

**Birmingham Board Of Zoning Appeals Proceedings**  
**Tuesday, November 9, 2021**  
**City Commission Room**  
**151 Martin Street, Birmingham, Michigan**

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**1. Call To Order**

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, November 9, 2021. Chair Charles Lillie convened the meeting at 7:30 p.m.

**2. Rollcall**

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

**Absent:** Board Members Richard Lilley, 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 Morganroth.

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

**T# 11-61-21**

**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 October 12, 2021**

Mr. Canvasser asked that on page nine 'hew', meaning 'conform or adhere', be changed to 'adhere'.

Mr. Lillie wanted it made more clear, beyond the statement on page 11 that "After discussion, Mr. Labelle said he would be willing to just pursue variance A," that the appellant in Appeal 21-46 withdrew their request for variance B.

Mr. Miller expressed appreciation of the use of the word 'disjuncture' in the minutes on page three.

**Motion by Mr. Lillie**

**Seconded by Mr. Canvasser to accept the Minutes of the BZA meeting of October 12, 2021 as amended.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**T# 11-62-21**

**5. Appeals**

**1) 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 variance 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 was being requested.

ABO Zielke noted that Appeal 21-42 was also before the Board in October 2021 and was tabled at that time.

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

In reply to Ms. Rodenhouse, Mr. Badrak explained that the appellants could not comply with the ordinance even though it was a new building being proposed because they did not want to have to cross the driveway to reach their garage. He also stated that it made the back yard more usable for the appellants' young daughter.

**Motion by Mr. Miller**

**Seconded by Mr. Reddy with regard to Appeal 21-42, 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 was requested.**

**Mr. Miller moved to approve the variance and to tie it to the plans as submitted. He stated the problem was the result of the house next door and therefore was not self-created by the appellants. He said conformity with the ordinance in this case would be unnecessarily burdensome.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**2) 157 E. Frank  
Appeal 21-37**

ABO Zielke presented the item, explaining that the owner of the property known as 157 E. Frank was requesting the following variances to replace the existing driveway:

**A. Chapter 126, Article 2.10.1** of the Zoning Ordinance requires that a minimum open space of 40% (2440.00 SF), shall be maintained. The proposed is 33.52% (2045.00 SF). Therefore, a variance of 6.48% (395.00 SF) was being requested.

**B. Chapter 126, Article 4.31(A)** of the Zoning Ordinance requires that a minimum of 65% (1034.40) of the front open space in all single-family districts shall be free of paved surfaces. The proposed is 45.83% (729.43 SF). Therefore a variance of 19.17% (304.99 SF) was being requested.

ABO Zielke noted that Appeal 21-37 was also before the Board in September 2021 and was tabled at that time.

Michael Lewis, owner, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

A few hypothetical methods for reducing the variance requests were proposed by Board members. The appellant explained why those strategies would not be feasible.

**Motion by Ms. Rodenhouse**

**Seconded by Mr. Reddy with regard to Appeal 21-37, A. Chapter 126, Article 2.10.1 of the Zoning Ordinance requires that a minimum open space of 40% (2440.00 SF), shall be maintained. The proposed is 33.52% (2045.00 SF). Therefore, a variance of 6.48% (395.00 SF) was being requested; and, B. Chapter 126, Article 4.31(A) of the Zoning Ordinance requires that a minimum of 65% (1034.40) of the front open space in all single-family districts shall be free of paved surfaces. The proposed is 45.83% (729.43 SF). Therefore a variance of 19.17% (304.99 SF) was being requested.**

**Ms. Rodenhouse moved to approve the variances and tied them to the plans as submitted. She said the appellant established a practical difficulty. She stated that there were unique circumstances about the property, that the appellant's driveway was in disrepair, that the matter was not self-created and that the variances requested were the minimum necessary to remedy the situation.**

**Mr. Lillie said he would support the motion. He concurred with Ms. Rodenhouse that the appellant established a practical difficulty and noted that the appellant reduced the overall variance request compared to his previous submittal to the Board.**

**Mr. Reddy said this was one of the rare cases where compliance with the ordinance would be unduly burdensome. He said he would support the motion.**

**Mr. Canvasser said he understood the need to replace the driveway and could support a variance for the back of the radius. He said, however, that the circular driveway was a self-created issue and a pre-existing non-conforming use. He said he would want to see part of the driveway replaced with green space. For that reason, he said he could not support the motion.**

**Motion carried, 6-1.**

ROLL CALL VOTE

Yeas: Rodenhouse, Reddy, Lillie, Morganroth, Hart, Miller

Nays: Canvasser

**3) 1061 Forest  
Appeal 21-47**

BO Johnson presented the item, explaining that the owner of the property known as 1061 Forest was requesting the following variance to construct a fence in the required front open space:

**A. Chapter 126, Article 4.1(A)(1)** of the Zoning Ordinance states that fences in the front open space shall not exceed 3.00 feet in height. The proposed is 6.00 feet. Therefore, a variance of 3.00 feet was being requested.

BO Johnson confirmed for the Board that while technically the front open space is along Adams, the Forest side of the house has the address, the front door, and what would visually seem to be the front yard of the house.

Richard Rassel, attorney, 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 Morganroth, Mr. Rassel contended that the six foot fence would better ensure the appellants' childrens' safety and the appellants' privacy better than a three foot fence would.

In reply to Mr. Canvasser, Nicholas Green, co-owner, confirmed that both the neighbors directly adjacent to 1061 Forest and the neighbors in-view of the potential six foot fence had assented to its proposed installation.

Mr. Canvasser noted that while appeals do not function as popularity contests, it was useful to know whether the neighbors that would be most directly impacted by the fence were supportive of the request.

In reply to Board inquiry, BO Johnson confirmed that while the ordinance regarding fences has not changed since 1997, the original approval issued by the City for the six foot fence at this property may have been in error.

#### Public Comment

Eric Milton, neighbor to the west, said he strongly supported the appellants' request.

Saverio Bitonti said he was supportive of the appellants' request.

#### **Motion by Mr. Lillie**

**Seconded by Mr. Canvasser with regard to Appeal 21-47, A. Chapter 126, Article 4.1(A)(1) of the Zoning Ordinance states that fences in the front open space shall not exceed 3.00 feet in height. The proposed is 6.00 feet. Therefore, a variance of 3.00 feet was being requested.**

**Mr. Lillie moved to approve the variance and tied it to the plans as submitted. He noted unique circumstances of the property included that functionally the front of the house is along Forest while the City determined the front to be along Adams, and that the yard area used by the appellants' children is consequently also along Adams. He noted that Adams is a busy thoroughfare and the neighbor at 246 Adams is now**

**commercial, whereas the property used to be residential, both of which contribute to the reasonableness of the request. He said that while not every property on a busy street should get a similar variance, 1061 Forest does not seem to front on Adams and has had a similar six foot fence since 1997.**

**Mr. Miller expressed his support for the motion, saying that a six foot fence for a side or rear yard is reasonable for any Birmingham resident. Since Adam functions as the side yard, he said granting the request was appropriate in this case.**

**Vice-Chair Morganroth said he had a challenge with the idea that busier roads require fences higher than three feet. He said in his experience that a three foot fence plus landscaping is more than sufficient to maintain childrens' safety. He said that if main roads require an exception to the ordinance's requirements for fence heights that the Commission would need to determine that. He said this appellant established a practical difficulty by showing that the front and side of the property are determined differently from how they function, and that he would support the motion for that reason.**

**Mr. Lillie concurred with Vice-Chair Morganroth. He also stated that neighbors' support for a request does not prove a practical difficulty, just as a lack of neighbors' support does not negate the existence of a practical difficulty.**

**Mr. Reddy said he would support the motion, but noted that the appellants removing the original six foot fence was the reason the need for this request arose. He recommended that other homeowners facing similar issues reach out to the City before taking action.**

**Ms. Rodenhouse contended that the previous allowance of the six foot tall fence at the property, even if it was allowed in error by the City, established a precedent for this property that should be weighed heavily. She said that not granting the variance in this case would be an unreasonable restraint on this property.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**4) 670 S. Old Woodward  
Appeal 21-48**

SP Cowan presented the item, explaining that the owner of the property known as 670 S. Old Woodward was requesting one of the following variances to satisfy parking requirements in order to operate a salon/spa with 23 service chairs:

**A. Chapter 126, Article 4, Section 4.45(G)(2)** of the Zoning Ordinance requires that off-street parking be provided within 100 feet of the building being served, distance being measured along the most direct line of public pedestrian access. The applicant is proposing a shared parking agreement with Adams Square Shopping Center, which is 1,300 feet away from the subject property. Therefore, a variance of 1,200 feet was requested.

OR

**B. Chapter 126, Article 4, Table A** of the Zoning Ordinance requires that beauty salon uses provide 2 parking spaces per service chair, or 1 parking space per 300 square feet of floor area, whichever is greater. The applicant is proposing 23 service chairs and is required to provide 46 parking spaces. The subject property has 24 parking spaces on-site. Therefore, a variance of 22 parking spaces was requested.

Dennis Cowan, attorney, reviewed the letter describing why one of these two variances was being sought. The letter was included in the evening's agenda packet. He also noted he was of no relation to SP Cowan. Mr. Cowan also stated that SP Cowan, PD Dupuis, and ACE Ecker had been very helpful in the preparation of this request and asked that fact be noted.

In reply to Board inquiry, Mr. Cowan stated:

- The 23 chairs were being proposed in order to best utilize the 7000 sq. ft. facility, and the request for 23 chairs had been reduced from the original request of 36 chairs;
- Due to significant competition for real estate in Birmingham, the appellant had to purchase the property at 670 S. Old Woodward quickly and became aware of the parking issue after the fact;
- For variance A, the customers would be parking on-site and the stylists would be parking off-site at Adams Square;
- He and the appellant looked into potential parking agreements with a number of smaller, closer buildings, but many were uninterested and it was ultimately decided that it would be most practical to find space for all stylist parking in one location; and,
- The six-minute walk to Adams Square would not be prohibitive for the stylists, and that stylists that work in an urban setting are accustomed to having to walk some amount to their workplace.

Mr. Reddy and Ms. Rodenhouse both said they saw the matter as self-created. Mr. Reddy opined this was the case because the appellant had the opportunity to know the potential parking issues both before and after signing the lease. Ms. Rodenhouse opined this was the case since the business could function and provide parking for eleven chairs and the appellant wanted to exceed that amount. She said she found no unique circumstances about the property that would merit the granting of either variance.

Ms. Rodenhouse also noted that if the Board were to grant variance A the City would have to be presented with a signed, written parking agreement.

Frank Jarbou, owner and appellant, responded to Board inquiry that:

- The business would not be able to operate with 11 chairs to begin and a gradual increase in chairs as more parking becomes available;
- The chairs and associated suites are rented out to each individual stylist, not shared between stylists. This means that even though most of the time the building would be at 25% capacity, and 11 chairs is 50% of the requested capacity, 11 chairs would ultimately not accommodate 23+ stylists because the spaces are not shared. Potential timing or booking issues would result from trying to share the chairs and suites;
- It is written into the stylists' leases that the business would pay for stylists to get rides via rideshares from the business to the stylists' vehicles; and,
- The on-site manager of the business would enforce the requirement that the stylists park at Adams Square.

#### Public Comment

Saverio Bitonti said he recently closed his salon at the 555 Building and recommended that the appellant re-assess whether space for parking would be available there.

#### **Motion by Mr. Canvasser**

**Seconded by Mr. Lillie with regard to Appeal 21-48, A. Chapter 126, Article 4, Section 4.45(G)(2) of the Zoning Ordinance requires that off-street parking be provided within 100 feet of the building being served, distance being measured along the most direct line of public pedestrian access. The applicant is proposing a shared parking agreement with Adams Square Shopping Center, which is 1,300 feet away from the subject property. Therefore, a variance of 1,200 feet was requested. OR B. Chapter 126, Article 4, Table A of the Zoning Ordinance requires that beauty salon uses provide 2 parking spaces per service chair, or 1 parking space per 300 square feet of floor area, whichever is greater. The applicant is proposing 23 service chairs and is required to provide 46 parking spaces. The subject property has 24 parking spaces on-site. Therefore, a variance of 22 parking spaces was requested.**

**Mr. Canvasser moved to deny the variance. He stated that strict compliance with the ordinance would not unreasonably prevent the petitioner from using the property for its permitted purpose, noting that the business could have 11 chairs. He said compliance with the ordinance was not demonstrated to be unnecessarily burdensome and that the variance would not do substantial justice to property owners in the area. He said that distance, inclement weather, temperatures, and time of day could all dissuade people from actually using Adams Square for parking, which would result in increased parking pressures around 670 S. Old Woodward. He stated the City was not provided with specific ways the requirement for stylists to park at Adams Square would be enforced, and noted that the City was also not provided with any examples of leases between the business and the stylists that would require that or would provide penalties for failure to comply. He said he found no unique circumstances, that the issue seemed self-created, and that the appellant could have done more due diligence to avoid this issue. He stated that the distance between the business and the stylist parking would also present potential safety issues for the stylists, especially in light of the necessity to cross Woodward.**



**Vice-Chair Morganroth concurred with Mr. Canvasser. He suggested that the appellant consider using 11 chairs and find another way to use the balance of the space. He stated that having to cross Woodward would likely deter stylists from using Adams Square for parking, which would then result in stylists parking closer to 670 S. Old Woodward, which would then result in decreased parking available for other retailers and possibly residents near 670 S. Old Woodward.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**5) 1759 Henrietta  
Appeal 21-49**

ABO Zielke presented the item, explaining that the owner of the property known as 1759 Henrietta was requesting the following variances to construct a second floor addition to an existing non-conforming 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 12.50 feet. Therefore, a variance of 1.50 feet was being requested.

**B. Chapter 126, Article 4.30(C)(1)** of the Zoning Ordinance permits a covered or uncovered porch including the steps may project into a front open space for a maximum distance of 10.00 feet. The existing and proposed is 13.59 feet. Therefore, a variance of 2.5 feet was being requested.

ABO Zielke noted the request for variance B was revised down after the agenda was published from 3.59 feet to 2.55 feet.

Chris Joseph, owner, reviewed the letter describing why these variances was being sought. The letter was included in the evening's agenda packet.

**Motion by Mr. Miller**

**Seconded by Mr. Hart with regard to Appeal 21-49, 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 12.50 feet. Therefore, a variance of 1.50 feet was being requested; and, B. Chapter 126, Article 4.30(C)(1) of the Zoning Ordinance permits a covered or uncovered porch including the steps may project into a front open space for a maximum distance of 10.00 feet. The**

**existing and proposed is 13.59 feet. Therefore, a variance of 2.55 feet was being requested.**

**Mr. Miller moved to approve the variances and to tie them to the plans largely as submitted, with the clarification that variance B was being amended to a 2.55 foot request. He said the request was reasonable and fit with the character of the neighborhood. He noted that the pre-existing, older home was not situated in accordance with the City's current requirements for the building envelope, and so the problem was not self-created.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**6) 551 S. Bates  
Appeal 21-50**

ABO Zielke presented the item, explaining that the owner of the property known as 551 S. Bates was requesting the following variances to construct a front and rear patio to an existing non-conforming home:

**A. Chapter 126, Article 2.10.1** of the Zoning Ordinance requires that the maximum lot coverage is 30% (1826.40 SF) of the lot. The proposed is 35.82% (2181.00 SF). Therefore, a variance of 5.82% (354.60 SF) was being requested.

**B. Chapter 126, Article 4.31(A)** of the Zoning Ordinance requires that a minimum of 65% (958.75) of the front open space in all single family districts shall be free of paved surfaces. The proposed is 63.34% (935.00 SF). Therefore, a variance of 1.66% (23.75 SF) was being requested.

**C. Chapter 126, Article 4.30(C)(1)** of the Zoning Ordinance permits a covered or uncovered porch including the steps may project into a front open space for a maximum distance of 10.00 feet. The existing and proposed is 13.60 feet. Therefore, a variance of 3.60 feet was being requested.

Jane Synnesvedt, owner, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

**Motion by Mr. Hart**

**Seconded by Mr. Reddy with regard to Appeal 21-50, A. Chapter 126, Article 2.10.1 of the Zoning Ordinance requires that the maximum lot coverage is 30% (1826.40 SF) of the lot. The proposed is 35.82% (2181.00 SF). Therefore, a variance of 5.82% (354.60 SF) was being requested; B. Chapter 126, Article 4.31(A) of the Zoning Ordinance requires that a minimum of 65% (958.75) of the front open space in all**

**single family districts shall be free of paved surfaces. The proposed is 63.34% (935.00 SF). Therefore, a variance of 1.66% (23.75 SF) was being requested; and, C. Chapter 126, Article 4.30(C)(1) of the Zoning Ordinance permits a covered or uncovered porch including the steps may project into a front open space for a maximum distance of 10.00 feet. The existing and proposed is 13.60 feet. Therefore, a variance of 3.60 feet was being requested.**

**Mr. Hart moved to approve the variances and tied them to the plans as submitted. He stated that the appellant has made several efforts to decrease the amount of hardscape and to increase the open space, and that the existing non-conforming property presented unique circumstances.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**7) 1679 Dorchester  
Appeal 21-51**

Appeal 21-51 was postponed.

**T# 11-63-21**

**6. Correspondence**

All correspondence was included in the agenda packet.

**T# 11-64-21**

**7. General Business**

**T# 11-65-21**

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

None.

**T# 11-66-21**

**8. Adjournment**

**Motion by Mr. Lillie**

**Seconded by Mr. Canvasser to adjourn the November 9, 2021 BZA meeting at 10:15 p.m.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None



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Bruce R. Johnson, Building Official