

# Agenda

City of Birmingham  
Board of Zoning Appeals

Commission Room of the Municipal Building  
151 Martin Street, Birmingham, Michigan  
August 12, 2014  
7:30 PM

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1. Roll Call
2. Approval of the July 2014 Minutes
3. Appeals:

	Address	Petitioner	Appeal	Type/Reason
1.	1188 BIRD	MERLINI	14-20	DIMENSIONAL
2.	1072 DAVIS	MERLINI	14-21	DIMENSIONAL
3.	1125 EMMONS	MERLINI	14-22	DIMENSIONAL
4.	2388 COLE	CARNOVALE	14-23	WITHDRAWN

4. Correspondence
5. General Business

#### Title VI

Persons with disabilities that may require assistance for effective participation in this public meeting should contact the City Clerk's Office at the number (248) 530-1880, or (248) 644-5115 (for the hearing impaired) at least one day before the meeting to request help in mobility, visual, hearing, or other assistance.

Las personas con incapacidad que requieren algún tipo de ayuda para la participación en esta sesión pública deben ponerse en contacto con la oficina del escribano de la ciudad en el número (248) 530-1800 o al (248) 644-5115 (para las personas con incapacidad auditiva) por lo menos un día antes de la reunión para solicitar ayuda a la movilidad, visual, auditiva, o de otras asistencias. (Title VI of the Civil Rights Act of 1964).

The public entrance during non-business hours is through the police department at the Pierce Street entrance only. Individuals requiring assistance entering the building should request aid via the intercom system at the parking lot entrance gate on Henrietta Street.

La entrada pública durante horas no hábiles es a través del Departamento de policía en la entrada de la calle Pierce solamente. Las personas que requieren asistencia entrando al edificio debe solicitar ayudan a través del sistema de intercomunicación en la puerta de entrada de estacionamiento en la calle de Henrietta.

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS  
TUESDAY, JULY 8, 2014**

Commission Room of the Municipal Building  
151 Martin, Birmingham, Michigan

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Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, July 8, 2014. Chairman Charles Lillie convened the meeting at 7:30 p.m.

**Present:** Chairman Charles Lillie; Board Members David Conlin, Thomas Hughes, Jeffery Jones, Randolph Judd, Peter Lyon

**Absent:** Board Member John Miller; Alternate Board Members Cynthia Grove, Kevin Hart

**Administration:** Ken Cooper, Asst. Building Official  
Bruce Johnson, Building Official  
Carole Salutes, Recording Secretary

The chairman welcomed everyone and explained the BZA procedure to the audience. Additionally, he noted that the members of the Zoning Board are appointed by the City Commission and are volunteers. They 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. There are no land use variances called for this evening. Also, appeals are heard by the board as far as interpretations or rulings. There are no interpretations on this evening's agenda. Four affirmative votes are required to reverse an interpretation or ruling.

**T# 07-33-14**

**APPROVAL OF THE MINUTES OF THE BZA MEETING OF JUNE 10, 2014**

**Motion by Mr. Jones**

**Seconded by Mr. Judd to approve the Minutes of the BZA meeting of June 10, 2014 as presented.**

**Motion carried, 6-0.**

VOICE VOTE

Yeas: Jones, Judd, Conlin, Hughes, Lillie, Lyon

Nays: None

Absent: Miller

**T# 07-34-14**

**656 RUFFNER  
(Appeal 14-18)**

The owners of the property known as **656 Ruffner** request the following variance to allow the construction of a new house and detached garage:

A. Article 4, Section 4.69, C of the Zoning Ordinance requires the distance between principal residential buildings to be 14.0 ft. for this lot; with 13.1 ft. proposed; therefore, a variance of 0.9 ft. is requested.

This property is zoned R-3 Single-Family Residential.

Mr. Cooper advised the home that is being removed currently has a 9.9 ft. distance between structures and is 6.8 ft. from the property line. If the requested variance is granted, the home will be 13.1 ft. from the property to the east and 10 ft. from the property line. Therefore, granting the variance would be an improvement. Currently the home sits 3.7 ft. from the property line on the west, and with the variance that would change to 5 ft. and remove the non-conformity. The proposed construction meets all other setback, height, and lot cover requirements.

In response to Chairman Lillie, Mr. Cooper explained that the neighbor's home is only 3.1 ft. off the property line, where 5 ft. would be the common number. As a result, the proposed building is being squeezed.

Mr. Joe Trificante from Torino Quality Homes spoke for the petitioner. Because of the closeness of the neighbor, they are forced to scale the home back to a width of 25 ft. The new property is improving the setbacks in several ways as mentioned and he is asking for the .9 ft. (10.8 in.) variance. No one has objected to the variance request.

Mr. Lyon asked why they could not build a 24 ft. wide house and Mr. Trificante replied it would be very challenging to get adequate room sizes. A super narrow, full two-story home would look somewhat top heavy.

There were no comments from the public on this appeal at 7:38 p.m.

Mr. Trificante added that there are only two or three older, non-conforming homes left on that street. So, conceivably some day the neighboring house will come down and the new home will meet the new guidelines.

**Motion by Mr. Jones**

**Seconded by Mr. Hughes as relates to Appeal 14-18 at 656 Ruffner to approve the variance as requested. He believes that strict compliance under these circumstances would unreasonably prevent the owner from the property for a permitted purpose. He believes that essentially as the petitioner said, and from a drive-by by himself, it would do substantial justice both to the applicant as well as to the other property owners; this being a very old house, a very narrow lot, and he is quite correct in what one would envision by driving down the street as being the inevitability of it.**

**Mr. Jones thinks it is due again to the unique circumstances of the adjoining property owner being as close as they are at 3.1 ft. He doesn't believe that the problem is self-created. Further, he believes that based on what is existing the petitioner has mitigated as well as assisted in the creation of greater space than currently exists.**

**For those reasons he would tie his motion to the plans and for those reasons he would vote to grant the variance.**

Mr. Conlin indicated his support for the motion. The petitioner has demonstrated the practical difficulty relative to the existing non-conforming house next door. This board has seen a number of times where new construction is impacted by existing, non-conforming older construction. It is clear that the non-conformity will probably be corrected when the neighboring house is replaced.

**Motion carried, 6-0.**

ROLLCALL VOTE

Yeas: Jones, Hughes, Conlin, Judd, Lillie, Lyon

Nays: None

Absent: Miller

**T# 07-35-14**

**2187 YORKSHIRE  
(Appeal 14-19)**

The owners of the property known as **2187 Yorkshire** request the following variance to allow the construction of an addition to the existing house:

A. Article 4, Section 4.03 D of the Zoning Ordinance requires the distance between principal residential buildings and accessory buildings be 10.0 ft., with 3.5 ft. existing and 3.5 ft. proposed; therefore, a variance of 6.5 ft. is requested.

This property is zoned R-2 Single-Family Residential.

Mr. Cooper advised that the owners are proposing to construct a rear addition to their home. The home was constructed along with a detached garage in 1925, with alterations in 1942 and 1969. The detached garage is located 3.5 ft. from the west side of the house. The petitioner's original proposal to remove the garage and build an attached garage required variances for side yard setbacks and the sum of side yard setbacks. So, they have mitigated down to what they feel is a reasonable request to just extend the existing non-conformity.

Mr. Cooper responded to an inquiry from Chairman Lillie. The petitioner did not propose to take the existing garage down and build in the rear because they want to keep their yard as open as possible. Further answering Chairman Lillie with regard to the 10 ft. Ordinance requirement between principal residential buildings and accessory structures, Mr. Cooper advised that the petitioner proposes to use 5/8 in. fiber board the same as an attached garage would require to meet the Fire Code.

Mr. Cooper noted this garage is built slightly forward and center on the lot. Usually garages are not built in that location. Mr. Conlin questioned the economic burden on the homeowner relative to working with the existing structure as opposed to working with a new structure.

Chairman Lillie pointed out that the proposed plan doesn't show that the west elevation extends out beyond the rear roof line of the garage.

Mr. Cooper said this proposal keeps the same look and style as the existing home.

Mr. William Thomas, Architect, spoke on behalf of the petitioner. The garage has a lot of character and they propose to bring it back to what it was. If they were to build a garage further into the back yard, a sport court would have to be destroyed in order to put a driveway through. Not showing the rear roofline extension is a graphical error on the plans. He went on to describe their proposed alterations.

Mr. Conlin said that it will be expensive to put footings under the garage. The expense may be justified by the fact that it would allow the garage to remain as an existing non-conforming structure. Mr. Thomas responded that by the Code they are not required to increase or modify the footings unless they are doing additional structural changes, which they are not.

Chairman Lillie cautioned if they end up having to tear the garage down they would have to come in for a variance to build it back. Mr. Johnson added the renovation of the garage cannot exceed 75% of the current assessed market value.

Discussion noted the high fire rating of the proposed materials being used on the garage. Mr. Thomas described how adding a new set of stairs down into the basement within the enclosure of the new addition will resolve the continuing water issue with the existing exterior set of stairs leading to the basement.

The chairman called for discussion from the audience at 8:13 p.m.

Mr. Tony Vitale, 2168 Yorkshire, spoke to support the changes. He feels they will not hinder the visual integrity of the neighborhood.

Ms. Sandra Badier, 2220 Yorkshire, commented that the property has a lot of character and this upgrade will only enhance their neighborhood. She hoped the board will vote for them to go forward.

**Motion by Mr. Judd**

**Seconded by Mr. Jones in regard to Appeal 14-19, 2187 Yorkshire, the petitioner seeks a variance to Article 4, Section 4.03, D of the Zoning Ordinance which deals with distance between structures. In particular, there is an existing Ordinance which requires 10 ft. between structures for purposes of fire prevention or abatement.**

**The petitioner wishes to put an addition on the rear of the house to the north which would increase and extend the existing non-conformity of the distance between structures further. So, our real question is whether or not to permit this. After reviewing the plans and hearing the presentation by the architect and members of the Building Dept., Mr. Judd feels that strict compliance with the regulations would unreasonably prevent the owner from using the property for a permitted purpose and would be unnecessarily burdensome.**

**He feels that to grant the variance would do substantial justice to the applicant as well as other property owners. The plight of the owner is due to unique circumstances in that this is a 1925 house that does not sit squarely on the property and obviously exists in an era of Building Codes which we no longer would tolerate, and that has been admitted.**

**Whether the problem was self-created, he would say no. They don't have to build an addition in this configuration. Other alternatives have been offered, such as removal of the existing detached garage and moving it further to the north, but that would come into conflict with some other existing features, such as a sport court.**

**Mr. Judd also feels that there has been mitigation done on this, in that the repairs and remodeling of the existing detached garage will be brought up to a stricter condition by using materials which are more fire resistant and hardy.**

**He tied the motion to the plans and moved to approve.**

Mr. Jones said he did have concerns but the overriding thing to him was the obvious nature of the need for improvement to the house. He has come to the conclusion that this is the least offensive and the most ameliorative plan.

Mr. Lyon noted he will support the motion because from everybody's perspective but the owner's, nothing is changing except that everything will be nicer and newer.

Chairman Lillie announced his support for the motion because based on the information presented tonight they have established a practical difficulty. His concern was the fire hazard, but those questions have been answered.

Mr. Hughes said he also will support the motion. He believes there has been sufficient information provided that supports the existence of a practical difficulty that would justify granting the variance as requested.

Mr. Conlin said the reason he likes the plan is because of its aesthetics. However, that doesn't count. The other thing is that he questions the economics.

Chairman Lillie pointed out everyone has to keep in mind that economics and aesthetics are not the standards for establishing a practical difficulty.

Mr. Lyon indicated the way he looks at it is that the garage is substantially behind the front of the house. It tries to stay within the spirit of the Ordinance that detached garages need to be back from the house. It is there and it is not self-created. Also they are doing a lot to mitigate any safety risks.

**Motion carried, 5-1.**

ROLLCALL VOTE

Yeas: Judd, Jones, Hughes, Lillie, Lyon

Nays: Conlin

Absent: Miller

**T# 07-36-14**

**CORRESPONDENCE** (none)

**T# 07-37-14**

**GENERAL BUSINESS**

A. Rules of Procedure Article 1, B (2)

- Discuss application deadline

Mr. Johnson said the deadline currently is the 15th of the month. There are a few months of the year that it just gets too tight and staff is pressed to get the public notice out to the paper in time. Staff will come back to next month's meeting suggesting either the 10th or 12th of the month.

Discussion noted confusion exists because the Ordinance is worded so that it combines use for both a dimensional variance and a use variance.

Mr. Johnson reported that he heard back from the city attorney regarding electronic signatures on e-mails. The BZA can accept them if they wish. However, an original signature must be on an application to appear before the board.

Mr. Hughes observed that sometimes he has difficulty locating a posted notice on a property.

Mr. Conlin thought everyone should compliment Mr. Cooper on the job he did and the time he spent working with tonight's petitioner on Yorkshire.

**T# 07-38-14**

## **ADJOURNMENT**

No further business being evident, the board members passed a motion to adjourn at 8:31 p.m.

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Bruce R. Johnson, Building Official



# **CASE DESCRIPTION**

## **1188 Bird (12-20)**

**Hearing date: August 12, 2014**

The owners of the property known as **1188 Bird** request the following variance to allow the construction of a new house and detached garage:

- A. **Article, Section 4.69, C** of the Zoning Ordinance requires the distance between principal residential buildings be 14.00' for this lot; with 10.5' proposed. Therefore, a variance of 3.50' is requested.

**Staff Notes:** The owner is proposing to construct a new house with a detached garage on this lot. The proposed new house and garage will meet all setbacks, height, and lot coverage requirements except the distance between principle structures requirement. The existing house to the west of this lot was built in 1926 and was constructed 0.30' from the shared property line. The owner is proposing the new house be 24'-10" in width to minimize the variance request.

This property is zoned R-3 single family residential.

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Ken Cooper  
Assistant Building Official



Kelli Cooper &lt;kcooper@bhamgov.org&gt;

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**1188 Bird Ave**

↑ ↑↑↑↑↑↑↑

**Chris Hewitt** <chewitt4693@comcast.net>

Wed, Aug 6, 2014 at 3:00 PM

To: kcooper@bhamgov.org

Dear Mr Cooper

My name is Christopher Hewitt and I recently moved into 1166 Bird Ave. I understand that there is a zoning hearing to review an ordinance variance request for new construction at 1188 Bird Ave, scheduled for next Tuesday.

Unfortunately I will be out of town on business but want to communicate my concerns. I hope that this email will suffice, and appreciate if you would let me know if another form is required.

As you may anticipate my concern is with any request to build closer to the lot line than current zoning requirements allow. My understanding is that the current zoning requirements are as follows:

**R3 District****2.10 R3 (Single-Family Residential) District Development Standards****Minimum Lot Area:**

- 4,500 sq ft per unit

**Minimum Open Space:**

- 40%

**Maximum Lot Coverage:**

- 30%

**Minimum Front Yard Setback:**

- average setback of homes within 200 feet, if not homes within 200 feet, then 25 feet

**Minimum Rear Yard Setback:**

- 30 feet

**Minimum Combined Front and Rear Setback:**

- 55 feet

**Minimum Side Yard Setback:**

- 9 feet or 10% of total lot width whichever is larger for one side yard
- 14 feet or 25% of total lot width whichever is larger for both side yards
- no side yard shall be less than 5 feet

The current property is constructed approximately 5 feet from the lot line. We are strongly opposed to construction any closer to the lot line than the current house.

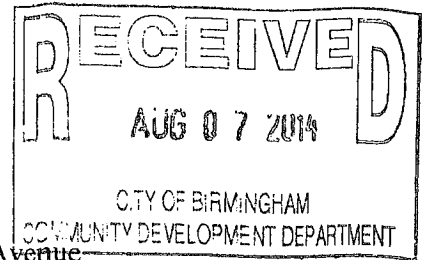
I would be glad to discuss further by telephone at a time of your convenience.

Kind regards

Chris

Christopher D. Hewitt

To: Board of Zoning Appeals  
From: David Findling  
1172 Bird Ave.



RE: Zoning variance requested by the homeowner at 1188 Bird Avenue

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### **Response to Variance Request**

The owner of 1188 Bird Avenue ("1188") is seeking a *twenty-five percent (25%)* reduction in the side setback variance from the required 14 feet to 10.5 feet. The lot is 4,800 square feet in the R3 district. Houses in the R3 district are extremely close together due to the size of the lots. 1188 was purchased by the applicant five months ago, on March 12, 2014. It was purchased with the knowledge that the construction of a house would be effected and limited by the side setback zoning due to its proximity to 1172 Bird Avenue.

If the variance is allowed, then 1188 will be constructed only 10.5 feet away from 1172 Bird Avenue ("1172"). 1172 is situated due east of 1188 and was constructed in 1926, prior to existing zoning. According to MCL 125.585, variances are only allowed when an ordinance creates practical difficulties or unnecessary hardships. The owner of 1188 does not have a practical difficulty or an unnecessary hardship regarding the side setback. The owner of 1188 simply wants to build the largest home possible on the property. The request for a variance should be denied.

Pursuant to statute, a request for a variance is brought before the Board of Zoning Appeals (the "Board"). Section 8-3 of the Zoning Ordinance sets forth how a variance request is to be considered. It provides:

#### 3. Variances.

- a. The Board of Zoning Appeals shall hear and grant or deny requests for variances from the strict application of the provisions of the Zoning Ordinance where there are practical difficulties or

unnecessary hardships in carrying out the strict letter of such chapter. In granting a variance, the Board of Zoning Appeals may attach such conditions as it may deem reasonably necessary to promote the spirit and intent of the Zoning Ordinance. The Board of Zoning Appeals shall not grant any variance unless it first determines that:

- i. Because of special conditions applicable to the property in question, the provisions of the Zoning Ordinance, if strictly applied, unreasonably prevent the property owner from using the property for a permitted purpose;
- ii. Literal enforcement of the chapter will result in unnecessary hardship;
- iii. The granting of the variance will not be contrary to the spirit and purpose of the Zoning Ordinance nor contrary to the public health, safety and welfare; and
- iv. The granting of the variance will result in substantial justice to the property owner, the owners of property in the area and the general public.

**Special Conditions of the Property**

The first condition that must be met when deciding if a variance should be granted is whether a special condition exists. In *Risko v. Grand Haven Charter Township Zoning Board of Appeals*, 284 Mich. App. 453, 773 N.W. 2d 730 (2009), the homeowners wanted to build an attached garage to their single-family residence that would encroach onto the 50-foot required setback by 9.5 feet. They claimed that their lot was located in a “critical dune zone,” making only a portion of it buildable. The homeowners believed that the variance was necessary to “preserve the enjoyment of a substantial property right” that other homeowners enjoyed, with the garage being that property right.

The *Risko* Court held that the zoning board’s decision to deny the homeowners’ variance request was proper because the variance was not necessary for the “preservation and enjoyment of a substantial property right.” *Id.* at 466, 773 N.W. at 739. The *Risko* Court reasoned that the

phrase “substantial property right” does not include building according to a preferred design. Unlike a substantial property right, a preferred design “does not deny access, use, or the ability to construct a residence in compliance with the zoning requirements.” Furthermore, the availability of an alternative design preserved the homeowners’ substantial property right in building a garage without granting a variance. Therefore, the *Risko* Court concluded that the zoning board was allowed to consider whether the homeowners had alternative designs, making a variance unnecessary.

Much like the homeowners in *Risko*, denying the owner of 1188 a variance will not interfere with a substantial property right. The owner of 1188 is building according to a preferred design. The owner’s plans were prepared to maximize the square footage of the proposed home without regard to its impact on neighbors or the neighborhood. The applicant’s cookie-cutter architectural design is based on other homes it has constructed in the area. The design was simply placed on top of a 4800 square foot lot and made to fit by seeking a variance.

Denying the variance will not hinder applicant’s ability to access, use, or construct a residence in compliance with zoning requirements. Because the property has no special conditions, the homeowner can consider an alternative design that will comply with the 14-foot side setback variance.

#### **Unnecessary Hardship**

Another case, *Puritan-Greenfield Improvement Association, a non-profit Michigan corporation, v. John L. Leo*, 7 Mich. App. 659, 153 N.W. 2d 162 (1967), discusses the second requirement, unnecessary hardship. In *Puritan-Greenfield*, John L. Leo applied for a variance to permit the use of a single family residence property as a medical and dental clinic. The zoning board granted the variance citing “unnecessary hardship” as the reason. The board found that the

heavy traffic in the area and its close proximity to the business section of the neighborhood made it difficult for the property to be used as a single family residence, thus creating an unnecessary hardship. The Circuit Court disagreed and set aside the use variance. The Court of Appeals agreed with the Circuit Court's decision.

The Court of Appeals concluded that a use variance should not be granted unless the zoning board finds that the property cannot be used in a manner consistent with the existing zoning. *Id.* at 673. In arriving at this conclusion, the court first provided a definition of an unnecessary hardship. The *Puritan-Greenfield* Court defined the term as a situation in which no feasible use can be made of the land without granting a variance. *Id.* at 669. The Court also listed five requirements that must be met to obtain a variance. The requirements are:

- (a) compliance with the ordinance will prevent the person from reasonable use of his property;
- (b) the hardship results from the application of the ordinance to his property;
- (c) the hardship is suffered directly by his property and not by others;
- (d) the hardship is not the result of his own actions; and
- (e) the hardship is peculiar to the property of the person seeking the variance. *Id.* at 670.

Applying these five requirements to Mr. Leo's variance request resulted in the *Puritan-Greenfield* Court's decision to affirm the denial of the variance. The Court did not believe that the proximity of the property to a gas station or the heavy traffic in the area were enough to create an unnecessary hardship.

Applying the unnecessary hardship requirements in *Puritan-Greenfield* to 1188 confirms that a variance should not be granted. The owner of 1188 cannot demonstrate that an unnecessary hardship exists. Denial of the variance does not render the property useless. In fact,

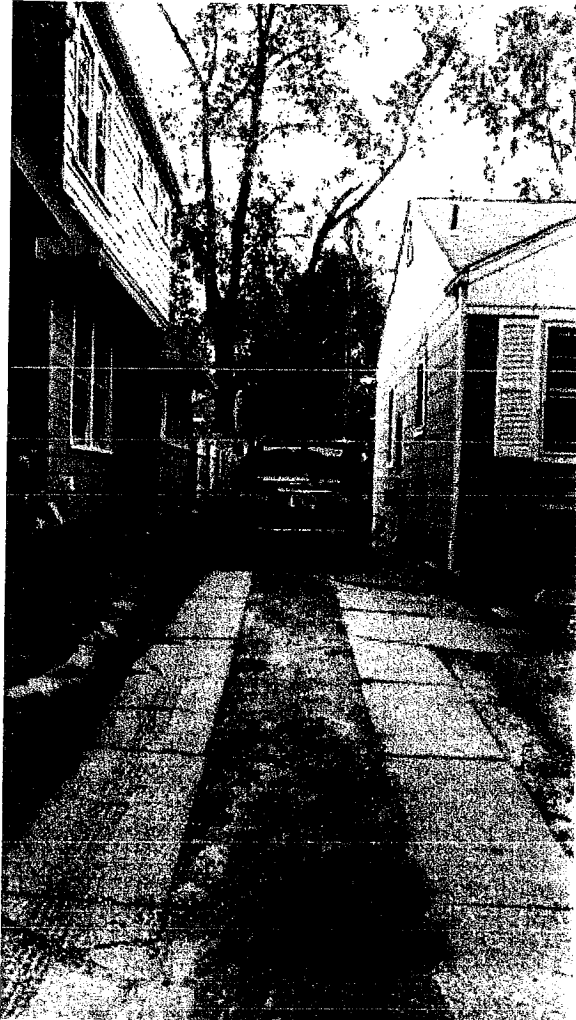
the property can still be used in a manner that is consistent with the current zoning requirements. Rather, the solution is simple; build a smaller house which conforms with .

### **Spirit and Purpose**

Section (3)(a)(iii) of the Zoning Ordinance, states that the “granting of a variance will not be contrary to the spirit and purpose of the Zoning Ordinance” or to the public health, safety, and welfare. Allowing the owner of 1188 to encroach an additional 3.5-feet on the side setback will be contrary to the spirit and purpose of the Zoning Ordinance. The purpose of having side setback development standards is to ensure that the homes are all spaced equidistant from each other. The homes in this neighborhood are very close to each other under the existing zoning.

Cramming homes and cars into small lots is not aesthetically pleasing. The homes are practically touching each other.





Thus, the variance goes against the spirit and purpose of the Zoning Ordinance.

### **Substantial Justice**

Finally, the Zoning Ordinance requires that “granting the variance will result in substantial justice to the property owner, the owners of the property in the area, and the general public.” Further analysis of the law from the above-mentioned cases proves that the variance will not result in substantial justice to the property owners in the area and the general public. Rather, it will only serve the interests of the owner of 1188.

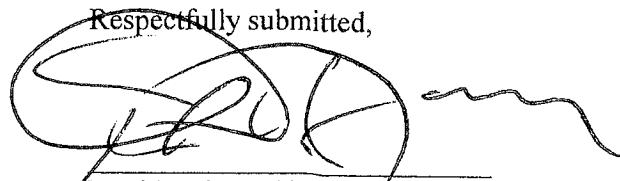


One of the requirements from *Puritan-Greenfield* is that the hardship is “peculiar to the property of the person seeking the variance.” Many of the residents in this area face the same situation and would also prefer to own a larger home. In other words, the current zoning ordinance is not peculiar to the property of the person seeking the variance. Granting the variance will allow the owner of 1188 to infringe upon his neighbor’s designated space. If this is allowed, then a substantial injustice will occur.

**Conclusion**

The owner of 1188 has not met the requirements that are necessary for a variance to be granted. Whatever hardship the homeowner is claiming stems from his unwillingness to find an alternative design that would comply with the 14-foot side setback requirement. In a neighborhood where space is limited, variances should not be granted unless the homeowner demonstrates a true need for one. The instant application simply seeks to use every square inch of buildable lot space for the construction of its house. Though the proposed design is the owner’s preferred design, it is not the only design. Simply reducing the size of the house to conform with current zoning is completely feasible. However, conformance would impinge on the builder/owner’s revenue model. In short, the owner wants to make more money by building a house which is too big and too close. The 1188 side setback variance request should be denied.

Respectfully submitted,



David and Jennifer Findling  
1172 Bird Avenue  
Birmingham, MI 48009  
(248) 399-9700  
David@Findlinglaw.com

Application Date: 7-11-14



Hearing Date: Aug 12, 2014

Received By: BM

Appeal # 14-20

### Board of Zoning Appeals Application

Type of Variance: Interpretation \_\_\_\_\_ Dimensional  Land use \_\_\_\_\_ Sign \_\_\_\_\_ Admin review \_\_\_\_\_

#### Property Information:

Street address: <u>1188 BIRD</u>	Sidwell Number:
Owners name: <u>JODI PODLO</u>	Phone #: <u>248-677-8484</u>
Owners address: <u>433 W. WASHINGTON</u>	Email: <u>RICK (A) RCMGROUPS.COM</u>
City: State: <u>ROYAL OAK, MI</u>	Zip code:
Contact person: <u>RICK MERLINI</u>	Phone #: <u>248-677-8484</u>

#### Petitioner Information:

Petitioner name: <u>RICK MERLINI</u>	Phone #: <u>248-677-8484</u>
Petitioner address: <u>433 W. WASHINGTON</u>	Email: <u>RICK (A) RCMGROUPS.COM</u>
City: <u>ROYAL OAK</u> State: <u>MI</u>	Zip Code: <u>48067</u>

#### Required Attachments:

- Original Certified Survey  Original BZA application  Letter of hardship or practical difficulty
- 10 folded copies of the site plan and building plans (existing and proposed floor plans and elevations)
- Set of plans and survey mounted on foam board
- If appealing a board decision, a written transcript from the meeting is required along with 10 copies of minutes from any previous Planning, HDC or DRB board.

#### General Information:

Prior to submitting for a Board of Zoning Appeals review, you must schedule an appointment with the Building Official or a City Planner for a preliminary discussion on your submittal. The deadline is the 15th of the previous month.

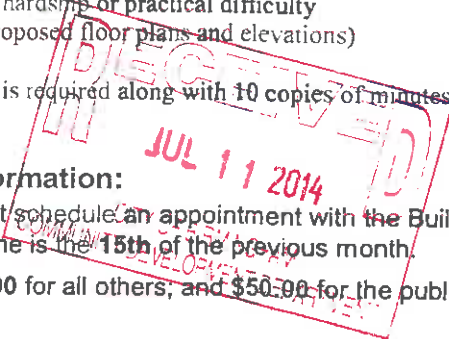
The BZA review fee is \$310.00 for single family residential; \$510.00 for all others; and \$50.00 for the public notice sign.

Location of all requested variances must be highlighted on plans and survey. All dimensions to be taken in feet to the first decimal point.

Variance chart example:	Required	Existing	Proposed	Amount of Variance
	25'	24'	24'	1'

By signing this application I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

Signature of Owner: Jodi Podlo Date: 7-1-14



CITY OF BIRMINGHAM  
 Date 07/11/2014 3:04 PM  
 Ref 00109989  
 Request 210487  
 Amount \$310.00

109989 109989

**Hard Ship for variance request  
1188 Bird , Birmingham  
7-1-14**

Dear Board.

I am requesting a variance of 3.5' side yard on the eastern side yarded

I am not able to comply with the requirement of 14' between homes because of existing non-conforming homes on the east side of this proposed new home.

If granted, I will have 10.5 between the homes.

My hardship is due to an existing conditions. The home to the east is only .3 off the lot line.

I have made some changes to my plan to help minimize the variances request.

# 1 Most new construction homes in this area are 26' wide. I have reduce mine to 24' 10"

By granting me this variance, I do not believe that I will hurt property values in the neighborhood by in fact increase them.

I believe that I have exhibit a hardship and I have made an effort through design to minimize the request

Thank you for your consideration

Rick Merlini

# **CASE DESCRIPTION**

## **1072 Davis (14-21)**

**Hearing date: August 12, 2014**

The owners of the property known as **1072 Davis** request the following variance to allow the construction of a new house and detached garage:

- A. **Article 4, Section 4.69, C** of the Zoning Ordinance requires the distance between principal residential buildings be 14.00' for this lot; with 10.40' proposed. Therefore, a variance of 3.60' is requested.

**Staff Notes:** The owner is proposing to construct a new house with a detached garage on this lot. The proposed new house and garage will meet all setbacks, height, and lot coverage requirements except the distance between principle structures requirement. A new house is also proposed to be built to the west of this lot. That house is proposed to be 5.20' from the shared property line and will be constructed first. The proposed house to the west will meet all setback requirements, based on this lot being vacant. The permit for the proposed house to the west of this lot is being issued first. Therefore, a variance is required for 1072 Davis, but not the house to the west. The owner is proposing the new house be 24'-10" in width and build the home to the west 5.20' from the shared property line to minimize the variance request.

This property is zoned R-3 single family residential.

Application Date: 7-11-14



Hearing Date: Aug. 12, 2014

Received By: Bru

Appeal # 14-21

### Board of Zoning Appeals Application

Type of Variance: Interpretation \_\_\_\_\_ Dimensional  Land use \_\_\_\_\_ Sign \_\_\_\_\_ Admin review \_\_\_\_\_

#### Property Information:

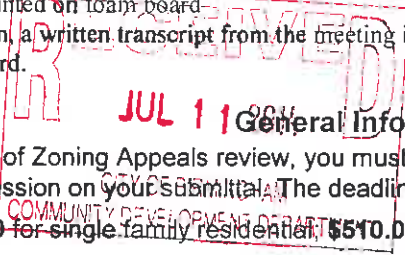
Street address: <u>1072 DAVIS</u>	Sidwell Number:
Owners name: <u>LIVE WELL LUSTON HOMES</u>	Phone #: <u>248-677-8484</u>
Owners address: <u>433 N. WASHINGTON</u>	Email: <u>RICK @ ACM GROUPS - CO</u>
City: State: <u>ROYAL OAK MI</u>	Zip code: <u>48067</u>
Contact person: <u>RICK MERLINO</u>	Phone #: <u>248-677-8484</u>

#### Petitioner Information:

Petitioner name: <u>SAME AS ABOVE</u>	Phone #:	
Petitioner address:	Email:	
City:	State:	Zip Code:

#### Required Attachments:

- Original Certified Survey
- Original BZA application
- Letter of hardship or practical difficulty
- 10 folded copies of the site plan and building plans (existing and proposed floor plans and elevations)
- Set of plans and survey mounted on foam board
- If appealing a board decision, a written transcript from the meeting is required along with 10 copies of minutes from any previous Planning, HDC or DRB board.



#### General Information:

Prior to submitting for a Board of Zoning Appeals review, you must schedule an appointment with the Building Official or a City Planner for a preliminary discussion on your submission. The deadline is the 15th of the previous month.

The BZA review fee is \$310.00 for single family residential, \$510.00 for all others; and \$50.00 for the public notice sign.

Location of all requested variances must be highlighted on plans and survey. All dimensions to be taken in feet to the first decimal point.

Variance chart example:	Required	Existing	Proposed	Amount of Variance
	25'	24'	24'	1'

By signing this application I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

Signature of Owner: [Signature] Date: 7-14-14

CITY OF BIRMINGHAM  
 Date 07/11/2014 3:04:13 PM  
 Ref: 0109990  
 Ref: 210487  
 Amount: \$310.00

109990

**Hard Ship for variance request**  
**1072 Davis , Birmingham**  
**7-14-14**

Dear Board.

I am requesting a variance of 3.6 on the western side yard dimension side yard.

I am not able to comply with the requirement of 14' between homes on the westerly side yard lot line because this is a corner lot, and there is no driveway on the westerly side yard. If granted I will have 10.4 between homes.

I do own the lot to the west and plan on also building on that lot.

I have made some changes to my plan to help minimize the variances request.

1. Most new construction homes in this area are 26' wide. I have reduce mine to 24' 10"
2. And I have moved both the homes to a 5.2 side yard to help minimize the variances request.

By granting me this variance, I do not believe that I will hurt property values in the neighborhood by in fact increase them.

Also, it needs to be noted, that my neighbor to the west, is also requesting a variance, of which I support his request.

I believe that I have exhibit a hardship and I have made an effort through design to minimize the request

Thank you for your consideration

Rick Merlini

# **CASE DESCRIPTION**

## **1125 Emmons (14-22)**

**Hearing date: August 12, 2014**

The owners of the property known as **1125 Emmons** request the following variance to allow the construction of a new house and detached garage:

- A. **Article 4, Section 4.69 C** of the Zoning Ordinance requires the distance between principal residential buildings be 14.00' for this lot; with 10.70' proposed. Therefore, a variance of 3.30' is requested.

**Staff Notes:** The owner is constructing a new house with a detached garage on this lot. The proposed new house and garage will meet all setbacks, height, and lot coverage requirements except the distance between principle buildings requirement. The permit for this house was issued and construction commenced prior to us realizing a variance is necessary.

The house under construction to the west (1111 Emmons) is located 5.50' from the shared property line after receiving a variance on February 11, 2014 to be 9.00' from the house that existed at 1125 Emmons at that time. Since 1111 was vacant, it did not appear that the building permit application we were reviewing at that time for a new house at 1125 Emmons would require a variance. That would have been true if the permit had been issued before the one at 1111. However, that was not the case and 1125 Emmons now requires a variance for distance between principle buildings. On a positive note, instead of having 9.00' between structures on these lots as approved in February, we now will have 10.70'. The owner is building the new house at 24'-10" in width to minimize the variance request.

This property is zoned R-3 single family residential.

**Motion by Mr. Judd**

**Seconded by Mr. Miller to approve the Minutes of the BZA meeting of January 14, 2014 as corrected.**

**Motion carried, 6-0.**

**VOICE VOTE**

Yeas: Judd, Miller, Grove, Hughes, Jones, Lillie

Nays: None

Absent: Conlin, Lyon

**T# 02-08-14**

**1111 EMMONS  
(Appeal 14-06)**

The owners of the property known as 1111 Emmons request the following variance to allow for the construction of a new house and detached garage:

- A. Article 4, Section 4.69 C of the Zoning Ordinance requires the distance between principal residential buildings to be 14 ft. for this lot, with 9 ft. proposed. Therefore, a variance of 5 ft. is requested.

Staff Notes: The owner is proposing to construct a new house with a detached garage on this lot. The proposed new house will meet all setbacks, height, and lot coverage requirements except the distance between principal structures requirement. This is a corner lot and the side yard setback on the west side is 10 ft., instead of 9 ft. if this was an interior 40 ft. width lot. The existing house to the east of this lot is 4 ft. from the shared property line. The owner is proposing the new house be 24.50 ft. in width to minimize the variance request. The existing house proposed for removal is non-conforming with the distance between principal structures requirement towards the east.

This property is zoned R-3 Single-Family Residential.

Two letters have been received respecting this appeal, one in favor and one in opposition.

Mr. Cooper noted that usually on a 40 ft. lot a 26 ft. wide house can be built. The applicant has tried to mitigate the distance between structures by reducing the width of his house. If this house and the house next door are constructed as planned the 9 ft. distance between them that is proposed tonight will increase to 10.2 ft.



Mr. Filvin Senti, the owner and the builder of 1111 Emmons, said they tried to mitigate the distance between houses as much as possible by pushing the house over an additional 6 in. and creating a 5.5 ft. setback, and also narrowing the house as much as they could. Addressing the neighbor's issue, they intend to put in a catch basin. Any storm water that his house sheds will be caught by the catch basin or shed to the road and into the sewer. In response to Ms. Grove, he indicated the footprint of the new house is larger than the house that was removed.

The chairman asked for comments on this appeal from the audience.

Mr. Kalim Assab who lives on Emmons received confirmation about how the front setback is calculated. Mr. Cooper explained it is the average of any residential homes within 200 ft. in each direction on the same side of the street.

**Motion by Mr. Miller**

**Seconded by Mr. Judd to approve Appeal 14-06 on 1111 Emmons. He believes that because of the condition of the lot and the position of the adjacent house it would unreasonably prevent the petitioner from using the property appropriately for the permitted purpose.**

**He believes that the variance does do substantial justice to aligning the house with the rest of the neighborhood. There is a unique circumstance to this corner lot and he does not believe that the problem was at all self-created. The motion is tied to the plans as submitted.**

Along with his support of the motion, Mr. Judd noted the mitigation of the petitioner in presenting and preparing his plans.

Mr. Jones concurred that not only has the petitioner mitigated circumstances to where he is putting the building in terms of the proposed construction next door, but also in response to a letter that has been received from a neighbor. The catch basin is not only responsive to this woman's concerns, but is in keeping with how the City will also deal with the matter.

**Motion carried, 6-0.**

**VOICE VOTE**

Yeas: Miller, Judd, Grove, Hughes, Jones, Lillie

Nays: None

Absent: Conlin, Lyon

**T# 02-09-14**

**2602 PEMBROKE RD.  
(Appeal 14-08)**

No Fee

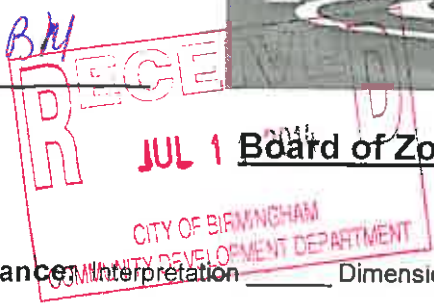
Application Date: 7-11-14

Hearing Date: Aug 12, 2014



Received By: BW

Appeal # 14-22



**Board of Zoning Appeals Application**

Type of Variance:  Interpretation  Dimensional  Land use  Sign  Admin review

**Property Information:**

Street address: <u>1125 EMMONS</u>	Sidwell Number:
Owners name: <u>IRISH MEADOWS, LLC.</u>	Phone #: <u>248-677-8484</u>
Owners address: <u>433 N. WASHINGTON</u>	Email: <u>RICK @ RCM GROUPS.COM</u>
City: State: <u>ROYAL OAK MICH</u>	Zip code: <u>48067</u>
Contact person: <u>RICK MERLINI</u>	Phone #: <u>248-677-8484</u>

**Petitioner Information:**

Petitioner name: <u>RICK MERLINI</u>	Phone #: <u>248-677-8484</u>
Petitioner address: <u>433 N. WASHINGTON</u>	Email: <u>RICK @ RCM GROUPS.COM</u>
City: <u>ROYAL OAK</u> State: <u>MICH</u>	Zip Code: <u>48067</u>

**Required Attachments:**

- Original Certified Survey
- Original BZA application
- Letter of hardship or practical difficulty
- 10 folded copies of the site plan and building plans (existing and proposed floor plans and elevations)
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- If appealing a board decision, a written transcript from the meeting is required along with 10 copies of minutes from any previous Planning, HDC or DRB board.

**General Information:**

Prior to submitting for a Board of Zoning Appeals review, you must schedule an appointment with the Building Official or a City Planner for a preliminary discussion on your submittal. The deadline is the 15th of the previous month.

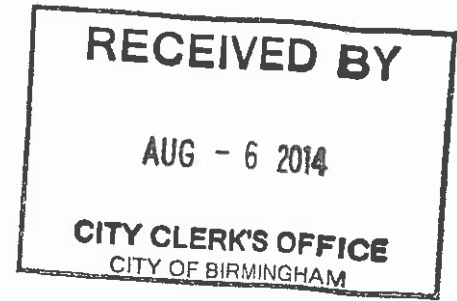
The BZA review fee is \$310.00 for single family residential; \$510.00 for all others; and \$50.00 for the public notice sign.

Location of all requested variances must be highlighted on plans and survey. All dimensions to be taken in feet to the first decimal point.

Variance chart example:	Required 25'	Existing 24'	Proposed 24'	Amount of Variance 1'
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By signing this application I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

Signature of Owner: [Signature] Date: 7-14-14



August 1, 2014

City Clerk  
City of Birmingham

To Whom It May Concern,

This letter is regarding a public hearing by the Birmingham Board of Zoning Appeals on Tuesday, August 12, 2014. Owners of Birmingham address 1125 Emmons are requesting a dimensional variance for distance between principal structures to construct a new home. I am opposed to any dimensional variances in my neighborhood. With every new home that is constructed, my backyard continues to flood. Currently my yard floods to within 8' of my house. I am extremely concerned about my basement flooding, the contents being damaged, and my property losing value. Please do not approve this request.

Sincerely,

A handwritten signature in cursive script that reads "Gretchen Maricak".

Gretchen Maricak  
1040 Chapin  
Birmingham, MI 48009

**Hard Ship for variance request  
1125 Emmons , Birmingham  
7-14-14**

Dear Board.

I am requesting a variance of 3.3 side yard on the westerly side yarded.

I am not able to comply with the requirement of 14' between homes on the westerly side yard lot line because both of the existing homes, that side my home, neither have a driveway siding my home , which is the reason I cannot conform,

The home on my west lot line is a new construction which has already been given a variance this past February. At That time, the board granted a variance of 5' to 9' between homes. If granted, I have increased the distance between homes to 10.7

I have made some changes to my plan to help minimize the variances request. Most new construction homes in this area are 26' wide. I have reduce mine to 24' 10" And I have moved the home to 5' 2" off the lot line which are normally only 5' off lot line

By granting me this variance, I do not believe that I will hurt property values in the neighborhood by in fact increase them.

Also, it needs to be noted, that my neighbor to the west, is also requesting a variance, of which I support his request.

I believe that I have exhibit a hardship and I have made an effort through design to minimize the request

Thank you for your consideration

Rick Merlini