

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, FEBRUARY 12, 2019
City Commission Room
151 Martin Street, Birmingham, Michigan**

1. CALL TO ORDER

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals (“BZA”) held on Tuesday, February 12, 2019. Vice-Chairman Randolph Judd convened the meeting at 7:30 p.m.

2. ROLL CALL

Present: Vice-Chairman Randolph Judd; Board Members Kevin Hart, Erik Morganroth, Francis Rodriguez; Alternate Board Member Ron Reddy

Absent: Chairman Charles Lillie, Jason Canvasser, John Miller

Administration:

Bruce Johnson, Building Official
Mike Morad, Asst. Building Official
Jeff Zielke, Asst. Building Official
Laura Eichenhorn, Transcriptionist

Vice-Chairman Judd offered Mr. Zaccagnini, owner of the property at 1245 Cole, the opportunity to postpone his appeal until the March 12, 2019 meeting, since only five members of the Board were present this evening. Mr. Zaccagnini stated he would prefer to move forward with his appeal this evening.

Vice-Chairman Judd then used the prerogative of the Chair to appoint a Temporary Chairman, Mr. Morganroth, who then took over the gavel and assumed the role as Temporary Chairman.

The Temporary Chairman welcomed everyone. He 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 are a quasi-judicial board and sit at the pleasure of the City Commission to hear appeals from petitioners who are seeking variances from the City’s Zoning Ordinance. Under Michigan law, a dimensional variance requires four affirmative votes from this board, and the petitioner must show a practical difficulty. A land use variance requires five affirmative votes and the petitioner has to show a hardship. He pointed out that this board does not make up the criteria for practical difficulty or hardship. That has been established by statute and case law. There are no land use variances called for this

evening. Also, appeals are heard by the board as far as interpretations or rulings. In that type of appeal the appellant must show that the official or board demonstrated an abuse of discretion or acted in an arbitrary or capricious manner. Four affirmative votes are required to reverse an interpretation or ruling. There are no interpretations on this evening's agenda.

T# 01-09-19

3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF JANUARY 8, 2019

Motion by Mr. Judd

Seconded by Mr. Rodriguez to accept the Minutes of the BZA meeting of January 8, 2019 as presented.

Motion carried, 5-0.

VOICE VOTE

Yeas: Morganroth, Hart, Judd, Reddy, Rodriguez

Nays: None

Absent: Lillie, Canvasser, Miller

T# 01-10-19

4. APPEALS

**1) 211 VALLEY VIEW LANE
Appeal 19-01**

The owner(s) of the property known as 211 Valley View Lane have requested to have their hearing adjourned to the March 12, 2019 meeting.

T# 01-11-19

**2) 1245 COLE
Appeal 19-04**

The owner(s) of the property known as 1245 Cole request the following variances to construct a new single family home with a detached garage:

A. **Chapter 126, Article 04, section 4.74 (C)** requires the minimum distance between structures on adjacent lots to be 14.0 feet or 25% of the total lot width, whichever is greater. As the required distance is 14.0 feet, and the proposed distance on the west side between structures is 12.37 feet, a variance of 1.63 feet is being requested by the property owner.

B. Chapter 126, Article 04, section 4.74 (C) requires the minimum distance between structures on adjacent lots to be 14.0 feet or 25% of the total lot width, whichever is greater. As the required distance is 14.0 feet, and the proposed distance on the east side between structures is 9.88 feet, a variance of 4.12 feet is being requested by the property owner.

Mr. Morad stated the applicant's new single family home and attached garage will meet all the zoning requirements on their own lot, with the exception of the distance between structures on both sides. The survey provided on the application indicates the existing homes on either side were constructed too close to the property lines.

Mr. Morad presented a map showing a setback at 9.63 feet on the west side of the home, and a 5.50 feet setback on the east side. The home on the west side is 4.22 feet from the property line, and the home on the east side is 2.8 feet from the property line. The applicant could have a setback at 9 feet on the west side and 5 feet on the east side within the zoning ordinance, but chose to mitigate the zoning issue by having a setback of 9.63 feet and 5.50 feet, respectively. Mr. Morad clarified the home could be 14 inches wider to fit on the lot.

Temporary Chair Morganroth clarified that independent of the two adjacent homes, the applicant could have made their house 14 inches wider and meets all the zoning requirements on the parcel itself. Mr. Morad confirmed.

Temporary Chair Morganroth asked if the applicant had previously submitted plans for a wider house and then changed it in an attempt to mitigate the issue, or whether planning the home for 14 inches narrower than the maximum width allowed was a coincidence. Mr. Morad said he believed the applicant tried to make the home as small as possible while still accomplishing what he needed, but the applicant could speak more to the question.

Mr. Rodriguez asked if the current house located at 1245 Cole is non-conforming. Mr. Morad said he could not confirm for certain, but suspected the current house is non-conforming due to the distance between the structures on both the east and west sides.

The home on the west was built in 2003, and the home on the east was built in 1985. Mr. Morad confirmed for Temporary Chair Morganroth that no changes to the side-yard setbacks and distance between the homes have changed in from those times.

Mr. Judd asked how the home on the west side, built in 2003, could have been built in violation of the ordinance.

Mr. Morad stated an as-built from 2003 shows the home on the west side at 5.0 feet from the property line which would have been conforming. A mortgage survey on the

home to the east showed the home at 5.0 feet from the property line, which would have been conforming as well.

Building Official Johnson explained the as-built survey submitted for the home to the west after the home was built showed it at 5.0 feet from the property line, as had been planned. This survey was certified. The mortgage survey from 1985 was not certified.

Temporary Chair Morganroth invited the property owner, Anthony Zaccagnini, to present his appeal to the Board.

Mr. Zaccagnini introduced himself to the Board and confirmed for Temporary Chair Morganroth that the plans for his home to be 14 inches narrower than the maximum width allowed was an attempt to mitigate the issue with the space between structures. Mr. Zaccagnini said he was aware of the whole issue once it was too late.

Mr. Zaccagnini told Mr. Judd that without a variance he would not be able to build a house there. Mr. Zaccagnini explained further that he had relied on the mortgage survey for the house on the east during purchasing and planning, only to find out after purchasing the lot that the survey was inaccurate.

There were no comments from members of the public.

Motion by Mr. Rodriguez

Seconded by Mr. Judd with regard to Appeal 19-04, A. Chapter 126, Article 04, section 4.74 (C), with regard to the minimum distance between structures on adjacent lots being 14.0 feet or 25% of the total lot width, whichever is greater, the applicant is requesting a variance on the west side of 1.63 feet; and for B. Chapter 126, Article 04, section 4.74 (C) with regard to the minimum distance between structures on adjacent lots being 14.0 feet or 25% of the total lot width, whichever is greater, the applicant is requesting a variance on the east side of 4.12 feet.

Mr. Rodriguez said a practical difficulty had been established and moved to approve. He noted unique circumstances apply to the property, particularly with the homes to the east and west, with both too close to the property line. The petitioner's need for a variance was not self-created, and the petitioner attempted to mitigate the issue so the variance is the minimum necessary. Finally, granting the variance will not adversely affect the adjacent properties.

For those reasons Mr. Rodriguez moves to approve the variances.

Mr. Judd stated he would also be supporting the motion.

Temporary Chair Morganroth stated he would also support the motion since there is a practical difficulty with the existing non-conforming houses on both sides,

that the applicant relied on the existing surveys which showed 5 feet on each side, and that the applicant could have gone wider with his home and chose not to which indicates reasonable mitigation.

Motion carried, 5-0.

ROLLCALL VOTE

Yeas: Morganroth, Hart, Judd, Reddy, Rodriguez

Nays: None

Absent: Lillie, Canvasser, Miller

T# 01-12-19

5. CORRESPONDENCE (none)

T# 01-13-19

6. GENERAL BUSINESS (not discussed)

T# 01-14-19

7. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA (no one from the public wished to comment)

T# 01-15-19

8. ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 7:46 p.m.



Bruce R. Johnson, Building Official