr. Hurst explained that while they explored stepping the wall of the second floor in, and were advised not to given load-bearing and cost concerns.

Motion by Mr. Hart

Seconded by VC Canvasser with regard to Appeal 23-19, 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 20.00 feet on the east side. The proposed is 17.20 feet. Therefore, a variance of 2.80 feet is being requested.

Mr. Hart moved to approve the variance request and tied approval to the plans as submitted. He said the appellant presented a reasonable request, that the pre-existing non-conforming portion of the home would not be affected, that there would be little effect on the neighboring properties, that the existing condition was not self-

created, and that approval would do substantial justice to the owner and the neighboring properties.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Hart, Reddy, Lilley, Yaldo, Morganroth, Canvasser, Miller

Nays: None

**3) 220 Park
Appeal 23-20**

VC Canvasser recused from the item citing a professional relationship with the appellant and exited the meeting at 8:01 p.m. Mr. Kona served for the hearing of this item in light of VC Canvasser's recusal.

SP Cowan presented the item, explaining that the owner of the property known as 220 Park was requesting the following variance to install two illuminated building identification signs:

- A. Chapter 86, Article 1, Section 1.05 (K)(2)** of the Sign Ordinance permits non-illuminated signs identifying the entire structure by a building name to be permitted above the first floor. The applicant is proposing two illuminated building identification signs at 18.3 square feet each (36.6 square feet total). Therefore, the applicant is requesting a dimensional variance of 36.6 square feet of illuminated building identification signage.

Staff answered informational questions from the Board.

Dan Minkus, Managing Partner of the Birmingham location of Clark Hill, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to the Board, Mr. Minkus said:

- The signage design was an effort to distinguish Clark Hill from the other signage on the building;
- He did not believe that the 220 Park sign was an illuminated sign. He noted that upcoming changes to the sign might include illumination;
- This outcome of this case should not be considered precedential because each case should be considered on its own merits;
- Their hardships were related to wayfinding, having to move from their previous office, and a desire for increased recognition; and,
- If it were in the sign band, a south-facing sign might not be visible to northbound traffic on Woodward due to the location of Hunter House Hamburgers. On the east facade, the building is indented which might also obscure the signage from view; and,
- The building was not unique in regards to most of the other buildings in the City.

Motion by Mr. Miller

Seconded by Mr. Lilley with regard to Appeal 23-20, A. Chapter 86, Article 1, Section 1.05 (K)(2) of the Sign Ordinance permits non-illuminated signs identifying the entire

structure by a building name to be permitted above the first floor. The applicant is proposing two illuminated building identification signs at 18.3 square feet each (36.6 square feet total). Therefore, the applicant is requesting a dimensional variance of 36.6 square feet of illuminated building identification signage.

Mr. Miller moved to approve the variance request and tied approval to the plans as submitted. He said a variance would do substantial justice to this particular petitioner. He said the building was in a unique location on Woodward, and noted that many nearby buildings had signage above the current limit. He noted that the lighting would be soft and unobtrusive due to its use of LED lighting. He said the request was reasonable due to the location of the building.

The Chair said that while he appreciated the appellant's presentation, the ordinance did not allow lighting based on the level, softness, or type of lighting used. He noted that the appellant would be able to brand the building through an agreement with the landlord, and that lighting of the signage was not permitted in the ordinance. He noted that the sign could also be illuminated within the sign band. He said the appellant therefore had sufficient opportunity to maximize exposure and illuminate without a variance. He said he would not support the motion for that reason.

Mr. Kona concurred with the Chair. He noted the ordinance would permit the appellant to have both the signage on the third floor and a lit sign in the sign band. He said that would resolve any difficulties with trying to locate the building in the dark without a variance. He said he would not support the motion and that there was no justification for the variance.

Mr. Hart said he would support the motion. He noted that there are a number of challenges with multi-tenant buildings and identification. He said the lighting would be very subtle and that foot candles with LEDs are very difficult to measure. He noted that the sign would be indirect lighting. Given the challenges with the building, he said he would support the motion.

The Chair noted it was not within the Board's purview to change the ordinance. He noted the appellant could petition the Commission if they believed the ordinance should be changed in regards to the lighting of signs. He said he did not hear anything from the appellant that established a practical difficulty.

Mr. Yaldo said it was his understanding that in order to grant a variance the difficulties faced by the appellant needed to be relatively unique to that appellant. He noted there were many other buildings along Woodward, and asked what would prevent those buildings from requesting the same variance. He said there were no particularly unique features of the building relative to other buildings along Woodward, and said he was concerned the Board would be varying from the standards it was required to vote on if the variance were granted.

Mr. Miller said there were not many buildings on Woodward, which made this building unique. He also opined that it was the Board's responsibility to do what was reasonable, even if it was beyond the ordinance. He noted that anyone requesting a

signage variance would have to have their appeal reviewed by the Board, and that the Board would determine whether a request was reasonable or unreasonable. He noted the sign was neither large nor bright, and that the building was relatively unique given its location. He said that any building on Woodward became a somewhat unique situation compared to other buildings within the City. He said that was why he found the appellant's request to be reasonable.

Motion failed, 3-4.

ROLL CALL VOTE

Yeas: Hart, Lilley, Miller

Nays: Morganroth, Reddy, Kona, Yaldo

VC Canvasser rejoined the meeting at 8:31 p.m.

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 8:32p.m.



Bruce R. Johnson, Building Official



Laura Eichenhorn, City Transcriptionist