

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, July 13, 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, July 13, 2021. Chair Charles Lillie convened the meeting at 7:31 p.m.

2. Rollcall

Present: Chair Charles Lillie; Board Members Richard Lilley, Erik Morganroth (attended virtually, located in Birmingham MI); Alternate Board Members Ron Reddy, Erin Rodenhouse

Absent: Board Member Jason Canvasser, Kevin Hart, John Miller, Francis Rodriguez

Administration:

Bruce Johnson, Building Official
Laura Eichenhorn, City Transcriptionist
Mike Morad, Assistant Building Official
Jeff Zielke, Assistant Building Official

Chair Lillie 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.

Chair Lillie took rollcall of the petitioners. All petitioners were present. The Chair offered all petitioners the option to delay their hearings to the August 2021 meeting since only five Board members were present. The appellants for Appeals 21-29 and 21-30 chose to table their hearings to the August 2021 meeting.

T# 07-37-21

3. Approval Of The Minutes Of The BZA Meeting Of June 8, 2021

With Messrs. Reddy and Lilley abstaining due to their absences from the June 8, 2021 meeting the Board did not have a quorum for a vote on the minutes.

The June 8, 2021 minutes will be voted on along with the July 13, 2021 minutes at the August 2021 meeting.

T# 07-38-21

4. Appeals

**1) 1220 Bird
Appeal 21-27**

ABO Zielke presented the item, explaining that the owner of the property known as 1220 Bird was requesting the following variances to construct a rear and front addition to an existing single-family home:

A. Chapter 126, Article 2.10.2 of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 20.90 feet. The proposed is 15.00 feet. Therefore a variance of 5.90 feet was being requested.

B. Chapter 126, Article 2.10.2 of the Zoning Ordinance requires that no side yard shall be less than 5.00 feet. The existing and proposed is 3.80 feet. Therefore a variance of 1.20 feet is being requested.

ABO Zielke continued that the applicant was requesting variances to an existing non-conforming home that was constructed in 1926. Variance A was for the front addition and variance B was for the rear addition. It was noted that the information for this appeal was provided as part of the June 2021 BZA agenda.

Zack Ostroff, representative for the appellant, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to Mr. Morganroth, Mr. Ostroff confirmed that the addition could be narrowed but said the 1.2 feet would be helpful. He said the two story buildout was being requested to have the architecture of the home better match the neighborhood.

Mr. Morganroth said that while both this home and the home to the west were pre-existing non-conforming, granting the variances would increase the non-conformity further down the lot and would increase the variance needed by the neighbor if they wanted to add on to their home in the future.

Motion by Mr. Reddy

Seconded by Mr. Lilley with regard to Appeal 21-27, B. Chapter 126, Article 2.10.2 of the Zoning Ordinance requires that no side yard shall be less than 5.00 feet. The existing and proposed is 3.80 feet. Therefore a variance of 1.20 feet is being requested.

Mr. Reddy moved to approve variance B only and tied it to the plans as submitted. He said based on the unique features of the lot, the fact that the home was pre-existing non-conforming, and the fact that the neighbor's home was also pre-existing non-conforming it was worth granting variance B to allow for a reasonable addition to the rear of the home.

Mr. Morganroth noted that Mr. Ostroff had stated the addition could be narrowed so as not to require a variance. He said the need for variance B was therefore self-created, and that if the addition were narrowed appropriately it would allow the neighbor to be able to build as they choose on their lot. For that reason he said he would not support the motion.

Ms. Rodenhouse offered her support for the motion, saying that preventing the appellant from keeping their roof line in a straight line was an unreasonable restriction given the house's pre-existing non-conformity.

Chair Lillie said he would not support the motion. He said that while the BZA occasionally grants variances for pre-existing non-conforming homes that stay within the existing plane, those variances have generally dealt with the minimum distances between buildings as opposed to buildings along the lot line. He noted that other properties have had additions in the area and indented them to avoid requesting a variance.

Mr. Reddy reiterated that it was a pre-existing non-conformity and said it was an undue hardship to require the appellant to narrow the addition. He noted that granting variance B would not necessarily affect the nextdoor neighbor since there was currently fifteen feet between the buildings according to the plans.

Motion failed, 3-2.

ROLL CALL VOTE

Yeas: Rodenhouse, Reddy, Lilley

Nays: Lillie, Morganroth

Motion by Ms. Rodenhouse

Seconded by Mr. Lilley with regard to Appeal 21-27, A. Chapter 126, Article 2.10.2 of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 20.90 feet. The proposed is 15.00 feet. Therefore a variance of 5.90 feet is being requested.

Ms. Rodenhouse moved to deny variance A. She noted that the proposed second-story space would just be decorative and that no practical difficulty vis-a-vis this variance was established by the appellant.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Rodenhouse, Reddy, Lilley, Lillie, Morganroth

Nays: None

**2) 689 Westwood
Appeal 21-29**

Tabled to the August 2021 BZA meeting.

**3) 282 Greenwood
Appeal 21-30**

Tabled to the August 2021 BZA meeting.

**4) 375 Lakepark
Appeal 21-31**

ABO Zielke presented the item, explaining that the owner of the property known as 375 Lakepark was requesting the following variance to construct an addition to an existing non-conforming single-family home:

A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 45.50 feet. The proposed is 41.00 feet. Therefore a variance of 4.50 feet is being requested.

ABO Zielke continued that the original home was constructed in 1926 and had an addition in 2003.

Ben Heller, builder, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to BZA comment, Mr. Heller noted that the appellant would be able to build a larger covered front porch by right without a variance, and stated that the appellant was trying to add something with more modest coverage instead. He explained that the primary issue was the walls being proposed for the small covered area. He stated that the practical difficulty was gaining coverage from inclement weather at the front door. He ventured that his proposal better keeps with the spirit of the ordinance. He noted the neighbors were supporting the appeal.

Mr. Morganroth floated two options that might mitigate the need for a variance. BO Johnson and ABO Zielke confirmed that both options would still require variances.

Ms. Rodenhouse observed that if the practical difficulty was gaining coverage from inclement weather, there were ordinance-compliant options to do that. She said the BZA is charged with applying the ordinance, not interpreting the intent. She said the BZA only looks at the 'spirit' of the ordinance if there is ambiguity, and stated there was no ambiguity in this case.

Mr. Lilley moved to grant the variance and tied it to the plans as submitted. He said it fit with the architecture of the house, fit with the neighborhood and would do justice to the property owner and the neighbors.

The motion failed for lack of a second.

Motion by Mr. Reddy

Seconded by Mr. Morganroth with regard to Appeal 21-31, A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 45.50 feet. The proposed is 41.00 feet. Therefore a variance of 4.50 feet is being requested.

In moving to deny the variance request, Mr. Reddy concurred with Ms. Rodenhouse's comments. He noted that the Board had just turned down a similar request from 1220 Bird, and said that since there were ordinance-compliant options for achieving coverage from inclement weather in the front of the home the appellant should pursue those.

Mr. Morganroth said that while the design was likely the most aesthetically appropriate option, the challenge was the porch's existing non-conformity and the request to expand the non-conformity. He said expanding the non-conformity contradicts with the BZA's role. He stated that since the practical difficulty was described as coverage from inclement weather, and there are ordinance-compliant options for achieving that, the BZA could not grant a variance. He said the appellant could likely pull the design forward, open the sides, and maintain the front door and the window above without needing a variance. He concurred with Mr. Reddy that the BZA has to maintain consistency in its rulings and therefore could not grant this request.

Motion carried, 4-1.

ROLL CALL VOTE

Yeas: Rodenhouse, Reddy, Lillie, Morganroth

Nays: Lilley

**5) 782 Chesterfield
Appeal 21-32**

ABO Zielke presented the item, explaining that the owner of the property known as 782 Chesterfield was requesting the following variance to construct an addition to an existing non-conforming single-family home:

A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 49.12 feet. The proposed is 37.61 feet. Therefore a variance of 11.51 feet is being requested.

ABO Zielke continued that the existing home was built in 1948. There was an addition to the rear and garage in 2006. It was noted that the house on the corner had a significantly larger setback than the other homes and thus significantly impacted the average setback in this case.

Ben Heller, builder, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

Motion by Mr. Morganroth

Seconded by Ms. Rodenhouse with regard to Appeal 21-32, A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 49.12 feet. The proposed is 37.61 feet. Therefore a variance of 11.51 feet is being requested.

Mr. Morganroth moved to approve the variance and tied it to the plans as submitted. He explained that the corner lot with the large setback created unique enough circumstances in this case to justify granting the variance. He noted that if it were not for the corner lot the proposed projection in this appeal would likely be allowed. He said granting the variance would do justice to the neighbors and the appellant.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Rodenhouse, Reddy, Lillie, Morganroth, Lilley

Nays: None

**6) 640 Suffield
Appeal 21-33**

ABO Zielke presented the item, explaining that the owner of the property known as 640 Suffield was requesting the following variance to construct an addition to an existing single-family home:

A. Chapter 126, Article 7.74(C) of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width whichever is larger. The required is 19.75 feet. The proposed is 18.40 feet. Therefore a variance of 1.35 feet is being requested.

ABO Zielke continued that the existing home was constructed in 1936 and that the detached garage would be demolished if the appeal is granted to construct a new attached garage. He stated that granting this variance would not likely create a hardship if a demolition and new build were proposed for 660 Suffield given the width of 660 Suffield's lot.

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

In reply to Chair Lillie, Mr. Parkinson stated he did not want to shorten the garage and push it back on the lot because he wanted to maintain the kitchen, upstairs hallway, and master bedroom as-is. He said he also believed the garage would look more balanced vis-a-vis the home if constructed and placed according to the plans.

Mr. Morganroth noted that given the depth of the proposed garage the appellant could mitigate the need for the variance by parking two vehicles slightly diagonal to each other in order to allow passengers and drivers enough space to get in and out of the vehicles in the garage.

Motion by Mr. Reddy

Seconded by Mr. Lilley with regard to Appeal 21-33, A. Chapter 126, Article 7.74(C) of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width whichever is larger. The required is 19.75 feet. The proposed is 18.40 feet. Therefore a variance of 1.35 feet is being requested.

Mr. Reddy moved to approve the variance and tied it to the plans as submitted. He said installing a two-car garage was a reasonable use of the property, and that variance requested was small compared to the lot size. He noted that there was still a significant distance between the appellant's home and the home at 660 Suffield even if the variance was granted.

Ms. Rodenhouse said the owner established a practical difficulty and concurred with Mr. Reddy that the request for the variance was relatively minor. She said it would be an unreasonable restraint on the property to deny this variance request.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Rodenhouse, Reddy, Lillie, Morganroth, Lilley

Nays: None

T# 07-39-21

5. Correspondence

Included in the agenda packet.

T# 07-40-21

6. General Business

T# 07-41-21

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

None.

T# 07-42-21

8. Adjournment

Motion by Mr. Lilley

Seconded by Mr. Morganroth to adjourn the July 13, 2021 BZA meeting at 9:20 p.m.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Reddy, Lillie, Morganroth, Lilley, Rodenhouse

Nays: None



Bruce R. Johnson, Building Official