

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, October 12, 2021
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, October 12, 2021. Chair Charles Lillie convened the meeting at 7:33 p.m.

2. Rollcall

Present: Chair Charles Lillie; Board Members Jason Canvasser, Kevin Hart, John Miller, Richard Lilley; Alternate Board Members Ron Reddy, Erin Rodenhouse

Absent: Board Members Erik Morganroth, Francis Rodriguez

Administration:

Bruce Johnson, Building Official
Brooks Cowan, Senior Planner
Laura Eichenhorn, City Transcriptionist
Mike Morad, Assistant Building Official
Jeff Zielke, Assistant Building Official

Chair Lillie welcomed those present, reviewed the meeting's procedures, and assigned duties for running the evening's meeting to Vice-Chair Canvasser.

Vice-Chair Canvasser described BZA procedure to the audience. 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.

Vice-Chair Canvasser took rollcall of the petitioners. All petitioners were present.

T# 10-55-21

3. Announcements

The highly transmissible COVID-19 Delta variant is spreading throughout the nation at an alarming rate. As a result, the CDC is recommending that vaccinated and unvaccinated personnel wear a facemask indoors while in public if you live or work in a substantial or high transmission area. Oakland County is now at the HIGH level of community transmission for COVID-19. The City has reinstated mask requirements for all employees while indoors. The mask requirement also applies to all board and commission members as well as the public attending public meetings.

4. Approval Of The Minutes Of The BZA Meetings Of July 13, 2021 and September 14, 2021

Motion by Mr. Lilley

Seconded by Mr. Reddy to accept the Minutes of the BZA meeting of July 13, 2021 as submitted.

Motion carried, 4-0.

ROLL CALL VOTE

Yeas: Lilley, Lillie, Reddy, Rodenhouse

Nays: None

Abstain: Canvasser, Hart, Miller

For the September 14, 2021 minutes, Mr. Lillie noted that the motion for Appeal 21-38 should read "Mr. Lillie moved", not "Mr. Canvasser moved".

Motion by Mr. Lillie

Seconded by Mr. Lilley to accept the Minutes of the BZA meeting of September 14, 2021 as amended.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Lilley, Lillie, Hart, Canvasser, Miller

Nays: None

Abstain: Reddy, Rodenhouse

T# 10-56-21

5. Appeals

**1) 566 Ann
Appeal 21-41**

SP Cowan presented the item, explaining that the owner of the property known 566 Ann was requesting the following variance to install a new solar panel car port:

A. Chapter 126, Article 4, Section 4.03(H) of the Zoning Ordinance requires that the maximum area of an accessory structure in an R3 zone not exceed 500 square feet. The applicant is proposing a 1,177 square foot solar panel car port, therefore a dimensional variance of 677 square feet is being requested

Sachit Verma of Nova Consultants reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to Vice-Chair Canvasser, Mr. Verma said that the need for the variance was not self-created because climate change is not self-created and the likely future increase in the use of electric vehicles is not self-created. Mr. Verma stated Stephen Roby, appellant, was seeking the variance to respond to those two factors which are outside of his control.

In reply to Ms. Rodenhouse, Mr. Verma said allowing public use of the electric vehicle (EV) charging port would not increase traffic to the property since it would take four to six hours to fully charge one vehicle. Consequently, only one or two extra vehicles could be charged at the property per day.

Motion by Mr. Lillie

Seconded by Ms. Rodenhouse with regard to Appeal 21-41, A. Chapter 126, Article 4, Section 4.03(H) of the Zoning Ordinance requires that the maximum area of an accessory structure in an R3 zone not exceed 500 square feet. The applicant is proposing a 1,177 square foot solar panel car port, therefore a dimensional variance of 677 square feet is being requested.

Mr. Lillie moved to deny the variance because he found that the petitioner showed no practical difficulty. Mr, Lillie stated compliance with the ordinance was not unduly burdensome and that the petitioner was not being prevented from using the property as permitted. He contended that granting the variance would not do substantial justice to the property owners in the area and that there are no unique circumstances of the property that require the variance. Mr. Lillie noted the BZA has been historically strict about limiting the size of accessory structures to the size permitted by the ordinance. He said to grant the variance in this case might raise questions about previous appeals where larger accessory structures were not permitted.

Mr. Miller noted the disjuncture between the Victorian style of the building at 266 Ann and the industrial quality of the proposed carport. He explained the carport would not complement the property or the surrounding area and would therefore not do substantial justice to the neighbors. He said for that reason he would support the motion.

Mr. Reddy stated that strict compliance with the ordinance would not disrupt the appellant's ability to do business. He said he would support the motion.

Vice-Chair Canvasser clarified that the BZA was not ruling either on solar panels or an EV charging port in this appeal. He stated that the only matter at hand was the

request to allow a larger carport than would otherwise be permitted by ordinance. He said for that reason, and the reasons already stated by his colleagues, he would be supporting the motion.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Lillie, Rodenhouse, Miller, Lilley, Hart, Canvasser, Reddy

Nays: None

**2) 791 N. Eton
Appeal 21-42**

ABO Zielke presented the item, explaining that the owner of the property known as 791 N. Eton was requesting the following variances to construct a new single-family home with an attached garage:

A. Chapter 126, Article 2.08.2 of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width whichever is larger. The required is 17.50 feet. The proposed is 12.70 feet. Therefore; a variance of 4.80 feet is being requested.

B. Chapter 126, Article 4.30(C)4 of the Zoning Ordinance does not permit window wells in the required front open space. The proposed is to place a window well in the required front yard.

C. Chapter 126, Article 4.30(C)4 of the Zoning Ordinance permits window wells projecting into the required open space shall not exceed 6.00 feet in width. The proposed is 13.30 feet. Therefore a variance of 7.30 feet is being requested.

Matt Badrak, architect, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

In reply to Mr. Lillie, ABO Zielke stated that if the home were pushed back 3.8 feet the home would likely not need the variances for the window wells because it would no longer be in the required front open space. ABO Zielke also said he was not sure if the house to the west met its required total sideyard setbacks.

Mr. Lillie said the house to the west might be causing the need for variance A.

Mr. Miller concurred with Mr. Lillie, stating that the house to the west seemed too large for the lot.

BO Johnson also concurred. He stated the house to the west was most likely impacting the present appeal, but that the dimensions of the house to the west would be necessary to determine the extent of the impact.

Motion by Mr. Miller

Seconded by Ms. Rodenhouse with regard to Appeal 21-42, B. Chapter 126, Article 4.30(C)4 of the Zoning Ordinance does not permit window wells in the required front open space. The proposed is to place a window well in the required front yard; and, C. Chapter 126, Article 4.30(C)4 of the Zoning Ordinance permits window wells projecting into the required open space shall not exceed 6.00 feet in width. The proposed is 13.30 feet. Therefore a variance of 7.30 feet is being requested.

Mr. Miller moved to deny variances B and C because he believed front yard window wells are undesirable in the front yard setback. He said the desire for variances B and C was self-created and that there was no evidence that compliance with the ordinances would be unduly burdensome.

Ms. Rodenhouse noted the lot had no unique circumstances that would require variances B and C. She said there would also be concerns about precedent if variances B and C were granted. She explained that for those reasons she was supporting the motion.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Miller, Rodenhouse, Lilley, Lillie, Hart, Canvasser, Reddy

Nays: None

Motion by Mr. Miller

Seconded by Mr. Reddy with regard to Appeal 21-42, A. Chapter 126, Article 2.08.2 of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width whichever is larger. The required is 17.50 feet. The proposed is 12.70 feet. Therefore; a variance of 4.80 feet is being requested.

Mr. Miller moved to adjourn variance A of Appeal 21-42 to the November 9, 2021 BZA meeting on the condition that the BZA is provided more information on the lot to the west.

Mr. Reddy explained he could not tell without further information whether the house to the west was causing 791 N. Eton to require variance A. He said for that reason he was supporting the motion.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Miller, Reddy, Rodenhouse, Lilley, Lillie, Hart, Canvasser

Nays: None

BO Johnson instructed the Board to retain their documents for Appeal 21-42. He said additional information regarding the house to the west would be sent to the BZA members.

**3) 1974 Holland
Appeal 21-43**

Mr. Reddy recused himself from discussion of, and voting on, Appeal 21-43 since he is related to the property owners. He left the meeting at 8:26 p.m.

ABO Zielke presented the item, explaining that the owner of the property known as 1974 Holland was requesting the following variance to construct a new single-family home:

A. Chapter 126, Article 2.08.2 of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width whichever is larger. The required is 14.00 feet. The proposed is 10.63 feet on the east side. Therefore; a variance of 3.35 feet is being requested.

ABO Zielke confirmed that this house would meet the ordinance if not for the homes to the right or left.

Patrick Raye, builder, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet. He explained the property would sacrifice the space on the west side of the property to prevent the issue with the distance between principal residential buildings on adjacent lots from recurring with neighboring properties down the road. He also noted the building would stay within the current envelope even if the variance was granted.

Motion by Mr. Hart

Seconded by Mr. Miller with regard to Appeal 21-43, A. Chapter 126, Article 2.08.2 of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width whichever is larger. The required is 14.00 feet. The proposed is 10.63 feet on the east side. Therefore; a variance of 3.35 feet is being requested.

Mr. Hart moved to approve the variance and tied it to the plans as submitted. He said the appellant had demonstrated a hardship and lack of self-creation stemming from the staggered driveway and setback issue. He noted the appellant also proposed plans that would stop the staggered driveway-setback issue from impacting neighboring houses on the street.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Hart, Miller, Lilley, Lillie, Canvasser, Rodenhouse

Nays: None

**4) 1853 Fairview
Appeal 21-44**

Mr. Reddy rejoined the meeting at 8:37 p.m.

ABO Zielke presented the item, explaining that the owner of the property known as 1853 Fairview was requesting the following variance to replace the existing A/C condensers:

A. Chapter 126, Article 4, Section 4.03(A) of the Zoning Ordinance requires that no accessory structures shall be located in the required side open space. The minimum required side open space is 5.00 feet. The existing and proposed is 2.60 feet. Therefore a variance of 2.40 feet is being requested.

Wayne Ginste, builder and owner, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

Mr. Ginste clarified that in 1998 the front house steps exited to the west and that now the front house steps exit to the north. He explained the permit granted in 1998 was consistent with the survey of the house from 1998. The A/C units have always been on the southeast corner of house.

Mr. Ginste confirmed for Mr. Hart that moving the A/C to the rear of the home would be a prohibitively difficult process. He also confirmed that having the A/C in the side yard is more beneficial to the neighbors.

In reply to Mr. Lillie, Mr. Ginste stated that the proposed A/C unit would be 72 decibels.

In reply to Ms. Rodenhouse, Mr. Ginste confirmed that there would be fences between the A/C unit and the neighbors and the A/C unit and the street.

Motion by Mr. Reddy

Seconded by Mr. Lilley with regard to Appeal 21-44, A. Chapter Chapter 126, Article 4, Section 4.03(A) of the Zoning Ordinance requires that no accessory structures shall be located in the required side open space. The minimum required side open space is 5.00 feet. The existing and proposed is 2.60 feet. Therefore a variance of 2.40 feet is being requested.

Mr. Reddy moved to grant the variance and to tie it to the plans as submitted. He explained that the location of the A/C units were originally in compliance with ordinance and that the renovation of the home changed that. He said it would be unreasonable to force the appellant to move the A/C units from their current location.

Mr. Miller explained that a number of homes built before the 1930s have A/C units located in either the side or front yards. He said being able to maintain A/C units in their original locations and being able to replace them with quieter units was reasonable. He said for this reason he would be supporting the motion.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Reddy, Lilley, Lillie, Hart, Canvasser, Rodenhouse, Miller

Nays: None

**5) 2549 Buckingham
Appeal 21-45**

SP Cowan presented the item, explaining that the owner of the property known as 2549 Buckingham was requesting the following variance to operate a Group Home Day Care:

A. Chapter 126, Article 2, Section 2.07 of the Zoning Ordinance lists Permitted Uses, Accessory Permitted Uses, and Uses Requiring a Special Land Use Permit within the R2 – Single Family Residential zone. Group Home Day Care is not listed as a Permitted Use, an Accessory Use, or a use requiring a Special Land Use Permit, therefore a use variance to operate a Group Home Day Care is requested.

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

Mr. Lillie explained that it takes five affirmative votes to receive a use variance which he said is generally very difficult to achieve. He explained that the Board has to avoid spot zoning, and that approving this request would run the risk of being spot zoning since it would arguably alter the essential character of the neighborhood. He stated that the issue seemed to be self-created.

Vice-Chair Canvasser explained that while he was both sympathetic and appreciative of Ms. Ortiz's request, the Board was limited to reviewing the appeal as a request for a use variance. He said Ms. Ortiz might want to consider other potentially appropriate uses in the zoning ordinance that might apply to her case. Vice-Chair Canvasser concurred with Mr. Lillie's comments. He noted the appeal could only be reviewed based on the four-factor test for a use variance, and enumerated the four factors for Ms. Ortiz. He invited Ms. Ortiz to address any of the four factors as appropriate.

Mr. Ortiz spoke of the enthusiasm of families for the service she offers, the benefits to children, and the letters of support she has received from parents of children who attend.

Ms. Rodenhouse said that while she also appreciated Ms. Ortiz's efforts and enthusiasm, the Board would have to find that not granting the variance would prevent the appellant from using their home as a home; result in an unnecessary hardship, which would amount to essentially a taking of the property; and, not alter the essential character of the neighborhood. Ms. Rodenhouse noted that the Board also needs to be considerate of potential precedential effects.

Ms. Ortiz said that with the Covid-19 pandemic she would hope there would be an exception. She reiterated the enthusiasm that families have expressed.

In reply to Mr. Hart, Ms. Ortiz described the areas of the home used for Ortiz Educare which include the kitchen, dining room, living room, and a bedroom-turned-classroom.

Public Comment

Mike Abdullah, Sonya Frisco, and Adam Orley spoke in favor of granting the variance.

Mr. Abdullah said the Covid-19 pandemic was not self-created and that granting the variance should not be considered precedential since the impact of the pandemic is unique in this situation.

Ms. Frisco said she is a neighbor of the Ortizes and would be proud to have Ms. Ortiz's expanded group home day care use in her neighborhood.

Mr. Orley stated Ms. Ortiz's hours of operation are longer than those offered by Birmingham Public Schools which makes it easier to balance work and child care.

Motion by Mr. Lillie

Seconded by Vice-Chair Canvasser with regard to Appeal 21-45, A. Chapter 126, Article 2, Section 2.07 of the Zoning Ordinance lists Permitted Uses, Accessory Permitted Uses, and Uses Requiring a Special Land Use Permit within the R2 – Single Family Residential zone. Group Home Day Care is not listed as a Permitted Use, an Accessory Use, or a use requiring a Special Land Use Permit, therefore a use variance to operate a Group Home Day Care is requested.

Mr. Lillie moved to deny the variance. He explained that while Board members were sympathetic to Ms. Ortiz's appeal, the Board could not approve the variance and establish a precedent in this case. He explained that Ms. Ortiz was not being prevented from using her property and that there were no unique circumstances of the property that would require the variance. He noted that granting the variance would alter the essential character of the area, and said the matter was self-created. He reiterated the importance of avoiding spot zoning as well.

Vice-Chairman Canvasser echoed his previous comments from the discussion and concurred with Mr. Lillie, adding that the Board is quasi-judicial and needs to adhere strictly to the required four-factor test.

Mr. Hart said he would not support the motion, citing the extenuating circumstances of the Covid-19 pandemic. He stated the Board exists for this type of request, that granting the variance would do substantial justice to the neighboring community. He stated there were unlikely to be similar enough circumstances in another case in the future that this case could be cited as precedent. He noted that other cases would still need to provide supporting documentation, prove the substantial justice of their requests, and stand on their own merits.

Motion carried, 6-1.

ROLL CALL VOTE

Yeas: Miller, Lilley, Lillie, Canvasser, Reddy, Rodenhouse
Nays: Hart

**6) 1394 Westwood
Appeal 21-46**

ABO Zielke presented the item, explaining that the owner of the property known as 1394 Westwood was requesting the following variances to construct an addition to a single family home with an attached garage:

A. Chapter 126, Article 4, Section 4.61(A)(2) of the Zoning Ordinance requires that a corner lot where there is no abutting interior residential lot on such side street, the minimum side street setback shall be 15.00 feet for permitted attached garages with vehicle entry doors facing the side street. The proposed is 12.81 feet. Therefore, a 2.19 foot variance is being requested.

B. Chapter 126, Article 4.75(A)(2) of the Zoning Ordinance requires that garage doors on attached garages which face a street may not exceed 9.00 feet in width. The proposed is 18.00 feet. Therefore; a variance of 9.00 feet is being requested.

Jeffrey Labelle, owner, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet. Robert Clarke, architect, was available for technical questions.

Mr. Clarke stated that if he were to install two nine-foot garage doors and add an eight-inch section in between then he would only have 12 inches of structural material at the corners. He said that was too small, even with a tie-down. He stated that he would need 16 to 20 inches on the outside corners.

Mr. Hart said two nine-foot doors should work using LVL material or steel for the header.

Mr. Clarke explained that the header was not the issue, but the corner of the wall. He explained there is a portal condition of the building code that requires a certain dimension on the outside edge of the opening of the doors. As a result, the building code requires that corners of the structure have tie-downs when the structure on the edges is under 20 inches.

In reply to Mr. Hart, Mr. Clarke confirmed that the appellant considered a 16-foot door but found it was too little space to easily accommodate the appellant's two oversized vehicles.

Vice-Chair Canvasser asked BO Johnson and ABO Zielke for their insight.

BO Johnson said while without the figures he could not say for sure, he suspected there was a way to engineer the garage to allow for two nine-foot doors. He acknowledged doing so might increase the cost.

ABO Zielke concurred.

In reply to Mr. Miller, Mr. Clarke stated that there would be 4.5 inches of masonry on the outside edges of the structure, the stud cavities, and then the 18-foot, four-inch door. He stated that if he were to use steel he could possibly do a center post in seven inches instead of the usual eight inches. He said he did not believe that he could expand the garage to the west enough to create space for the two nine-foot doors.

Mr. Labelle said that if Mr. Clarke believed it would be feasible Mr. Labelle would consent to the construction being done in steel to create two nine-foot garage doors.

After discussion, Mr. Labelle said he would be willing to just pursue variance A.

Motion by Mr. Lillie

Seconded by Mr. Miller with regard to Appeal 21-46, A. Chapter 126, Article 4, Section 4.61(A)(2) of the Zoning Ordinance requires that a corner lot where there is no abutting interior residential lot on such side street, the minimum side street setback shall be 15.00 feet for permitted attached garages with vehicle entry doors facing the side street. The proposed is 12.81 feet. Therefore, a 2.19 foot variance is being requested; and, B. Chapter 126, Article 4.75(A)(2) of the Zoning Ordinance requires that garage doors on attached garages which face a street may not exceed 9.00 feet in width. The proposed is 18.00 feet. Therefore; a variance of 9.00 feet is being requested.

Mr. Lillie moved to grant variance A and to deny variance B because the petitioner has withdrawn variance B. He stated variance A would be tied to the plans as submitted. He stated the appellant showed a practical difficulty and had also incorporated previous Board feedback regarding the proposal. He noted only a small portion of the garage would be in the 15-foot setback, that the issue was not self-created, and that the property is somewhat unusual.

Mr. Miller observed that the unique circumstances of this appeal are the position of the home on the lot and the non-rectangular lot shape. Consequently, he said the proposed variance was reasonable in this particular case.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Lillie, Miller, Lilley, Hart, Canvasser, Reddy, Rodenhouse

Nays: None

T# 10-57-21

6. Correspondence

Correspondence for Appeal 21-45 was distributed to the appellants at the beginning of the meeting.

All other correspondence was included in the agenda packet.

T# 10-58-21

7. General Business

T# 10-59-21

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

None.

T# 10-60-21

8. Adjournment

Motion by Mr. Lillie

Seconded by Mr. Lilley to adjourn the October 12, 2021 BZA meeting at 9:55 p.m.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Lillie, Lilley, Hart, Canvasser, Reddy, Rodenhouse, Miller

Nays: None



Bruce R. Johnson, Building Official