

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, September 14, 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, September 14, 2021. Chair Charles Lillie convened the meeting at 7:32 p.m.

2. Rollcall

Present: Chair Charles Lillie; Board Members Jason Canvasser, Kevin Hart, John Miller, Erik Morganroth (attended virtually, located in Birmingham MI); Francis Rodriguez, Richard Lilley

Absent: Alternate Board Members Ron Reddy, Erin Rodenhouse

Administration:

Bruce Johnson, Building Official
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 with the exception of Appeal 21-35. ABO Zielke indicated the petitioners for Appeal 21-35 were in the parking lot and would be joining the meeting momentarily.

T# 09-49-21

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 Meeting Of August 10, 2021

Mr. Canvasser stated that in the second full line of page two 'because' should be changed to 'becomes'.

Motion by Mr. Canvasser

Seconded by Mr. Lilley to accept the Minutes of the BZA meeting of August 10, 2021 as amended.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Lilley, Hart, Morganroth, Canvasser, Rodriguez, Miller

Nays: None

Abstain: Lillie

With Vice-Chair Canvasser and Messrs. Hart, Miller, and Rodriguez abstaining due to their absences from the July 13, 2021 meeting the Board did not have a quorum for a vote on the July 13, 2021 minutes. Consequently, approval of the July 13, 2021 minutes was delayed to a future date.

T# 09-50-21

5. Appeals

1) 689 Westwood Appeal 21-29

ABO Zielke presented the item, explaining that the owner of the property known as 689 Westwood 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 total side yard setback are 14.00 feet or 25% of the total lot width whichever is larger. The required is 22.47 feet. The proposed is 18.99 feet. Therefore; a variance of 3.48 feet is being requested.

ABO Zielke continued that the applicant had an appeal denied by the Board in May 2021. The applicant returned with a request for a lesser variance to construct an addition to the home.

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

Both ABO Zielke and Ms. Meads explained that this variance would still allow the neighbor to the north to teardown and rebuild their home while meeting the requirements for the distance between neighbors. They noted that doing so would depend on the neighbor to the north's choices in were to situate a rebuilt house on the lot.

Ms. Meads also noted that if the owners of 689 Westwood were to teardown and rebuild their house they would still be able build the wall of their garage where it was being proposed.

Motion by Mr. Miller

Seconded by Mr. Lilley with regard to Appeal 21-29, A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum total side yard setback are 14.00 feet or 25% of the total lot width whichever is larger. The required is 22.47 feet. The proposed is 18.99 feet. Therefore; a variance of 3.48 feet is being requested.

Mr. Miller moved to approve the variance and tied it to the plans as submitted. He noted that this was the third time the Board was reviewing this petition. He said the matter was not self-created. He explained the issue was the result of the relationship between garage, steps, and house which makes the garage unusable as a two-car garage. He said strict compliance would unreasonably restrict the owners' use of the garage. He said the impact on the neighbor to the north would either be minimal or negligible because of the way this house and the adjacent houses sit on their lots at an angle.

Mr. Hart said that the Board could only make its determination based on what exists now in terms of the neighbor to the north. He said he would support the motion.

Vice-Chair Morganroth said the Board was responsible for ensuring to the best of its ability that it would not negatively affect the neighbor, and said the Board had done so in its three reviews of this appeal. He said in light of that and the practical difficulty with the garage he would support the motion.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Miller, Lilley, Lillie, Hart, Morganroth, Canvasser, Rodriguez

Nays: None

**2) 448 Willits
Appeal 21-35**

ABO Zielke presented the item, explaining that the owner of the property known as 448 Willits was requesting the following variances to renovate the exterior of an existing non-conforming single-family home:

A. Chapter 126, Article 4.30(C)(2) of the Zoning Ordinance allows roof overhangs to extend or project into a required side open space not more than 2 inches for each 1 foot of width of such required open space. The West side yard setback is non-conforming by 5.40 feet. A one (1.00) foot overhang is proposed. Therefore; a variance of 3.74 feet for the overhang is being requested.

B. Chapter 126, Article 4.30(C)(2) of the Zoning Ordinance allows roof overhangs to extend or project into a required side open space not more than 2 inches for each 1 foot of width of such required open space. The East side yard setback is non-conforming by 2.30 feet. An existing/proposed one (1.00) foot overhang is being proposed. Therefore; a variance of 2.47 feet for the overhang is being requested.

C. Chapter 126, Article 4.30(C)(2) of the Zoning Ordinance allows roof overhangs to extend or project into a required front open space not more than 2 inches for each 1 foot of width of such required open space provided that such extensions may not project more than 2 feet into the front open space. The front yard setback is non-conforming by 6.30 feet. A two (2.00) foot overhang is being proposed. Therefore a variance of 6.30 feet for the overhang is be requested.

ABO Zielke continued that the applicant was proposing to re-side and restore the existing exterior of the existing non-conforming home that was constructed in 1924.

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

Motion by Mr. Miller

Seconded by Mr. Lillie with regard to Appeal 21-35, A. Chapter 126, Article 4.30(C)(2) of the Zoning Ordinance allows roof overhangs to extend or project into a required side open space not more than 2 inches for each 1 foot of width of such required open space. The West side yard setback is non-conforming by 5.40 feet. A one (1.00) foot overhang is proposed. Therefore; a variance of 3.74 feet for the overhang is being requested; and, B. Chapter 126, Article 4.30(C)(2) of the Zoning Ordinance allows roof overhangs to extend or project into a required side open space not more than 2 inches for each 1 foot of width of such required open space. The East side yard setback is non-conforming by 2.30 feet. An existing/proposed one (1.00) foot overhang is being proposed. Therefore; a variance of 2.47 feet for the overhang is being requested; and, C. Chapter 126, Article 4.30(C)(2) of the Zoning Ordinance allows roof overhangs to extend or project into a required front open space not more than 2 inches for each 1 foot of width of such required open space provided that such extensions may not project more than 2 feet into the front open space. The front yard

setback is non-conforming by 6.30 feet. A two (2.00) foot overhang is being proposed. Therefore a variance of 6.30 feet for the overhang is be requested.

Mr. Miller moved to approve the variances and tied them to the plans as submitted. He explained that most of the houses along this stretch of Willits are non-conforming, and that allowing the owners to improve their homes instead of requiring they be rebuilt does substantial justice to the owner, neighbors, and th City.

Mr. Lillie said he would support the motion since it was the existing placement of the house on the lot that was causing the need for the variances.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Miller, Lillie, Hart, Morganroth, Canvasser, Rodriguez, Lilley

Nays: None

**3) 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 33.63% (2051.65 SF). Therefore; a variance of 6.37% (388.35 SF) is 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 36.04% (573.65 SF). Therefore a variance of 28.96% (460.75 SF) is being requested.

ABO Zielke continued that the applicant was requesting variances on the required open space to remove and replace the existing drive. The existing home was constructed in 1985, before lot coverage and open space regulations were added to the ordinance.

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

Nathan Matatall, contractor, was present to answer technical questions on behalf of the appellant.

Mr. Canvasser, Mr. Lillie, and Mr. Miller each suggested ways the appellant could reduce the amount of hardscape in the front yard, thereby at least minimizing the variance requests.

The Board offered the appellant the option to table the appeal to October 2021 to see if he might find a way of minimizing the hardscape in the front yard.

Mr. Lewis accepted the offer to table the appeal for one month.

Motion by Mr. Canvasser

Seconded by Mr. Miller 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 33.63% (2051.65 SF). Therefore; a variance of 6.37% (388.35 SF) is 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 36.04% (573.65 SF). Therefore a variance of 28.96% (460.75 SF) is being requested.

Mr. Canvasser moved to adjourn Appeal 21-37 to October 2021. He noted that more detailed drawings that included the landscaping and locations of other features would help the Board evaluate the appeal.

Vice-Chair Morganroth said providing a design plan instead of a plot plan would help.

Mr. Miller agreed with Messrs. Canvasser and Morganroth about the need for more detailed plans. He said those plans should include the location of the front porch and the overhangs on the house. He said he would also recommend at least some effort at mitigating the amount of hardscape being requested in the front of the home.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Canvasser, Miller, Lilley, Lillie, Hart, Morganroth, Rodriguez

Nays: None

**4) 1222 Cole
Appeal 21-38**

ABO Zielke presented the item, explaining that the owner of the property known as 1222 Cole was requesting the following variance to replace the existing A/C condensers:

A. Chapter 126, Article 4.03(B) of the Zoning Ordinance allows accessory structures to be located in the rear open space, but shall be at least 3.00 feet from any lot line. The existing and proposed is 1.90 feet. Therefore; a variance of 1.10 feet is being requested.

ABO Zielke continued that the applicant was seeking to replace the existing A/C units which are currently non-conforming. The home was constructed in 2011.

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

Mr. Fabry confirmed that there was an easement in the home's title to allow for the current placement of the fence.

Motion by Mr. Lillie

Seconded by Mr. Lilley with regard to Appeal 21-38, A. Chapter 126, Article 4.03(B) of the Zoning Ordinance allows accessory structures to be located in the rear open space, but shall be at least 3.00 feet from any lot line. The existing and proposed is 1.90 feet. Therefore; a variance of 1.10 feet is being requested.

Mr. Lillie moved to grant the variance as advertised as long as the replacement A/C units comply with the City's noise ordinance. He tied the approval to the plans as presented.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Lillie, Lilley, Hart, Morganroth, Rodriguez, Canvasser, Miller

Nays: None

**5) 1159 E. Maple
Appeal 21-39**

ABO Zielke presented the item, explaining that the owner of the property known as 1159 E. Maple was requesting the following variance to replace the existing driveway:

A. Chapter 126, Article 4.31(A) of the Zoning Ordinance requires that a minimum of 65% (1924.00) of the front open space in all single-family districts shall be free of paved surfaces. The existing is 52.70% (1561.00 SF) and the proposed is 57.60% (1706.00 SF). Therefore a variance of 7.94% (218.00 SF) is being requested.

ABO Zielke continued that the applicant was seeking to replace the existing driveway which exceeds the allowable impervious area in the required front yard. The home was constructed in 1986.

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

Motion by Mr. Miller

Seconded by Mr. Lilley with regard to Appeal 21-39, A. Chapter 126, Article 4.31(A) of the Zoning Ordinance requires that a minimum of 65% (1924.00) of the front open space in all single-family districts shall be free of paved surfaces. The existing is 52.70% (1561.00 SF) and the proposed is 57.60% (1706.00 SF). Therefore a variance of 7.94% (218.00 SF) is being requested.

Mr. Miller moved to approve the variance and to tie it to the plans as submitted. He noted that there were a number of unique conditions contributing to the need for the variance including a lack of street parking in front of the home, the location of the garage on the lot, and the fact that the home is located in a high-traffic area. He said the appellant's proposal to replace the driveway with some mitigation was reasonable as a result. He noted that approving the variance would also have no negative impact on the neighbors.

Vice-Chair Morganroth said he would support the motion. He noted that the circumstances outlined by Mr. Miller explained the difference between this appeal and Appeal 21-37.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Miller, Lilley, Hart, Morganroth, Rodriguez, Canvasser, Lillie

Nays: None

T# 09-51-21

6. Correspondence

Included in the agenda packet.

T# 09-52-21

7. General Business

T# 09-53-21

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

None.

T# 09-54-21

8. Adjournment

Motion by Mr. Lilley

Seconded by Mr. Canvasser to adjourn the September 14, 2021 BZA meeting at 9:10 p.m.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Lilley, Canvasser, Rodriguez, Miller, Hart, Morganroth, Lillie

Nays: None



Bruce R. Johnson, Building Official