

BOARD OF ZONING APPEALS AGENDA

City of Birmingham
Commission Room of the Municipal Building
151 Martin Street, Birmingham, Michigan
August 8, 2017
7:30 PM

1. ROLL CALL
2. APPROVAL OF THE MINUTES OF June 13, 2017
APPROVAL OF THE MINUTES OF July 11, 2017

3. APPEALS

	Address	Petitioner	Appeal	Type/Reason
1.	1728 W LINCOLN	CRAIG	17-22	DIMENSIONAL
2.	615 EMMONS	YATOOMA	17-23	DIMENSIONAL

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

Title VI

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**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, JUNE 13, 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, June 13, 2017. Chairman Charles Lillie convened the meeting at 7:30 p.m.

Present: Chairman Charles Lillie; Board Members Kevin Hart, Jeffery Jones, Vice Randolph Judd, Peter Lyon John Miller, Erik Morganroth; Alternate Board Member Kristen Baiardi

Absent: Alternate Board Member Jason Canvasser

Administration: 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. Four affirmative votes are required to reverse an interpretation or ruling. There are no interpretations on this evening's agenda.

T# 06-38-17

APPROVAL OF THE MINUTES OF THE BZA MEETING OF MAY 9, 2017

Motion by Mr. Morganroth

And seconded to approve the Minutes of the BZA meeting of May 9, 2017 as presented.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

T# 06-39-17

345 HAWTHORNE

Appeal 17-15

Mr. Hart recused himself on this matter because his firm represents the appellant. Ms. Baiardi joined the board.

The owners of the property known as 345 Hawthorne request the following variance to allow for the construction of a one-story addition.

A. **Chapter 126, Article 4, Section 4.74 (C)** requires a minimum of 27.56 ft. between principal structures. The existing and proposed distance between principal structures (north side) is 17.39 ft.; therefore a variance of 10.17 ft. is requested.

B. **Chapter 126, Article 2, Section 2.06** requires the total side yard setback to be a minimum of 27.56 ft. The existing and proposed total side yard setback is 25.87 ft.; therefore a variance of 1.69 ft. is requested.

This property is zoned R-1.

Three letters have been received that complain about the condition of the property.

Mr. Worthington explained the one-story addition is in line with the existing non-conforming home that was built in 1950. A variance was granted on 9/13/2016 for the installation of pool on the south side of the home to project into the required side open space.

Mr. John Vanbrook, Vanbrook & Associates, spoke to represent Kevin Hart Architects as well as the homeowner, Mr., Anthony Kupisz. Basically they are following the existing pattern of the home with the single-story addition. They are just filling in the corner of the garage by extending the rear wall to square it off. That was the most logical way to give the owner additional space in the garage and to create a new laundry/mud room area in the back. It cleans up that side of the garage by continuing the roof line across and squaring it up.

With respect to the condition of the property, the owner has now hired a building contractor and from this point on it will be professionally cared for. The project should be completed in about three months.

At 7:43 p.m. no one in the audience wished to comment on this appeal.

Motion by Mr. Miller

Seconded by Mr. Morganroth to approve appeal 17-15 at 345 Hawthorne. It seems that the problem is due to the circumstance of the property and the seating of the existing house on the property. The problem was not self-created. It is about the position of the existing house on the property.

It also seems reasonable to be able to add on to your house aligning with the side wall that kind of notches back. Filling that in would seem to be a reasonable use of the property. Certainly rendering conformity to the Zoning Ordinance would be burdensome in that regard. Mr. Miller believes this kind of addition is very reasonable within the context of that neighborhood.

With regard to the written objections that were submitted, they seem to be more about the timing and construction concerns and not really applicable to our judgment here. So, Mr. Miller would move to approve the appeal, tied to the drawings as submitted.

Mr. Lyon asked the owner's agent to be aware of the condition of the property and he encouraged Mr. Johnson to have the Code Enforcement folks pay visits periodically.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Hart

T# 06-40-17

1407 STANLEY

Appeal 17-16

Mr. Hart rejoined the board at this time, and Ms. Baiardi stayed in the audience for the election of officers.

The owners of the property known as 1407 Stanley are requesting the following variance to allow for the construction of a new house.

A. Chapter 126, Article 4, Section 4.74 (C) requires a minimum of 14 ft. between principal structures. The proposed distance between principal structures (south side) is 12.34 ft.; therefore a variance of 1.66 ft. is requested.

This property is zoned R-2.

Mr. Worthington noted this is a corner lot and the house to the south is 5.84 ft. off the property line.

Chairman Lillie said the applicant needs 10 ft. on one side and 5 ft. on the other. He is providing 6.49 ft. Chairman Lillie noticed that everyone on the east side of Stanley has their driveway on the south side of the house. So if that pattern follows the whole block then the lot on the corner of Stanley and Fourteen Mile Rd. doesn't have a problem but the house at the other end has a problem. If the driveways were reversed, then this house would not have a problem but the house at Fourteen Mile Rd. and Stanley would have a problem. It was agreed there is always one house on the block that will have a problem.

Mr. Rick Merlini, Live Well Custom Homes, said his hardship is relatively simple. He indicated that most of his competitors have a 35 ft. building envelope. He tried to minimize his variance request by reducing the size of the home.

At 7:50 p.m. the chairman asked for comments from the audience on this appeal.

Mr. J. Bryan Williams, 1421 Stanley, the house immediately to the south, said he did not receive a postcard about this hearing, nor did his neighbor at 1439 Stanley. Mr. Williams noted he is opposed to the variance. The houses as they exist are about 15 ft. apart. There has been no hardship demonstrated other than the petitioner wants to build a bigger house. He pointed out that if the variance is granted and some day if he were demolish his house, he could not build without a variance even to the footprint that he currently has because he would be less than 14 ft. between structures. He believes this is not only a hardship; it is basically a taking of his property value.

Mr. Williams also pointed out that the rear of the lot floods and he hopes the Building Dept. will ensure that the construction will not be raised up so that there is further flooding onto his yard.

Mr. David Bloom, 1591 Stanley, pointed out that the petitioner will not benefit from this except financially. The backyard floods in his area as well, and larger houses certainly contribute more to flooding. He suggested that the board deny this request and the property owner can either work within the confines of the existing regulations or he can find someone else that will.

Motion by Mr. Lyon

Seconded by Mr. Judd in regard to Appeal 17-16, 1407 Stanley, while he agrees with the concerns of the neighbors he believes the appellant has met the burden

for a practical difficulty. This is a variation on our 9-5, 5-9 issue, and now he will call it the 9-5, 5-10 rule in that everybody on one block is going to need a variance because of the distance between principal structures.

He believes that strict compliance would be unduly burdensome due to the plight of this property. It is the unique lot on this block, with the driveway to the south facing it, along with being on a corner, and there are going to be two houses that will need a variance, this one and the one next to it.

Mr. Lyon believes it does substantial justice to both the appellant and the surrounding neighborhood, in that this is somewhat of an unfortunate part of our Ordinance. But, we do need to grant these variances as they arrive for this particular circumstance of a corner lot with an adjacent sidewalk.

He feels the appellant has mitigated it. As he stated, other folks could build 36 ft. on a 50 ft. lot with 14 ft. total. He has reduced it to 33 ft. and change to help mitigate. Mr. Lyon tied the motion to the plans as presented.

Mr. Morganroth announced he would support the motion. There does appear to be mitigation on the maximum width that could have been requested. In addition, it looks like all the room dimensions seem appropriate and not out of scale relative to this size home on this size property.

Mr. Jones said that Mr. Lyon is correct. This is a variation on the 9-5, 5-9 issue. Economics are not the business of this board. It is the land and what has occurred by it. What competitors are doing cannot be this board's business.

Mr. Lyon further noted this problem is not self-created, in that the house to the south is part of the issue forcing the variance appeal.

Chairman Lillie said this is a common problem that the BZA runs into. Going down the street if all the driveways are not on the same side of the house, at some point in time you run into a problem where the houses are going to be too close together. In this case if all the driveways are on the south side, then the corner lot at Northlawn and Stanley has the problem. If the house to the south was not there the appellant would not need a variance. He is complying with the Ordinance. The only problem is distance between buildings. It works out that someone along the block will run into this discrepancy. Therefore, the chairman indicated he would also support the motion.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: None

Mr. Williams announced his intention to take his appeal to Circuit Court.

T# 06-41-17

**612 DAVIS
Appeal 17-17**

This appeal is postponed to the July 2017 BZA meeting.

CORRESPONDENCE (none)

T# 06-42-17

GENERAL BUSINESS

Election - Chairman

**Motion by Mr. Lyon
Seconded by Mr. Judd to nominate Charles Lillie as Chairman.**

There were no further nominations.

Motion carried, 8-0.

Election - Vice-Chairman

**Motion by Mr. Judd
Seconded by Mr. Hart to nominate Peter Lyon as Vice-Chairman.**

There were no further nominations.

Motion carried, 8-0.

Mr. Jones thanked Mr. Judd for his years of service as vice-chairman. Everyone joined in.

T# 06-43-17

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

T# 06-44-17

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:02 p.m.

Bruce R. Johnson, Building Official

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, JULY 11, 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, July 11, 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, Erik Morganroth; Alternate Board Member Jason Canvasser

Absent: Board Member John Miller; Alternate Board Member Kristen Baiardi

Administration: Matthew Baka, Sr. Planner
Bruce Johnson, Building Official
Carole Salutes, Recording Secretary
Scott Worthington, Asst. Building Official

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. Four affirmative votes are required to reverse an interpretation or ruling. There are no interpretations on this evening's agenda.

T# 07-45-17

APPROVAL OF THE MINUTES OF THE BZA MEETING OF JUNE 13, 2017

Since a full set of Minutes was not provided in the packets for the board, consideration of the Minutes of the BZA meeting of June 13, 2017 was postponed to the next meeting on August 9, 2017.

T# 07-46-17

612 DAVIS
Appeal 17-17

The owners of the property known as 612 Davis are requesting the following variance to allow for the construction of a porch.

A. Chapter 126, Article 4, Section 4.30 (C. 1.) requires a porch to be a minimum of 10 ft. from the property line. The proposed porch will be 7.7 ft. from the property line; therefore a variance of 2.3 ft. is requested.

This property is zoned R-3.

Mr. Worthington explained the house was built in 1975 and was constructed on an angle that is not parallel with the side yard property line. The applicant is proposing a one-story addition that complies with the zoning requirements and a porch which requires the above variance.

Chairman Lillie noticed that the house faces Grant but the address is Davis. He received confirmation that because this is a corner lot the required side setbacks are 10 ft. on Grant and 5 ft. on Davis.

Mr. Tom Baisler, designer for the project, said they are requesting a 2.3 ft. variance to the existing 10 ft. setback to allow for the proposed wrap-around porch. One condition is the 20 degree offset from the east property line which creates the difficulty in staying within the setback requirement. The other issue is the Davis elevation is considered the main front elevation. The purpose of the wrap-around porch is to help create access from Davis to the front door of the house on Grant.

They are hoping the board will see this as a fix to the problem of the garage front design which is no longer accepted in Birmingham. Also, the homeowner will be able to use the porch as they want on the Grant side and the Davis side as well. They kept the 5 ft. width as narrow as they could and still allow walkability. The porch doesn't negatively affect any of the neighbors and will not impede traffic on the sidewalk.

Responding to Mr. Morganroth, Mr. Baisler said if the corner is clipped it would make that corner nearly impassable, and it might not be the best look for the house. The overhang encroaches more than the porch itself.

Mr. Jones received confirmation that a variance would not be needed for the porch if the house was not sitting at a 20 degree angle. Mr. Judd did not see any use for the porch. It is not possible to walk there when people are sitting. He wondered why they couldn't just build a walkway with a more direct line to the front door. Mr. Baisler answered that the only entrance into the house from Davis is through the garage or walking around the house and coming in off of Grant. With the addition of the wraparound porch, a walkway is created from the driveway up to the Davis elevation. Also the porch would have curb appeal as well as function.

Mr. Judd thought the problem was self-created because the appellant bought the house and knew what they had. He added further that his interpretation of a garage front is not this particular house. Lastly he noted if they just had an overhang covering, it could be shaved or rounded at the corner so it wouldn't encroach and be in accordance with the Ordinance.

No one in the audience wanted to comment on this appeal at 7:52 p.m.

Motion by Mr. Judd

Seconded by Mr. Lyon in regard to Appeal 17-17, 612 Davis, the petitioner seeks a variance pursuant to Chapter 126, Article 4, Section 4.30 (C.1.) which requires a 10 ft. minimum to the property line. The design of the proposed porch will be 7.7 ft. from the lot line; therefore requiring a 2.3 ft. variance.

Mr. Judd moved to deny since he feels that strict compliance with the ordinances dealing with setback would not unreasonably prevent the owner from using the property for a permitted purpose and is not unnecessarily burdensome.

The board has learned that there are solutions to this. As a former member of this board, Mr. Koseck, used to say, "I don't think you are being very imaginative here." That is the way he feels about this. It has been brought out that with just an overhang that is altered at the crucial point, the board wouldn't be here.

He thinks that to grant the variance would not do substantial justice to the other property owners in the district and he does not feel the plight is due to unique circumstances in this case. The house sits askew on the property, but that pre-existed and the owner bought the house with that design feature in place.

Most importantly, Mr. Judd feels the problem is self-created in that if it weren't for this particular design feature they wish to have, we wouldn't be here. For those reasons, he would move to deny.

Mr. Hart thought neighboring properties will be enhanced aesthetically by creating a link for pedestrian traffic to the house which is supposed to be on Davis and it is not. The Ordinance was changed to respond to this condition. Further, he thought it would place an excessive burden on the owner to try to clip the corner because that would not match the rest of the house. Lastly, Mr. Hart felt the appellant tried to keep the width of the porch to a minimum. Therefore, he will not support the motion for denial.

Mr. Jones said he too will not support the motion to deny. This board deals time and again with what the appellant has when he is there. He doesn't believe this will do harm to the adjoining properties. He feels the house being at a 20% angle is justification for the request. Additionally, he agrees with Mr. Hart that the proposal is minimal.

Mr. Judd agreed with Mr. Hart that 5 ft. is not much of a porch. But why build a porch in that circumstance when you can derive the same benefit from having a walkway without having to construct something of this nature.

Mr. Canvasser indicated he will support the motion. He thinks the request is self-created. There are alternatives that could achieve the desired goal without requiring a variance.

Mr. Morganroth did not see a practical difficulty. He believes there are other creative solutions that would not require a variance.

Mr. Lyon expressed the view that everyone has the right to one porch, but not necessarily two if it requires a variance. For that reason, he will support the motion.

Motion to deny carried, 4-0.

ROLLCALL VOTE

Yeas: Judd, Lyon, Canvasser, Morganroth

Nays: Jones, Hart, Lillie

Absent: Miller

T# 07-47-17

**551 RIDGEDALE
Appeal 17-18**

The owners of the property known as 551 Ridgedale are requesting the following variance to allow for the construction of a fence higher than the 6 ft. maximum.

A. Chapter 126, Section 4.11 A.1 requires that a fence not to exceed 6 ft. in height in the required side or rear yard. The proposed fence is 8 ft. tall; therefore a variance of 2 ft. is required.

This property is zoned R-2.

Mr. Worthington advised the property is located next to the Holiday Inn Express and zoned B-2. The Holiday Inn Express would be allowed to construct a fence over 6 ft. in height with administrative approval from Planning, but the R-2 zoned property is limited to 6 ft. in height.

Chairman Lillie noticed when driving into the Holiday Inn Express parking lot there is a wall about 3 ft. high wall before reaching the neighbor's property line behind. In response to Mr. Lyon, Mr. Worthington noted because the Holiday Inn is an older

building they did not have to follow today's screening requirements that mandate a minimum 6 ft. high brick wall for that lot line.

Mr. Judd observed the Ridgedale property is 4 ft. higher than the Holiday Inn property. Starting from the retention wall, and adding 6 ft. on top of that results in a fence that is 10 ft. tall in relationship to the Holiday Inn property. But because of the terracing it is 6 ft. at the elevation of the original property and now they want another 2 ft. on top of that.

In answer to a question from Mr. Morganroth, Mr. Worthington indicated there is no limitation in the Ordinance for the height limit of fences in the B-2 Zoning District with Planning approval. Therefore, the Holiday Inn could build a fence as high as they want. The height limit for fences in the R-2 Zoning District is 6 ft.

Mr. Baka explained in this situation, all of the Holiday Inn lights were installed before the Lighting Ordinance was in place. They don't have cut-off fixtures and the lights are probably higher than would presently be allowed. Normally the light trespass would be mitigated by the requirements of the Lighting Ordinance and a fence would not be needed to block the light.

It was noted there are no restrictions on plantings that would achieve the additional height necessary.

Mr. Randy Lake from Action Fence of Michigan spoke for the homeowner, Ms. Lila Cherri who was present. Her fence blew down in a storm and now she can see into the parking lot where traffic is coming in and out all day and headlights are shining in all night long. Also trash is thrown onto her property. She used to have arborvitae and the Holiday cut them down while she was gone. The homeowner has approached the Holiday Inn about the trash but the manager not responsive or pleasant to deal with.

Ms. Cherri said she has tried to work with the Holiday Inn over the years. In the past their cars have run into the fence and knocked it down and she has paid for it a number of times. A month ago a light was put up that is at least 25 ft. off the ground and shines into her backyard,

There were no comments on this appeal from members of the public at 8:20 p.m.

Motion by Mr. Judd

Seconded by Mr. Lyon in regard to Appeal 17-18, 551 Ridgedale, the petitioner seeks a variance to erect a fence 8 ft. in height in an area which is limited to 6 ft. in height. Therefore, a 2 ft. variance is requested. The petitioner and the petitioner's representative have described the situation.

Mr. Judd feels that in this circumstance strict compliance with the Ordinance dealing with the height of a fence would unreasonably prevent the property owner from using the property for a permitted purpose.

Also, to enjoy it and have such a restriction would be unnecessarily burdensome. He further notes that Mr. Baka from the Planning Dept. has advised that the property next door being B-2 could erect a fence much higher. In fact, there isn't really a limitation.

In this case, based on some of the challenges that the petitioner has described, Mr. Judd feels this is reasonable. He thinks to grant the variance would do substantial justice to the applicant as well as to surrounding property owners and he feels the plight is due to unique circumstance, and certainly doesn't feel that the problem is self-created. He would tie his motion to the plans and vote to grant.

Mr. Jones expressed his support for the motion. Part of his reason for support is that the business has been there and is grandfathered in with an existing non-conforming lighting use. That causes the issue for this applicant.

Mr. Lyon spoke in support. He believes the plight of the petitioner is not self-created in that the lighting is existing non-conforming. He also noted this business operates 24/7 and doesn't wind down at night. For that reason he thinks the homeowner is entitled to take action to alleviate the intrusion on her privacy. The fence seems to be a minimalistic action.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Miller

T# 07-48-17

607 S. BATES

Appeal 17-17

The owners of the property known as 607 S. Bates are requesting the following variances to allow for the construction of a two-story addition:

A. Chapter 126, Article 2, Section 2.10 requires the maximum building height to be 28 ft. to the midpoint. The proposed midpoint for the room referred to as a cupola is 32.81 ft.; therefore a variance of 4.81 ft. is requested.

B. Chapter 126, Article 2, Section 2.10 requires the maximum eave height of 24 ft. The proposed cupola's eave height is 28.94 ft.; therefore a variance of 4.94 ft. is requested.

C. Chapter 126, Article 4, Section 4.75 SS-02 B.3 requires a dormer on the side yard to be set back a minimum of 8 in. from the face of the second floor below. The dormer on the south elevation is flush with the second floor below and doesn't meet the 8 in. minimum setback; therefore a variance of 8 in. is required because it is not set back and is flush with the floor below.

D. Chapter 126, Article 4, Section 4.75 SS-02 B.3 requires a dormer on the side yard to be set back a minimum of 8 in. from the face of the second floor below. The dormer on the north elevation is cantilevered out 3.06 ft. from the second floor below; therefore a variance of 3.73 ft. (3.06 ft. + .67 in.) is required.

This property is zoned R-3.

Mr. Worthington observed the house was constructed in 1901 and is designated historical. The applicant appeared before the Historic District Commission ("HDC") on 6/21/17 for review and comments.

The Chairman observed if the appellant was building a brand new house it could go higher. But because they are adding onto a historic house there are limitations.

In response to Mr. Judd, Mr. Worthington stated this cupola could be looked at as a habitable attic per the Ordinance. It is more like a room.

It was verified that this application came in after the new ordinance for dormers took effect.

Mr. William Finnicum, Architect with Finnicum Brownlee Architects, spoke for the homeowners, Mr. and Mrs. Joseph Angileri who were present. This project is unique from the standpoint that every decision was driven by the fact that it is a historic resource. The height of the house is kept down to a scale that is in keeping with the historic resource.

The Dept. of the Interior Guidelines for Rehabilitation of Buildings mandates that the new addition be done in a way that is distinguishable from the old historic resource, but is compatible in size, scale and proportion. One thing that they did to help distinguish the new from the old was to place the cupola squarely on the new addition.

He feels their practical difficulty is in following these Guidelines and responding to the historic resource in such a way that they can be true to the house and be true to the

Guidelines. The BZA is permitted by the Zoning Ordinance to modify the height restriction of a cupola provided such height modifications do not violate the spirit and intent of the Zoning Ordinance. They feel this is a cupola and that the height extension is warranted.

They are allowed to have an eave height of 24 ft. and their eave height is 18 ft. That means they could go all the way up to 28 ft. at the ridge. However, their average height is 6 ft. 3 in. lower than what they are permitted if they were starting new with 24 ft. eaves and maxed the ridge height out to the ultimate 28 ft. That is why they do not feel the height is harmful to the historic resource. Also, he was not sure if it is customary to judge the average roof height for a structure from a secondary roof line. The cupola is only a tiny fraction of the entire roof form.

They considered the dormers as cross gables when they were designing the house. After two meetings with staff they were never told these were dormers until the Friday before going before the HDC. Now variances were required because the gables are called dormers. However, they do not match the description of a dormer that is in the Definition Section of the Ordinance. Personally he doesn't believe these are dormers. On the north side there are no walls that interrupt the roofline. On the other side setting back the dormers would change the style of the roof and be detrimental to the historic resource because it would not be in the Queen Anne style. The existing building is a Queen Anne and the new addition has been designed to be very respectful of that style.

Mr. Finnicum respectfully requested the board to grant the requested variances to enable the Angleris to move forward with their project.

Discussion concluded that if these were not defined as dormers there would not be an issue. Mr. Worthington said if a projection from the house comes out 2 ft. on a foundation it is a secondary roofline. Then the second floor roofline is going to be looked at as a dormer unless it meets that.

Mr. Finnicum noted the two lots that his client owns are going to be rejoined into one lot. He added that his client has received a number of letters from neighbors, all positive, in support. In addition, the heights of every historic house in the Bates St. Historic District with the exception of one are much taller than this house. The Chairman replied it is nice to have input from the neighbors, but whether they are for or against the project doesn't establish practical difficulty.

Responding to Mr. Morganroth, Mr. Finnicum said the cupola is in scale with the historic resource and it was carefully thought out to be the right element to distinguish the historic house from the new addition.

Mr. Hart received information that there is one issue still outstanding with the HDC on this project. It has to do with the corner of the porch roof that is concealing some of the

existing historic detail. They asked them to look into that. Therefore they will be back before the HDC next week with ideas for that. There was strong support for the cupola and its relationship to the historic resource by committee members because the cupola is located on the new construction.

Mr. Judd pointed out that anything this board does is contingent upon the two lots being rejoined as one. He added that after reading three quotes from the Minutes he thought there was somewhat of an ambivalent feeling about this plan by members of the HDC.

An answer to the Chairman, Mr. Finnicum reported the historic house occupies approximately 25% of the entire structure.

At 9:08 the Chairman took public comments on this appeal.

Mr. Steve Lemberg, 648 S. Bates, directly across the street from the subject property, spoke in favor of the proposed construction. He passed around a handout showing the view from his window of the existing house and lot. They will be looking right at the cupola and will see it more than anyone.

Ms. Lee Sack said she lives at 630 Henrietta, directly behind. She thought that keeping the historic home as it is rather than moving it and constructing two new houses as the previous owners wanted to do lends itself to the City's intent. Just adding on keeps the flavor of the historic home and the District. She hopes for approval.

Ms. Barbara Connolly, 648 S. Bates, said this appears like it will be one of the nicest historic homes in the area. The height seems to be very much on the same plain as the Taubman house next door, so the rooflines will be consistent and fit in well with the street.

Motion by Mr. Lyon

Seconded by Mr. Judd in regard to Appeal 17-19, 607 S. Bates, to approve the variances as advertised. He believes the appellant has shown that strict compliance with the Ordinance would be unduly burdensome. Due to the unique nature of this house being in a Historic District and the requirements that any improvements have to comply with the Secretary of the Interior Guidelines for Historic Buildings and the HDC review requirements also, he believes that strict compliance would be unduly burdensome.

Mr. Lyon believes the variances do substantial justice to the appellant and the other property owners in the District, especially given this is a historic building. He believes through the extensive testimony tonight that the architect has done an admirable job following all of those guidelines incorporating the elements required to both make it similar to, but not exact as the existing historic resource.

He believes this is due to the unique circumstances of the property. It is a unique historic home in the Queen Anne style. He does not believe the situation is self-created. To the contrary, this house has been there for a long time. It is a historic building in a Historic District and therefore the compliance with the historic guidelines is something that has to be followed and not necessarily self-created by the owner.

The motion is contingent on two lots being combined as one parcel.

He tied the motion to the plans as presented subject to any minor modification by the boards and the Building Official to comply with the needs of the Historic District.

Mr. Jones was concerned that the first time the new ordinance for dormers comes up a variance is needed. He was surprised that staff surprised the architect. Therefore he is concerned about complying with the ordinance that specifically deals with dormers.

Mr. Lyon asked that Planning Staff have a look at this Ordinance to determine if there are conflicts. To him a gable end is not a dormer. If they are forced to interpret this as a dormer given the Ordinance, then the City probably needs to look at the Ordinance.

Mr. Judd pointed out that what the board is doing here doesn't set any precedent. So, he doesn't feel they are undercutting the Building Dept. or the commission in this situation.

Mr. Hart agreed. He feels the Ordinance still has merit in other applications. The Dormer Ordinance was instituted to respond to the dilemma of new construction inside of roofs. The second floor of this historic home is essentially up inside the roof itself. He thinks the spirit of the law is met with these variances. Therefore he will support the motion.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Miller

T# 07-49-17

CORRESPONDENCE (none)

T# 07-50-17

GENERAL BUSINESS (none)

T# 07-51-17

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

T# 07-52-17

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 9:25 p.m.

Bruce R. Johnson, Building Official

CASE DESCRIPTION

1728 W. Lincoln (17-22)

Hearing date: August 8, 2017

The owners of the property known as 1728 W. Lincoln are requesting the following variance to allow for the construction of a rear, one story addition.

- A. **Chapter 126, Article 4, Section 4.74 C.** requires a minimum of 16.25' between principal structures. The proposed addition is 11.25' away from the adjacent house, therefore; a variance of 5.0' is requested.

Staff Notes: The house was constructed in 1955. The proposed addition complies with all zoning regulations with exception of distance between houses. The house is inset .25' from the existing plane of the home off the East property line.

This property is zoned R-1.

Scott Worthington

Scott Worthington
Plan Reviewer

Application Date: 7-17-17



Hearing Date: 8-8-17

Received By: JM.

Appeal # _____

Board of Zoning Appeals Application

Type of Variance: Interpretation _____ Dimensional Land use _____ Sign _____ Admin review _____

Property Information:

Street address: <u>1728 W. LINCOLN</u>	Sidwell Number: _____
Owners name: <u>ELEANOR LITT</u>	Phone #: _____
Owners address: <u>SAME</u>	Email: _____
City: State: <u>BIRMINGHAM, MI</u>	Zip code: <u>48009</u>
Contact person: <u>JAMIE CRAIG</u>	Phone #: <u>313-585-7852</u>

Petitioner Information:

Petitioner name: <u>JAMIE CRAIG</u>	Phone #: <u>313-585-7852</u>
Petitioner address: <u>211 E. MERRILL #413</u>	Email: <u>JAMIECS361@AOL.COM</u>
City: <u>BIRMINGHAM</u> State: <u>MI</u>	Zip Code: <u>48009</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: Eleanor Smith Litt Date: July 16, 2017

ZONING BOARD OF APPEALS REQUEST

1728 W. Lincoln Avenue, Birmingham, MI 48009

Birmingham Zoning Board of Appeals

151 Martin Street

Birmingham, MI 48009

July 17, 2017

Dear Members of the Zoning Board of Appeals;

I am writing to seek an addition variance for my single-family home at 1728 W. Lincoln, Birmingham, MI 48009. Current zoning rules say that my addition must be no closer than 16.25 feet away from my neighbor's house. I respectfully request to install an addition directly behind my house which will be 11.25 feet away from my next door neighbor's house.

Facts:

- The proposed addition is not in compliance due to a 2000's variance granted to the next door neighbor which an addition encroaches into **THEIR** setback and has therefore created a hardship for us to build an addition straight back off our existing property.
- The proposed addition is in compliance and is 5'3" from the property line
- The proposed addition has been mitigated and offset by 3" from house wall
- The proposed addition is straight back and attached to existing dwelling and does not portrude in to the sideyard setback.
- The proposed addition at 16.25 feet from neighbor's dwelling would make the bedroom unworkable from 11' wide to 6' wide.

"Literal enforcement... would result in practical difficulty or unnecessary hardship" The petitioner would experience practical difficulty to have space to blend a family if this Variance were not to be granted.

"The variance is necessary for the preservation of a substantial property right... possessed by other property in the same district" There are at least two dozen other houses on the same street with rear yard additions, and those property owners are enjoying the substantial property right on a daily basis."

"The granting of the Variance will not constitute a grant of special privileges..." As stated, there are at least two dozen other houses on the same street with rear additions, and the intended addition is specifically proposed to use the identical materials, design, and finish as similar additons in the same neighborhood."

"The granting of such Variance will be in harmony with the general purpose and intent of this work" The proposed addition is designed, laid out, and shall be constructed in a manner that achieves harmony with the neighborhood, fosters peaceful relations with neighbors, and blends in visually in a low-key, unobtrusive manner with the surroundings. As such, it is clearly in harmony with the overall intents and purposes of the work.

Additionally, the addition that this Variance is being requested for does not encroach or infringe on any neighboring residential properties, nor would it impose any hardship on any neighbors, nor would it serve to create a situation where any neighbor's quality of life, property value, or peaceful co-existence would be negatively affected. Quite the contrary, the proposed Variance would allow the petitioner to become a quieter neighbor, enjoying greater personal security, and a harmonious neighborhood home.

The granting of such Variance will not be materially detrimental to the public welfare..." the proposed Variance does no harm to either public or private interests, and is not injurious to any property or interest. In fact, granting the proposed Variance will serve only to create a community of greater value and harmony amongst neighboring houses in size and stature, by virtue of the careful architectural design to make the dwelling aesthetically pleasing."

In Conclusion, I hope you agree that my request would produce an aesthetically proper addition if not an enhancement to my neighborhood. Should you have any questions, please do not hesitate to contact me. Thank you for your thoughtful consideration of this request.

A handwritten signature in cursive script that reads "Eleanor Smith Litt". The signature is written in dark ink and is positioned above the typed name.

Eleanor Litt

CASE DESCRIPTION

615 Emmons (17-23)

Hearing date: August 8, 2017

The owners of the property known as 615 Emmons are requesting the following variance to allow for the construction of a front porch.

- A. **Chapter 126, Article 4, Section 4.61** requires a minimum of 10' off the side street for a front porch. The proposed porch is 4.7' off the side street setback, therefore; a variance of 5.3' is requested.

Staff Notes: The house was constructed in 1927. The proposed addition complies with all zoning regulations with exception for a portion of the front porch. The porch is in line with the existing home and is not going any closer to the property line.

This property is zoned R-3.

Scott Worthington

Scott Worthington
Plan Reviewer

Application Date: 7-17-17



Hearing Date: 8-8-17

Received By: BM

Appeal # 17-23

Board of Zoning Appeals Application

Type of Variance: Interpretation Dimensional Land use Sign Admin review

Property Information:

Street address: <u>615 Emmons Ave</u>		Sidwell Number:	
Owners name: <u>Stephen + Tania Yatooma</u>		Phone #: <u>248 875 2137</u>	
Owners address:		Email: <u>taniacyatooma.com</u>	
City: State:		Zip code: <u>48009</u>	
Contact person: <u>Tania Yatooma</u>		Phone #: <u>248 875 2137</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 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: Jamie Yatooma Date: 7-13-17

Yatooma
615 Emmons Ave
Birmingham MI 48009
248-875-2137 248-210-3483

July 12, 2017

Board of Zoning Appeals
Birmingham, MI 48009

Subject Property:

615 Emmons Ave
Birmingham MI 48009

Re: Variance request of 4.7ft of the proposed porch on the right corner of existing house.

Home Owners: Stephen and Tania Yatooma

(We) The petitioners request a variance for a proposed 4.7 feet front unenclosed porch to the above referenced property.

1. Special or unique condition and circumstances exist which are particular to the land, structure, or building involved, and which are generally applicable to other lands, structures or buildings in the same district.

The uniqueness in this is the pre existing dimensional non conformance of the home that was first built in 1927

2. A literal interpretation of the provisions of this ordinance would deprive the applicant of the rights commonly enjoyed by other properties in the same district under the terms of this ordinance; and that the variance is the minimum necessary.

The request for the variance will not increase the footprint of the existing structure on the Property. The proposed porch will not increase existing non-conformity of the setback to the home.

3. The special conditions and circumstances do not result from the actions of the applicant.

The special condition and circumstance is that the home has a pre-existing structure from 1927 of the home of which we took ownership in 2013.

4. The granting of the variance will be in harmony with the general purpose and intent of this ordinance.

The granting of the variance is needed to continue the harmonious of the porch. The footprint of the existing structure will not increase and there will be no encroachment on existing boundaries.

5. The variance will not be injurious to the neighborhood or otherwise detrimental to the general welfare.

The proposed variance will not be harmful to adjacent properties. The proposed porch will not encroach or infringe on any neighboring residential properties.

6. The spirit of this ordinance shall be observed, public safety secured and substantial justice done.

The proposed porch will not be harmful or unsafe to any neighboring properties. The proposed variance request allows will project onto the front yard and will look harmonious with the neighboring homes.

Diagrams to support requested variance are attached within the land boundary survey.

Respectfully yours

Stephen and Tania Yatooma
Home Owners