

# BOARD OF ZONING APPEALS AGENDA

City of Birmingham  
Commission Room of the Municipal Building  
151 Martin Street, Birmingham, Michigan  
October 17, 2017  
7:30 PM

---

1. ROLL CALL
2. APPROVAL OF THE MINUTES OF September 12, 2017
3. APPEALS

	Address	Petitioner	Appeal	Type/Reason
1.	539 S BATES	HOROWITZ	17-29	DIMENSIONAL

4. CORRESPONDENCE
5. GENERAL BUSINESS
6. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA
7. ADJOURNMENT

## Title VI

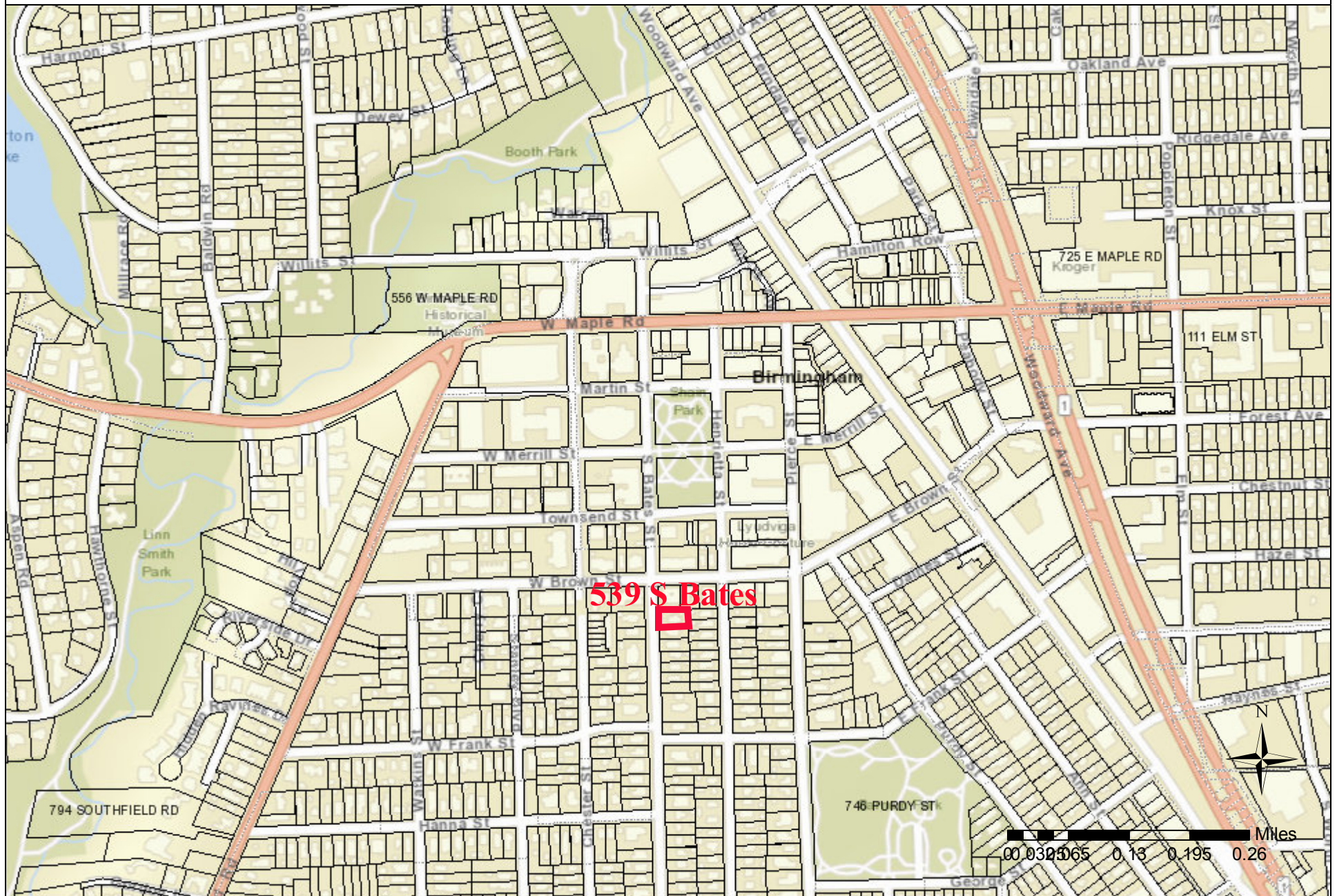
Persons with disabilities that may require assistance for effective participation in this public meeting should contact the City Clerk's Office at the number (248) 530-1880, or (248) 644-5115 (for the hearing impaired) at least one day before the meeting to request help in mobility, visual, hearing,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

# OCTOBER 17, 2017 BOARD OF ZONING APPEALS MEETING





**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS  
TUESDAY, SEPTEMBER 12, 2017  
City Commission Room  
151 Martin Street, Birmingham, Michigan**

---

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, September 12, 2017. Chairman Charles Lillie convened the meeting at 7:30 p.m.

**Present:** Chairman Charles Lillie;; Board Members Kevin Hart, Jeffery Jones, Randolph Judd, Vice-Chairman Peter Lyon John Miller, Erik Morganroth

**Absent:** Alternate Board Members Kristen Baiardi, Jason Canvasser

**Administration:** Bruce Johnson, Building Official  
Mike Morad, Asst. Building Official  
Carole Salutes, Recording Secretary  
Jeff Zielke, Building Inspector

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 who serve staggered three-year terms. 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. Four affirmative votes are required to reverse an interpretation or ruling. There are no interpretations on this evening's agenda.

**T# 09-60-17**

**APPROVAL OF THE MINUTES OF THE BZA MEETING OF AUGUST 8, 2017**

**Motion by Mr. Judd**

**Seconded by Mr. Morganroth to approve the Minutes of the BZA meeting of August 8, 2017 as presented.**

**Motion carried, 7-0.**

**VOICE VOTE**

**Yeas:** Judd, Morganroth, Hart, Jones, Lillie, Lyon, Miller

Nays: None  
Absent: None

**T# 09-61-17**

**1583 RUFFNER  
Appeal 17-21**

The owners of the property known as 1583 Ruffner request the following variances to construct a two-story addition to the rear of the existing home.

A. Chapter 126, Article 2, section 2.10 of the Zoning Ordinance requires both side yard setbacks for this property total 14.00 ft. The total side yard setbacks proposed is 8.46 ft.; therefore, a 5.54 ft. variance is requested.

B. Chapter 126, Article 4, section 4.61 (2) of the Zoning Ordinance requires a minimum street side yard setback to be 10.00 ft. The proposed setback is 3.46 ft; therefore, a variance of 6.54 ft. is requested.

C. Chapter 126, Article 4, section 4.61 (2) of the Zoning Ordinance requires the attached garage to be setback 15.00 ft. from the street side property line. The proposed setback is 13.10 ft.; therefore, a variance of 1.90 ft. is requested.

D. Chapter 126, Article 4, section 4.74 (C) of the Zoning Ordinance requires a minimum distance between principal residential buildings for this lot to be 14.00 ft. The proposed distance is 10.14 ft., therefore a variance of 3.86 ft. is requested.

E. Chapter 126, Article 4, section 4.61 (2) of the Zoning Ordinance requires a minimum street side yard setback to be 10.00 ft. A proposed covered porch is set back 3.46 ft. with a 1.00 ft. overhang; therefore, variances of 6.54 ft. for the porch and 5.87 ft. for the overhang are requested.

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

Mr. Johnson advised that the existing two-story colonial home was constructed in 1926 and is located on the NW corner of Ruffner and Torry St.. The existing lot dimensions are as originally platted. The applicant is proposing a two-story addition to the rear of the home with an attached garage accessed from the side street. The lot tapers as it goes back. It is 40 ft. wide in the front and 37.03 ft. in the rear which is driving some of the need for request (C). The neighboring home on the abutting lot to the west was constructed in 2012-2013.

Chairman Lillie pointed out a problem with variance (E). One survey shows the NE corner of the porch to be 3.46 ft. off the lot line. However the property line tapers back

and the variance request should be larger. If the lot line was parallel the petitioner would have had 2.5 more ft. to build in. He received clarification from Mr. Johnson that the house to the west did not need variances when it was constructed. Also Mr. Johnson noted that if the petitioner built a detached garage instead of attaching it a variance would still be needed.

Mr. Johnson went on to explain regarding variance (C) that the 15 ft. setback requirement for attached garages is a fairly new ordinance provision. Prior to that, attached garages only needed to maintain the same setback as the house. However, the City was receiving complaints about cars parked over the sidewalk, because 10 ft. was not enough room to park a vehicle without blocking the sidewalk.

Mr. Jones asked what the petitioner has done to mitigate the amount of variances requested. Mr. Johnson verified that after the petitioner spoke with Mr. Worthington the variances were reduced from what was initially proposed.

Mr. Hart noted that if the garage was detached the petitioner would still need a variance for lot coverage. The current proposal to attach the garage seems to be a much lesser evil.

Ms. Janine Sova spoke for her daughter, Victoria Miller, who is the owner of the property. Ms. Sova said the house was purchased before the new 15 ft. setback requirement was in place. She explained the reasons for the variances. They worked on the plans over four months trying to conform to the Ordinance. The inside depth of the garage is only 19 ft. which is quite narrow for a car.

Chairman Lillie explained to her that with variance (E) the problem is that a setback of 3.46 ft. has been advertised to the public and probably a larger variance is needed. Because of that the City will have to re-advertise on that one item. Mr. Johnson noted that when the designer drew the plans he did them in accordance with the Certified Survey, but put the dimension in the wrong location. If the requested variance is granted the porch would have to be moved in about 4 in. The petitioners agreed to that and Mr. Johnson said he would need new drawings that conform to the Survey.

At 8:05 p.m. Mr. Larry Alessi, the designer, commented that part of the width of the living room is the stairway down to the garage. They moved the stairway from inside the garage into the house to decrease the size of the garage. Also the whole structure was pulled back to reduce two variances. They looked at a design that would only require a variance for lot coverage and potentially side yard setback, but that was discouraged because lot coverage would be over by about 80 sq. ft.

**Motion by Mr. Miller**

**Seconded by Mr. Jones to approve variances A, B, C, D, and E for Appeal 17-21 at 1538 Ruffner. He believes this situation was created by three things:**

- **One is the diminishing size of the lot;**
- **The second is the fact that it is a corner lot and the BZA has encountered that before;**
- **Thirdly, the position of the existing residence on the lot, which is very close to Torry St., makes connecting up difficult there.**

**So, Mr. Miller sees those three difficulties preventing the petitioner from meeting the exact Zoning Ordinance as written and conformity does become burdensome because of that.**

**He also feels that this addition will do substantial justice to the neighborhood. It is a great improvement on the house. They have tried to mitigate the situation. It is a very narrow garage. Also, the house as it proceeds north does step back and increases the distance from Torry St. and diminishes the mass of the house as it goes north.**

**For those reasons the problem certainly wasn't self-created and he would move to approve tied to the dimensions as advertised and contingent upon revised drawings depicting the porch being set back approximately 4 in.**

Mr. Lyon was concerned about the ordinance for attached garages on 40 ft. lots. Mr. Johnson observed if the lot didn't taper back the way it does he thought they could fit it in. Mr. Lyon indicated his support for the motion because of the unique characteristics of the tapered lot and the existing non-conforming residence. He also noted the petitioner took quite a few steps to mitigate the variances and the impact to the neighbor.

**Motion carried, 7-0.**

ROLLCALL

Yeas: Miller, Jones, Hart, Judd, Lillie, Lyon, Morganroth

Nays: None

Absent: None

**T# 09-62-17**

## **767 HARMON**

### **Appeal 17-24**

The owners of the property known as 767 Harmon request a variance from the maximum height of a fence in the front open space:

A. Chapter 126, Article 4, Section 4.11 (2) requires fences located in the front open space not exceed 3.00 ft. in height. The fence panel height is 4.17 ft. and the post

height is 5.17 ft.; therefore, variances of 1.17 ft. for the fence panel and 2.17 ft. for the posts are requested.

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

Two pieces of correspondence have been received from neighbors, one commenting on the variance request and one in favor of it.

Mr. Johnson noted that the Building Dept. received a complaint on or about June 27, 2017 that a new fence in the front open space at this location was too tall. A Code Enforcement Officer investigated and determined the fence was too tall and issued a violation notice. The property owner called the department the next day and stated that the fence was installed approximately five years ago to replace an existing deteriorated fence. The applicant is seeking a variance to allow the existing fence to remain at its current height. Pictures were presented showing how the original fence looked and how it looks today. In response to the Chairman, Mr. Johnson said the Fence Ordinance has been in existence since 1963. He explained for Mr. Judd that installation of a fence requires a permit. There was no permit drawn for this particular fence.

Mr. Ryan Goodman, the homeowner, said he purchased the house over five years ago when it was approaching 100 years in age. It needed a multitude of repairs both interior and exterior, including the fence at the front which was rotting and falling down. It was a complete eyesore for the entire street. The president of the Millpond Neighborhood Association has written a nice letter on their behalf detailing how the fence and other improvements that have been made have enhanced the appeal of the neighborhood.

In response to the Chairman's question Mr. Goodman said he cannot comply with the Ordinance now because the vinyl material cannot be cut down. Also he cannot lower the fence into the ground. Further, it would be a financial hardship to tear out the fence and replace it.

Mr. Jones stated the BZA has parameters they are required to meet in order to grant or deny a variance. Mr. Lyon added there are four points that need to be met in order to convince the board beyond a reasonable doubt that a variance is needed. The most important is that the need for a variance is not self-created. Mr. Miller asked Mr. Goodman why he did not pull a permit. His answer was that he assumed it had been pulled by his landscaper. Chairman Lillie concluded he was relying on his agent and the fact that his agent didn't do it is the petitioner's problem.

Discussion followed that letters from neighbors are worth something, but they are not the deciding factor in granting a variance. Responding to Mr. Jones, Mr. Goodman said it is possible to rip the fence out and have no fence there. Mr. Jones explained that the act of putting in a new fence requires compliance with the zoning then in effect. If the

applicant had applied for a permit it would have been pointed out to him that the fence had to be 3 ft. in height.

At 8:25 p.m. no one in the audience wished to comment on this variance request.

**Motion by Mr. Jones**

**Seconded by Mr. Judd as it relates to appeal 17-24 having the address of 767 Harmon, he would move to deny, as the requirements with which we are all aware and which the applicant signs when he files the appeal are not met.**

**In fact, the board heard nothing relating to the physical nature of the property as to why there is a practical difficulty. In fact, we heard just the opposite. Mr. Lyon's statement relating to is it not self-created, he thinks is ample reason enough. For those reasons, non-compliance with any of the four criteria that we are to decide upon are why he would move to deny.**

Mr. Miller concurred with the motion. He would be afraid of going down a slippery slope if the board approves this. It would set a very difficult precedent.

Mr. Jones added that approval of the motion would not only be a slippery slope, but it would become a totally subjective matter. That is something that would fall outside of this board's parameters. The requirements to grant approval have not been met.

Mr. Lyon said there is no choice but to deny.

**Motion to deny carried, 7-0.**

**ROLLCALL**

Yeas: Jones, Judd, Hart, Lillie, Lyon, Miller, Morganroth

Nays: None

Absent: None

**T# 09-63-17**

**490 LAKESIDE**

**Appeal 17-25**

The owners of the property known as 490 Lakeside request the following variances to replace an existing trellis roof on a rooftop terrace.

A. Chapter 126, Article 2, Section 2.06 of the Zoning Ordinance requires a maximum roof height of 30.00 ft. for this property. The proposed roof height is 32.00 ft.; therefore, a variance of 2.00 ft. is requested.



B. Chapter 126, Article 2, Section 2.06 of the Zoning Ordinance requires a maximum eave height of 24.00 ft. The proposed eave height is 29.00 ft.; therefore, a variance of 5.00 ft. is requested.

This property is zoned R-1 Single-Family Residential.

Mr. Johnson explained that the existing home was constructed in 2001. There is a rooftop terrace area at the front of the home accessed from the habitable attic area. The applicant is proposing to replace the existing trellis roof above the terrace with a sloped roof. In response to the Chairman Mr. Johnson indicated that he is not aware of any variances that were needed when the house was built. Mr. Jones received clarification that the proposed bell shaped roof will not exceed the roofline height.

Mr. Miller observed it would seem that the existing height and the proposed are in proximity to one another.

Mr. Brad Baqua from AZD Architects represented the homeowner, Mr. Arya Afrakhteh. He advised they explored a number of options with the roof configuration. None of them lent themselves aesthetically to the style of the home. The existing trellis height and the eave height are within a few inches of each other. They were very conscious about keeping the new roof lower than the main peak of the house and in balance with the mass of the house. The roofing material will be metal or copper. Aesthetically the roof will have no affect on any of the neighbors in that it will not obstruct their enjoyment of their properties in any way. If the trellis were lowered it would not be usable because of headline issues.

In response to Chairman Lillie, Mr. Baqua said the sloped roof is 5 ft. high in order to balance with the mass of the house. A flat roof did not lend itself to the aesthetics of the home in their opinion. The bell shaped roof improves the look. There is a dropped ceiling on the interior to make that shape work. He indicated for the Chairman that a flat roof would match what the house looks like now.

There were no comments from members of the audience at 8:40 p.m.

**Motion by Mr. Miller**

**Seconded by Mr. Lyon on Appeal 17-25 at 490 Lakeside to approve Variance (B) only, which is Chapter 126, Article 2, section 2.06. That relates to the proposed eave height and to the existing eave height. He thinks there is an existing condition and it is really not changing with the proposed design. So he thinks the petitioner would find conformity unnecessarily burdensome because you can't really lower the eave height and still walk out on the porch. There is only about 7 or 7.5 ft. now. Again, he finds that quite burdensome.**

**It is a unique circumstance that this is already built. Because that porch is already built he doesn't see that eave height as being self-created. It is something that was inherited and he thinks that would reasonably do justice to the neighborhood, that type of modification but maintaining that implied or the new built eave height, which seems reasonable to him.**

**So Mr. Miller would move to approve the eave height as dimensioned on the drawings, separate from the concerns for Variance (A) and tie that to an administratively approved modification to support the existing "eave."**

**Motion carried, 7-0.**

**ROLLCALL**

**Yeas: Miller, Lyon, Hart, Jones, Judd, Lillie, Morganroth**

**Nays: None**

**Absent: None**

**Motion by Mr. Miller**

**Seconded by Mr. Morganroth on Appeal 17-25 at 490 Lakeside to deny Variance (A). He cannot get around that it is completely self-created and actually relatively frivolous in terms of going past the height restrictions. Certainly a slightly different profile of the roof can be within the zoning envelope and he thinks that can be done pretty easily. There is no real practical difficulty here that he sees so he would move to deny.**

**Motion carried, 7-0.**

**ROLLCALL**

**Yeas: Miller, Morganroth, Lyon, Hart, Jones, Judd, Lillie**

**Nays: None**

**Absent: None**

**T# 09-64-17**

**CORRESPONDENCE (none)**

**T# 09-65-17**

**GENERAL BUSINESS**

**Mr. Johnson introduced Jeff Zielke and Mike Morad to the board.**

**T# 09-66-17**

**OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA** (no public was left)

**T# 09-67-17**

**ADJOURNMENT**

No further business being evident, the board members passed a motion to adjourn at 8:45 p.m.

A handwritten signature in blue ink, appearing to read "Bruce R. Johnson", is written over a horizontal line.

Bruce R. Johnson, Building Official

## 539 S Bates





# **CASE DESCRIPTION**

## **539 S. Bates St. Case No. 17-29**

**Hearing date: October 17, 2017**

The owners of the property known as 539 S. Bates request the following variance to construct an addition to their existing home:

- A. Chapter 126, Article 4, Section 4.74 (C)** of the Zoning Ordinance requires a minimum distance between principal residential buildings for this lot to be 17.50', with 7.76' proposed a variance of 9.74' is requested.

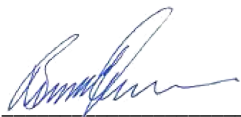
**Staff Notes:** The dimensions stated above are as advertised. However, the appellant has clarified the actual dimension between principal buildings at its closest point is 7.82' requiring a lesser variance amount of 9.68 feet.

The existing home on the property was built in 1880 and is a designated historical structure. The property owner received approval on November 02, 2016, from the Historic District Commission to construct an addition to the existing home. A building permit was issued on April 24, 2017, to construct the addition after the plans were reviewed and approved by the Building Department. After the permit was issued it was determined that the location of the addition would be in violation of the National Electrical Code and DTE minimum clearances. The department issued a stop work order on June 30, 2017, due to the clearance violation.

The property owner redesigned the addition to meet the clearance requirements from the power lines and submitted an Administrative Approval Application to the Planning Department for the changes. The revised plan has been administratively approved with the condition that the applicant seeks approval from Board of Zoning Appeals for the minimum distance between principal structures.

The attached garage on the neighboring lot (551 S. Bates) did receive a variance prior to being constructed in 1986. The minutes from that case are included.

This property is zoned R3.



---

Bruce R. Johnson  
Building Official

Application Date: 9-15-17

Received By: BM



Hearing Date: 10-17-17

Appeal # 17-29

**Board of Zoning Appeals Application**



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

**Property Information:**

Street address: <u>539 S. Bates</u>	Sidwell Number:
Owners name: <u>Michael &amp; Barbara Horowitz</u>	Phone #: <u>248 613 8600</u>
Owners address: <u>2828 Peachtree Rd, NW #601</u>	Email: <u>michael@tricapre.com</u>
City: State: <u>ATLANTA, GA</u>	Zip code: <u>30305</u>
Contact person: <u>Michael Horowitz</u> <u>Adam Cohen, Attorney</u>	Phone #: <u>248 613 8600</u>

**Petitioner Information:**

Petitioner name: <u>Michael Horowitz</u>	Phone #: <u>248 613-8600</u>
Petitioner address: <u>2828 Peachtree Rd, NW #601</u>	Email: <u>michael@tricapre.com</u>
City: <u>ATLANTA</u> State: <u>GA</u>	Zip Code: <u>30305</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: [Signature] Date: 9-15-17



**STEINHARDT PESICK & COHEN**  
PROFESSIONAL CORPORATION Attorneys & Counselors

380 North Old Woodward Avenue  
Suite 120  
Birmingham, Michigan 48009  
Telephone (248) 646-0888  
Facsimile (248) 646-0887  
www.spclaw.com



October 3, 2017

Jerome P. Pesick  
H. Adam Cohen  
Jason C. Long  
John E. Scheibelhut

Frederick D. Steinhardt  
(1941-2000)

Of Counsel  
Walter B. Mason, Jr.

**VIA EMAIL and FIRST CLASS MAIL**

City of Birmingham  
Board of Zoning Appeals  
151 Martin Street  
P.O. Box 3001  
Birmingham, MI 48012-3001

Attention: Mr. Bruce Johnson, Building Official

Re: Letter of Practical Difficulty Accompanying Application for  
Dimensional Variance Regarding 539 S. Bates Street,  
Birmingham, Michigan

Dear City of Birmingham Board of Zoning Appeals:

This law firm represents Michael and Barbara Horowitz, who own property commonly known as 539 S. Bates Street, Birmingham, Michigan (the "Property"). This "Letter of Practical Difficulty" accompanies our Board of Zoning Appeals ("BZA") Application dated on or about September 15, 2017, and summarizes the unique history concerning the Property, which supports the BZA's issuance of a dimensional variance from the "distance between buildings" regulation contained in the City of Birmingham's ("City's" or "Birmingham's") Zoning Ordinance at Article 4, Section 4.74(c) (the "Ordinance").

**I. BACKGROUND**

The Horowitzes are in the process of relocating from Atlanta, Georgia to Birmingham. In July 2016, the Horowitzes purchased the Property contingent on, among other things, the City's Historic District Commission ("HDC") "reinstating" a then-expired approval that the HDC had granted to one of the Property's prior owners to construct an addition to the existing historic home located on the Property. During the following month, the Horowitzes appeared before the HDC, which granted their request to reinstate the prior owner's approval. At that meeting, the Horowitzes advised the HDC that they would soon return seeking modest changes



City of Birmingham  
October 3, 2017  
Page Two

to that “reinstated” plan. In November 2016, the Horowitzes did return to the HDC and presented those changes, which were likewise unanimously approved, with positive comments about the modest changes. In reliance on those approvals, the Horowitzes proceeded to close on their purchase of the Property, and received approval of their building plans and a building permit from the City to complete their project. The Horowitzes designed their home within the approved footprint, and the project commenced in the form of earthwork, demolition, preliminary construction, and the like.

During the approval and permitting process, DTE asserted that development of the proposed garage on the Property’s **easterly** side would lack the National Electric Code’s required clearance from an overhead power line located in that vicinity. While DTE apparently possessed an easement on the next-door neighbor’s property, it possessed no easement on the subject Property to compel such clearance. In fact, all DTE poles and wires were located on the neighbor’s property east of the Horowitzes’ Property. However, DTE and the Horowitzes identified a potential resolution to that issue.

Then, at a later date, after building permits had already been issued, DTE asserted that construction of the proposed addition would also lack the National Electric Code’s required clearance from a power line on the Property’s **north** side, as well. DTE contended that it possessed an easement on the Property in that location, but it was unrecorded and did not appear in the Property’s chain of title.

On June 29, 2017, the City issued a notice stating that, absent resolution of DTE’s concerns, the City would issue a stop work order in 24 hours. The City then promptly issued the stop work order. That order, issued well after the City issued the building permit, led to a lengthy series of meetings and communications over many weeks among representatives for the City, DTE, and the Horowitzes, including attorneys, building officials, engineers, and others. At a meeting on August 16, 2017, two basic alternatives were presented to the Horowitzes:





City of Birmingham  
October 3, 2017  
Page Three

1. The Horowitzes could apply to the HDC for a permit to demolish the historically designated structure on the Property. We are advised that demolition approval is unlikely, given the historic designation. Moreover, this process would consume many months with the result being uncertain at best; or

2. DTE could elevate the power lines on the Property's easterly side, and relocate the power poles and lines on the Property's northerly side, subject to confirmation that the relocation is even feasible from an engineering standpoint. This process, too, would take months and DTE's estimated cost for that alternative is approximately \$345,000. This proposal was modified from a prior DTE proposal, the cost for which exceeded \$500,000. The parties, of course, dispute who would be responsible for paying that extraordinary cost.

All the while, the Horowitzes' building project has remained stalled.

Concerned that both "alternatives" would yield substantial construction delays, uncertainty, significant cost, and potential litigation, the Horowitzes went back to square one. With the assistance of their architect, William Finnicum, they re-designed the proposed addition to be constructed on the Property. Put another way, despite the fact that the Horowitzes long ago obtained HDC approval and a building permit, they have now re-designed their proposed addition. The new design would meet the requirements identified by DTE, preserve the historic structure, and substantially mitigate both the timeline necessary to secure their occupancy, and some of their damages. The new design has been circulated among the various City and DTE attorneys, representatives, and officials referenced above, with favorable responses. While the new design meets the City's setback requirements, its construction requires a dimensional variance from the City's Ordinance regulating "distance between buildings" on the Property's southerly side. (This assumes, for the sake of argument, that the neighbor's garage qualifies as a "principal residential building" under Ordinance Section 4.74(C)).



City of Birmingham  
October 3, 2017  
Page Four

## II. DIMENSIONAL VARIANCE

The Ordinance provides, in pertinent part, that, "Each residential lot shall provide a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. This requirement is in addition to the setback provisions as specified in each 2-page layout in Article 2." Ordinance, Article 4, Section 4.74(C). The Horowitzes' lot is 70 feet wide. The closest point of the neighbor's garage is 7.82 feet from the Horowitzes' proposed addition. They are therefore requesting that the BZA grant a dimensional variance equal to 9.68 feet from the 17.5 foot minimum distance between buildings imposed by the Ordinance based on a demonstrable "practical difficulty." As explained below, this practical difficulty is satisfied through any or all of three alternative sources, none of which were self-created.

## III. PRACTICAL DIFFICULTY

### A. Property History

The first source of "practical difficulty" supporting the Horowitzes' Application is the Property's history as detailed above. The Horowitzes already obtained HDC approval and a building permit for construction of an addition to the existing home on the Property. The Horowitzes believe that, as a matter of Michigan law, they possess "vested rights" to complete construction of their approved plan. The City disagrees. Either way, substantial work on the site has already occurred, and it was DTE, not the Horowitzes, who belatedly objected to that construction and prompted the City to issue a stop work order. This was not "self-created."

Moreover, the costs and time associated with the other two alternatives – involving demolition of the existing historic structure or elevating and relocating power lines and poles at the Property – are expensive, risky, and time-consuming, not to mention uncertain in scope and feasibility. By re-designing their home, the Horowitzes have eliminated those barriers, subject only to the modest dimensional variance requested herein.



City of Birmingham  
October 3, 2017  
Page Five

**B. Adjacent Property**

Irrespective of the foregoing Property history, practical difficulty also exists in a very traditional sense. In approximately 1986, an owner of the adjacent lot to the Property's south obtained a variance to construct a single-story garage addition to his/her home's northerly side. That neighbor's garage is nonconforming as to its side yard setback requirement. Moreover, the neighbor's lot is only 50 feet wide, meaning that lot's "distance between buildings" regulation is only 14 feet, not the 17.5 feet applicable to the Horowitz Property.

Those factors are significant in several respects. First, if the Horowitzes' Property was equal in width to the adjoining neighbor's lot, the requested variance would be only 6.18 feet (because the applicable "distance between buildings" under the Ordinance would be 14, not 17.5 feet, such that the requested 9.68 foot variance would be 3.5 feet narrower).

Second, the neighbor's addition narrowed the "distance between buildings" that would otherwise exist under the Horowitzes' new plan, from which they now seek a dimensional variance. Put another way, absent the garage addition constructed by the Property's neighbor, no variance would be required in connection with the new design submitted by the Horowitz family.

Finally, the neighbor's garage addition is non-conforming as to its setback. The variance granted to the neighbor permitted an encroachment 2.2 feet into the "standard" 5.0 foot side yard setback. Were it conforming, the Horowitzes' variance request would be 2.2 feet narrower than that requested herein. The Horowitzes' new design complies with all setback requirements applicable to their site; only the proximity of the neighbor's garage addition compels a variance. These practical difficulties were also not self-created.



City of Birmingham  
October 3, 2017  
Page Six

**C. Limited Building Envelope**

In light of the demands asserted by DTE, the existing home's historic designation, the City's zoning ordinance setback requirements, and reinstatement of the Property's previously-expired plans, the Horowitzes are confronting an extremely limited building envelope in which to construct their addition. Their request for just one dimensional variance, while otherwise complying with all these independent constraints upon their Property, is a modest but necessary consequence of these myriad practical difficulties, which were not of the Horowitzes' making.

**IV. ALL PRACTICAL DIFFICULTY CONSIDERATIONS ARE PRESENT**

Granting this dimensional variance is consistent with the spirit and intent of the City's ordinance. The Property will be put to single family use, complies with all but one regulation under the use and dimensional ordinances imposed by the City, and will still respect the historic designation of the existing structure on site.

For the reasons explained above, the practical difficulty at issue was not self-created. To the contrary, the Horowitz family already obtained HDC approval and a building permit, and the neighbor to the south constructed an addition years ago, generating the need for this variance.

Further, this Property presents a unique procedural history: As previously discussed, for several months the Horowitzes have worked diligently with the City's representatives and staff to develop a reasonable solution that works for all parties. The requested variance is that solution.

Granting this dimensional variance would also promote substantial justice and fairness: the Horowitz family has endured a hardship as their efforts to construct an already-approved home have stalled for months. The alternatives of seeking permission from the HDC to demolish an historic structure, or raising and relocating power poles and lines, are daunting, uncertain, time-consuming, prohibitively expensive, and not in the City's best interest. The requested variance is a far more subtle means of solving the problems before all parties.





City of Birmingham  
October 3, 2017  
Page Seven

Finally, in no sense would issuance of this dimensional variance impair health, safety, welfare, or the greater community. To the contrary, it is the best means of preserving costs, expediency, resources, and the collaborative spirit in which it is sought.

Michael and Barbara Horowitz respectfully request the BZA grant the requested dimensional variance. We will be happy to answer any questions at the public hearing on their Application scheduled for October 17, 2017. In the meantime, should you have any further questions or comments, please do not hesitate to call.

Very truly yours,

A handwritten signature in blue ink, appearing to read "H. Adam Cohen", with a long horizontal flourish extending to the right.

H. Adam Cohen

HAC/cat

cc: Mr. and Mrs. Michael Horowitz  
Timothy J. Currier, Esq.

**BIRMINGHAM HISTORIC DISTRICT COMMISSION  
MINUTES OF NOVEMBER 2, 2016**

Municipal Building Commission Room  
151 Martin, Birmingham, Michigan

---

Minutes of the regular meeting of the Historic District Commission ("HDC") held Wednesday, November 19, 2016. Chairman John Henke called the meeting to order at 7:04 p.m.

**Present:** Chairman John Henke; Board Members Mark Coir, Natalia Dukas (arrived at 7:08 p.m.), Thomas Trapnell, Vice-Chairperson Shelli Weisberg, Michael Willoughby

**Absent:** Commission Member Keith Deyer; Student Representative Loreal Salter-Dodson

**Administration:** Matthew Baka, Sr. Planner  
Carole Salutes, Recording Secretary

**11-57-16**

**APPROVAL OF MINUTES  
HDC Minutes of October 5, 2016**

**Motion by Mr. Coir**

**Seconded by Mr. Willoughby to approve the HDC Minutes of October 5, 2016 as submitted.**

**Motion carried, 5-0.**

**VOICE VOTE**

Yeas: Coir, Willoughby, Henke, Trapnell, Weisberg

Nays: None

Absent: Deyer, Dukas

Chairman Henke cautioned the petitioners that there were only five of seven board members present and four votes are needed to pass a motion. He offered them the opportunity to postpone their hearing to the next meeting in the hope there would be seven members present at that time. No one opted to postpone.

**11-58-16**

**HISTORIC DESIGN REVIEW**

**539 S. Bates**

**United Presbyterian Parsonage**

**Alterations to the existing historic home  
Bates St. Historic District**

Zoning: R-3 Single-Family Residential

Proposal: Mr. Baka provided a history of events to this point. The applicant proposes to construct an addition and a two-story garage on a contributing historic house in the Bates St. Historic District. This application was previously approved at the June 6, 2012 HDC meeting. However, the owners at that time did not follow through with construction of the addition. A new prospective home owner appeared before the commission on August 3, 2016 to request renewed approval of the previous plan, which was granted. At that time the applicant indicated that they would return to the commission in the near future to request modifications to the original plan once they had finalized the purchase of the home.

In 2012, the HDC approved a large two-story addition on the back of the existing historic structure. The owners at the time never followed through with the approved addition. In August of 2016 a new prospective owner was granted a renewed approval of the previous addition. This was done prior to the formal purchase of the home in order to ensure that the previously approved addition would still be permitted. At that time the new owner, Mr. Michael Horowitz, indicated that he would likely be returning to the board to slightly modify the plans for the addition to better suit their needs. Accordingly, the applicant has now submitted revised plans requesting several changes to the site.

*Design*

Addition: The footprint of the addition to the house is proposed to be enlarged by 127 sq. ft. from the original approval to accommodate a new elevator and master bedroom suite. Also, the footprint of the garage is proposed to be enlarged 30 sq. ft. and the eave height to be raised 21 in.

These changes are to accommodate a ½ story storage area above the garage and an interior staircase. Along the rear of the new addition the applicant is now proposing to construct an uncovered raised porch made of Fendt Old World Holland tumbled paving brick in a “rustic blend” color.

In addition to the changes to the footprint of the addition, the applicant is also proposing several changes to the design and materials to be used. Shakertown cedar shingles are now proposed to be used on the addition and garage in place of the previously approved stucco finish. Also, the applicant is now proposing a 10 in. frieze board and simplified window and door casings. The color of the addition is proposed to be “Amherst Gray” on the cedar shake and the trim is proposed to be BM Pale Oak. The foundation of the addition and garage is now proposed to be concrete block parged with cement plaster painted SW 0077 “Classic French Gray.” The chimney is now proposed to be Michigan fieldstone.

Historic Resource: The changes proposed to the historic portion of the home include painting the existing Dolly Vardon Siding SW0077 – Classic French Gary (previously approved), and installing a new roof on the historic portion and the new addition using CertainTeed Landmark Pro Shingles in “Driftwood” color.

The applicant is also proposing to renovate the front porch by replacing the ceiling with tongue and groove, v-groove, painted BM “Amherst Gray.” The floor of the porch is proposed to be painted to match natural finish Ipe wood. The railing of the porch is proposed to be clear cedar clear-coated with polyurethane. The balusters are proposed to be painted BM Pale Oak OC-20. The proposal also calls for a new exterior light fixture with bronze finish and pearl mist glass.

Mr. Baka passed around a materials board.

Mr. Bill Finnicum, the architect, confirmed for the Chairman that the windows on the new addition will be aluminum clad. The Michigan fieldstone which is on the foundation of the existing structure is being used on the new structure for the chimney.

It was the consensus of the board members that this proposal looks a lot better than the previous submission.

**Motion by Mr. Willoughby**

**Seconded by Mr. Coir to approve the Historic Design Review for 539 S. Bates, United Presbyterian Parsonage, as submitted.**

There were no comments from the public on the motion at 7:20 p.m.

**Motion carried, 6-0.**

VOICE VOTE

Yeas: Willoughby, Coir, Dukas, Henke, Trapnell, Weisberg

Nays: None

Absent: Deyer

**11-59-16**

~~**HISTORIC DESIGN REVIEW**~~

~~**159 Pierce**~~

~~**Historic St. Clair Edison Building**~~

~~**CBD Historic District**~~

~~Zoning: B-4 Business Residential~~



**B. Communications**

-- Commissioners' Comments (none)

**11-61-16**

**ADJOURNMENT**

No further business being evident, the commissioners motioned to adjourn the meeting at 7:41 p.m.

Matthew Baka  
Sr. Planner

**BIRMINGHAM HISTORIC DISTRICT COMMISSION  
MINUTES OF AUGUST 3, 2016**

Municipal Building Commission Room  
151 Martin, Birmingham, Michigan

---

Minutes of the regular meeting of the Historic District Commission ("HDC") held Wednesday, August 3, 2016. Chairman John Henke called the meeting to order at 7:05 p.m.

**Present:** Chairman John Henke; Commission Members Mark Coir, Natalia Dukas, Thomas Trapnell, Michael Willoughby

**Absent:** Commission Members Keith Deyer, Vice-Chairperson Shelli Weisberg; Student Representative Loreal Salter-Dodson

**Administration:** Matthew Baka, Sr. Planner  
Carole Salutes, Recording Secretary

Chairman Henke cautioned the petitioners that there were only five of the seven board members present this evening and four affirmative votes are needed to pass a motion for approval. Therefore he offered the option to postpone to the next meeting without penalty in the hope all seven members would be present. The petitioners elected to proceed.

**08-41-16**

**APPROVAL OF MINUTES  
HDC Minutes of July 6, 2016**

**Motion by Mr. Coir**

**Seconded by Ms. Dukas to approve the HDC Minutes of July 6, 2016 as presented.**

**Motion carried, 5-0.**

**VOICE VOTE**

Yeas: Coir, Dukas, Henke, Trapnell, Willoughby

Nays: None

Absent: Deyer, Weisberg

**08-42-16**

~~**HISTORIC DESIGN REVIEW  
277 Pierce  
Former Varsity Shop**~~

## **HISTORIC DESIGN REVIEW**

**539 S. Bates**

**United Presbyterian Parsonage**

**New Addition**

**Bates St. Historic District**

Zoning: R-3 Single-Family Residential

Proposal: Mr. Baka highlighted the request. The applicant proposes to construct an addition and a two-story garage on a contributing historic house in the Bates St. Historic District. This application was previously approved at the June 6, 2012 HDC meeting. However, the owners at that time did not follow through with the construction of the addition. There is now a new potential home owner. They would like to construct the addition and are asking for a renewed approval of the previous plan which was only good for one year.

The Victorian style, wood frame house was constructed c. 1890, and was used as the parsonage of the United Presbyterian Church. A 222 sq. ft. two-story rear addition was added to the house in 1988, without approval from the HDDRC. In 1995, it was discovered that an existing rear addition already had illegal vinyl siding on it. A small one-story screened aluminum patio addition was attached to the north elevation at some point between 1995 and 2004 without approval from the HDDRC.

In March, 2009, the owner received Administrative Approval to replace the front porch with one that mirrored the porch at 571 S. Bates, a house which is almost a duplicate of 539 S. Bates. In May 2009, the owner received permission to paint the house and in July, 2009, new landscaping was administratively approved.

Design: The applicant proposes to demolish the existing one-story north side screened aluminum addition and the two rear two-story additions. The applicant proposes to build a two-story addition on the rear of the house, a full basement below the addition and a two-story, two-car garage with an interior staircase to attic storage on the northeast corner of the site.

The previous applicant took the HDC's comments into consideration and designed an addition that compliments the historic character of the original building and creates a functional space for the owners. The two non-contributing additions are proposed to be removed, and the new proposed addition has been moved to the rear of the original historic house, and attached with a small "hyphen" to create an "L" and delineate the old from the new. The proposed addition is clearly differentiated from the existing building through materials and design, but at the same time, is compatible with the existing building in scale and massing. The roof height of the proposed addition is lower than the existing roof height.

---

The applicant is proposing to construct a detached one-story, two-car garage directly at the rear of the house, where it will be unobtrusive.

Mr. Michael Horowitz, the prospective purchaser of the property, clarified he wants to get the previous approval reinstated without any changes to the exterior look of the home. However, he anticipates they would have to satisfy this commission before making any modifications.

Chairman Henke disclosed that his wife was one of the two color experts that were consulted in 2009. Secondly, with respect to variances he cautioned that the Board of Zoning Appeals ("BZA") is very reluctant to grant those. Mr. Horowitz assured the changes they are seeking will not require BZA approval. He will come back with some minor changes such as eliminating the fountain, changing the size of the hyphen that delineates the old from the new, and putting the fireplace on the exterior elevation. His new architect, Mr. Bill Finnicum, will address any problems the HDC may have.

**Motion by Mr. Willoughby**

**Seconded by Mr. Coir to approve the plan again as submitted on June 6, 2012. The board looks forward to seeing what the new thoughts are.**

There were no comments from members of the public on the motion at 7:26 p.m.

**Motion carried, 5-0.**

**VOICE VOTE**

Yeas: Willoughby, Coir, Dukas, Henke, Trapnell

Nays: None

Absent: Deyer, Weisberg

**08-44-16**

**~~HISTORIC DESIGN REVIEW~~**

**~~142 W. Maple Rd.~~**

**~~Allen Edmonds~~**

**~~CBD Historic District~~**

Zoning: B-4 Business Residential

Design: Mr. Baka explained the applicant is proposing to renovate the facade of the Quarton Building, a contributing resource in the Central Business District Historic District, by replacing the storefront window system and door, adding new signage, and cladding a portion of the brick façade above the existing door and storefront window to install a large white glass transom panel with metal cladding and wood trim. The existing brick base below the store front and between the door and window is also proposed to be clad with metal cladding and wood trim.

- 
- ~~Sweet Shop flag sticks out into the street.~~

**08-46-16**

**ADJOURNMENT**

No further business being evident, the commissioners motioned to adjourn the meeting at 7:36 p.m.

Matthew Baka  
Sr. Planner



**HISTORIC DISTRICT COMMISSION  
MINUTES OF JUNE 6, 2012**  
Municipal Building Commission Room  
151 Martin, Birmingham, Michigan

---

Minutes of the regular meeting of the Historic District Commission ("HDC") held Wednesday, June 6, 2012. Chairman John Henke called the meeting to order at 7:03 p.m.

**Present:** Chairman John Henke; Commission Members Keith Deyer, Robert Goldman; Michael Willoughby, Vice-Chairperson Shelli Weisberg (arrived at 7:05 p.m.); Alternate Commission Member Janet Lekas (arrived at 7:08 p.m.)

**Absent:** Commission Member Darlene Gehringer, Student Representative Erin Brown

**Administration:** Sheila Bashiri, City Planner  
Carole Salutes, Recording Secretary

**06-35-12**

**APPROVAL OF MINUTES**  
**HDC Minutes of May 16, 2012**

**Motion by Mr. Willoughby**  
**Seconded by Mr. Goldman to approve the HDC Minutes of May 16 as presented.**

**Motion carried, 4-0.**

**VOICE VOTE**

Yeas: Willoughby, Goldman, Deyer, Henke

Nays: None

Absent: Gehringer

**06-36-12**

**HISTORIC DESIGN**  
**539 S. BATES**  
**United Presbyterian Parsonage**  
**Bates St. Historic District**

Zoning: R-3 Single-Family Residential

---

Proposal: The applicant proposes to construct an addition and a two-story garage on a contributing historic house in the Bates St. Historic District. This application was reviewed at the March 7, 2012 HDC meeting. The HDC postponed the proposal to allow the applicant to work further on the house and garage design.

The Victorian style, wood frame house was constructed c. 1890, and was used as the parsonage of the United Presbyterian Church. A 222 sq. ft. two-story rear addition was added to the house in 1988, without approval from the Historic District Design Review Commission ("HDDRC"). In 1995, the former owners of the house applied to the HDDRC for vinyl siding on the north and south sides, and scalloped shingles on the front gable. The application was denied because the work did not meet the Secretary of the Interior ("SOI") standards. At that time, it was discovered that an existing rear addition already had illegal vinyl siding on it. A small one-story screened aluminum patio addition was attached to the north elevation at some point between 1995 and 2004 without approval from the HDDRC.

In March 2009, the current owner received Administrative Approval to replace the front porch with one that mirrored the porch at 571 S. Bates, a house which is almost a duplicate of 539 S. Bates. In May 2009, the current owner received permission to paint the house and in July 2009, new landscaping was administratively approved.

Design: The existing house is 17.96 ft. wide x 27.97 ft. deep. The applicant proposes to demolish the existing one-story north side screened aluminum addition and the two rear two-story additions. The applicant proposes to build a two-story addition on the rear of the house, a full basement below the addition, and a two-story, two-car garage with an interior staircase to attic storage on the northeast corner of the site.

The applicant took the HDC's comments into consideration and designed an addition that compliments the historic character of the original building and creates a functional space for the current owners. The new proposed addition has been moved to the rear of the original historic house, and attached with a small "hyphen" to create an "L" and delineate the old from the new. The proposed addition is clearly differentiated from the existing building through materials and design, but at the same time is compatible with the existing building in scale and massing. The roof height of the proposed addition is lower than the existing roof height.

The previous design required a setback variance because it was too close to the south property line. The new proposal addresses that issue and it no longer requires a variance. The applicant is proposing to construct the detached one-story, two-car garage directly at the rear of the house, where it will be unobtrusive.

Mr. Kurt Neiswender, the architect for the project, passed around material samples and close-up views of the Bates St. elevations. He went on to give a presentation showing how they have complied more appropriately with the SOI standards along with responding to the commission's comments at their last presentation. With the new scheme they have also developed a revised landscape plan that enhances the home's historic portion but doesn't put too much attention on the new addition. A set of layers have been created that add depth to the property. A lot of the landscaping re-uses what the client currently has that was already approved.

The only alteration they are doing to the historic parsonage, aside from taking off the non-contributing portions, is to change the white trim to dark brown, resulting in a light body with dark trim which was very common in the Victorian era.

Mr. Willoughby questioned why limestone is going two stories between old and new on both the west and south sides. Mr. Neiswender replied they tried to break up the massing by using the stone to create more separation so that the building wasn't entirely stucco. Mr. Willoughby expressed his personal point of view that the stone detracts from the whole composition. Aside from that, he really likes the scale and the way the building is stepped back.

Mr. Deyer thought the proposal meets the intent of the SOI standards and commended the applicant for that. He supported Mr. Willoughby's opinion that the vertical limestone portion could be eliminated.

Mr. Goldman agreed that the limestone is not needed. He would like to see an eyebrow placed above the center window. Chairman Henke liked the design the way it is.

Ms. Bashiri noted that any changes to the design could be administratively approved.

**Motion by Mr. Deyer**

**Seconded by Ms. Weisberg to approve the historic design application for 539 S. Bates, United Presbyterian Parsonage as proposed.**

There were no comments from the public at 7:28 p.m.

**Motion carried, 6-0.**

**VOICE VOTE**

Yeas: Deyer, Weisberg, Goldman, Henke, Lekas, Willoughby

Nays: None

Absent: Gehringer

MINUTES OF REGULAR MEETING OF BOARD OF ZONING APPEALS,  
JUNE 10, 1986  
Page Eight

---

Yeas: Mullen, Mayer, Cotton, Dixon

Nays: Decker

Motion carries - adjourned to date.

~~Appeal 32-86: Mr. and Mrs. Nummer, owners of the property known as 1023 Bennaville, Birmingham, are requesting a variance in order to build a deck in the required side open space.~~

~~Section 5.223(3), Chapter 39, Birmingham City Code, prohibits decks to project into the required side open space. The proposed deck is projecting 6/10 of a foot into the side open space and, therefore, will require a variance.~~

~~This property is located in an R-3 zone district.~~

~~Mr. Nummer appeared before the Board and stated that the deck extends beyond the present line of the house 6/10 of a foot and they would be willing to keep it entirely flush with the existing house.~~

~~Motion by Dixon~~

~~Seconded by Cotton relative to Appeal 32-86, I would move we grant the variance requested documented on the drawings. There is a practical difficulty due to the existing non-conformity of the existing residence.~~

~~Yeas: Unanimous~~

~~Motion carries - variance granted.~~

Appeal 33-86: Mr. and Mrs. Jerold Levine, owners of the property known as 551 South Bates, Birmingham, are requesting variances in order to add an attached garage to their existing residence.

Section 5.163, Chapter 39, Birmingham City Code, requires the total side yard setbacks to be 14' with 9.7' proposed, or a variance of 4.3' required.

Section 5.163, Chapter 39, Birmingham City Code, requires the side setback to be 9' with 3.3' proposed, or a variance of 5.7' required.

Section 5.223(2), Chapter 39, Birmingham City Code, allows an overhang to project 6" into the side open space with 12" proposed, or a variance of 6" required.

This property is located in an R-3 zone district.

Mr. Levine stated that they propose to add a garage to their property and in order to do so without losing a very large old tree in the back yard the variances are necessary. They are willing to add some windows to the side of the garage to break up the long plain line that would be on their neighbor's side of the garage.

Motion by Mayer

Seconded by Dixon on Appeal 33-86 to grant a 4.3' variance to the total side yard setback, 5.7' variance to the side setback and 6" variance to the overhang as indicated on the plans submitted with the exception of adding two windows on the 36' north side of the garage. I make this motion based on the support for this plan by the neighbors as expressed by the several letters submitted to the Board. This motion is tied to the plans submitted with the modification of the windows.

Yeas: Decker, Mullen, Mayer, Dixon

Nays: Cotton

Motion carries - variances granted.

~~Appeal 35-86: Mr. and Mrs. Gary Saretsky, owners of the property known as 528 Park Street, Birmingham, are requesting a variance in order to add an addition to the rear and side of their home.~~

~~Section 5.162, Chapter 39, Birmingham City Code, requires the side yard setback to be 5' with 4.1' proposed, or a variance of 0.9' required.~~

~~This property is located in an R-2 zone district.~~

~~The petitioner stated that the addition would continue the present line of the house and would enable them to construct an addition. The neighbor has no objections. There was no indication of any objection by any neighbor.~~

~~Motion by Cotton~~

~~Seconded by Dixon with regard to Appeal 35-86, I move that the request for a variance be granted, that the petitioner has demonstrated that the proposed addition will conform to the existing non-conforming plane of the house and he has indicated that the neighbor most affected has no objection and, in addition, the addition will exceed or maintain the distance required by the ordinance and for those reasons, I make this motion. This motion is tied to the plans submitted and the applicant's statement he will decrease the deck to conform to the plane of the existing walls.~~

~~Yeas: Unanimous~~

~~Motion carries - variance granted.~~



9/27/17

Please do not allow  
a variance for 539 Bates  
for 9.74 instead of the  
allowed 17.5. Thank you

Barbara Spencer  
563 Bates St.