

BIRMINGHAM BOARD OF ZONING APPEALS AGENDA

Municipal Building Commission Room
151 Martin Street, Birmingham, Michigan
March 12, 2019
7:30 PM

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF THE MINUTES

1) February 12, 2019

4. APPEALS

	Address	Petitioner	Appeal	Type/Reason
1)	1423 BENNAVILLE	SESI	19-05	DIMENSIONAL
2)	1708 S BATES	ABDELNOUR	19-06	DIMENSIONAL
3)	280 N OLD WOODWARD	JFK INVESTMENTS	19-07	USE
4)	1684 W LINCOLN	GENZLINGER	19-08	DIMENSIONAL
5)	1592 E LINCOLN	SCHRODER	19-09	DIMENSIONAL
6)	1810 HUMPHREY	KING	19-10	DIMENSIONAL

5. CORRESPONDENCE

6. GENERAL BUSINESS

7. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

8. ADJOURNMENT

Title VI

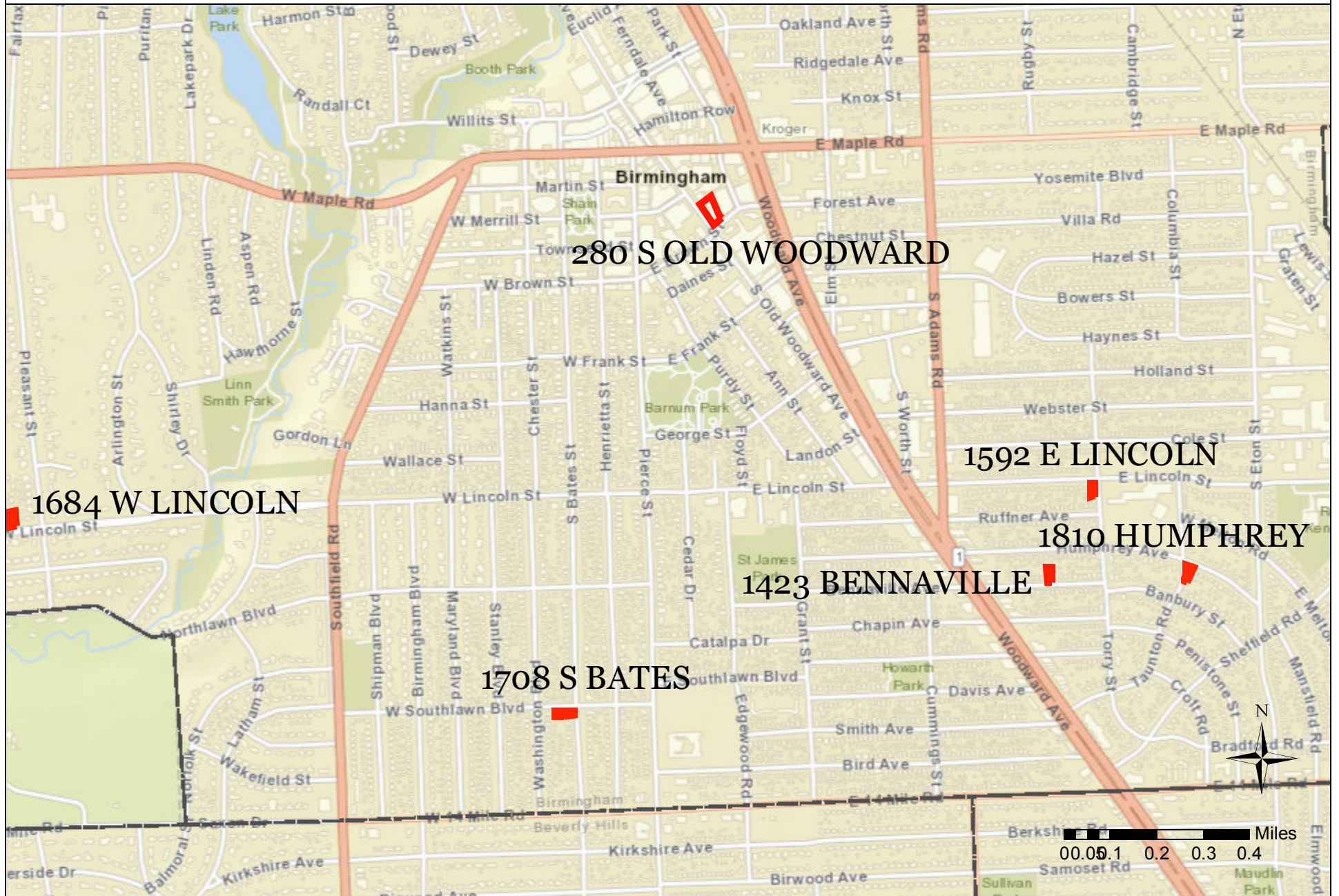
Persons with disabilities that may require assistance for effective participation in this public meeting should contact the City Clerk's Office at the number (248) 530-1880, or (248) 644-5115 (for the hearing impaired) at least one day before the meeting to request help in mobility, visual, hearing,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

MARCH BZA MAP



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

CASE DESCRIPTION

1423 Bennaville (19-05)

Hearing date: March 12, 2019

The owner(s) of the property known as 1423 Bennaville are requesting the following variances to construct a second floor and rear addition to an existing nonconforming home:

- A. Chapter 126, Article 2, Section 2.10** of the Zoning Ordinance requires a minimum front yard setback to be the average of the homes within 200 feet in each direction. The required front yard setback for this property is 20.10 feet. The existing and proposed is 19.60 feet; therefore, a variance of 0.50 feet is requested.
- B. Chapter 126, Article 2, Section 2.10** of the Zoning Ordinance requires that no side yard setback shall be less than 5.00 feet. The existing and proposed setback is 4.30 feet; therefore, a variance of 0.70 feet is requested.

Staff Notes:

The applicant is proposing to construct a second floor addition over the existing footprint of the home which is non-conforming. Along with a rear addition to the home which conforms to the zoning ordinance.

This property is zoned R3.

1423 BENNAVILLE

Humphrey Ave

1599

1423 BENNAVILLE

Bennaville Ave

1599

aville Ave



0.000 0.008 0.016 0.024 0.032 Miles

CITY OF BIRMINGHAM
Community Development - Building Department
151 Martin Street, Birmingham, MI 48009
Community Development: 248-530-1850
Fax: 248-530-1290 / www.bhamgov.org

APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: 2.8.19
Received By: SVH

Hearing Date: March 12, 2019
Appeal #: 19-05

Type of Variance:	<input type="checkbox"/> Interpretation	<input checked="" type="checkbox"/> Dimensional	<input type="checkbox"/> Land Use	<input type="checkbox"/> Sign	<input type="checkbox"/> Admin Review
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I. PROPERTY INFORMATION:

Address: 1423 Bennaville Birmingham Lot Number: 1423 Sidwell Number:

II. OWNER INFORMATION:

Name: Anatola Sesi
Address: 6850 Maple Creek Blvd City: West Bloomfield State: MI Zip code: 48322
Email: anatola@tiptopsells.com Phone: 248-882-0506

III. PETITIONER INFORMATION:

Name: SAME Firm/Company Name:
Address: City: State: Zip code:
Email: Phone:

IV. GENERAL INFORMATION:

The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12th day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.

To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted. Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.

The BZA application fee is **\$360.00** for single family residential; **\$560.00** for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.

Variance Chart Example				
Requested Variances	Required	Existing	Proposed	Variance Amount
Variance A, Front Setback	25.00 Feet	23.50 Feet	23.50 Feet	1.50 Feet
Variance B, Height	30.00 Feet	30.25 Feet	30.25 Feet	0.25 Feet

V. REQUIRED INFORMATION CHECKLIST:

- ☐ One original and nine copies of the signed application
- ☐ One original and nine copies of the signed letter of practical difficulty and/or hardship
- ☐ One original and nine copies of the certified survey
- ☐ 10 folded copies of site plan and building plans including existing and proposed floor plans and elevations
- ☐ If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting

VI. APPLICANT SIGNATURE

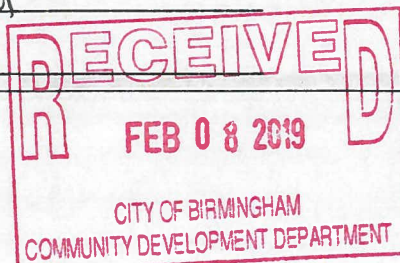
By signing this application, I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

Signature of Owner: Anatola Sesi

Date: 2-6-2019

Signature of Petitioner: _____

Date: _____



**CITY OF BIRMINGHAM
BOARD OF ZONING APPEALS
RULES OF PROCEDURE**

ARTICLE I - Appeals

- A. Appeals may be filed under the following conditions:
1. A property owner may appeal for variance, modification or adjustment of the requirements of the Zoning Ordinance.
 2. A property owner may appeal for variance, modification or adjustment of the requirements of the Sign Ordinance.
 3. Any aggrieved party may appeal the decision of the Planning Board and/or the Building Official in accordance with the City of Birmingham Zoning Ordinance, Article Eight, Section 8.01 (D) Appeals. If an appellant requests a review of any determination of the Building Official, a complete statement setting forth the facts and reasons for the disagreement with the Building Official's determination shall include the principal point, or points on the decision, order or section of the ordinance appealed from, on which the appeal is based.
- B. Procedures of the Board of Zoning Appeals (BZA) are as follows:
1. Regular BZA meetings, which are open to the public, shall be held on the second Tuesday of the month at 7:30 P.M. provided there are pending appeals. There will be a maximum of seven appeals heard at the regular meeting which are taken in the order received. If an appeal is received on time after the initial seven appeals have been scheduled, it will be scheduled to the next regular meeting.
 2. All applications for appeal shall be submitted to the Community Development Department on or before the 12th day of the month preceding the next regular meeting. If the 12th falls on a Saturday, Sunday, or legal holiday, the next working day shall be considered the last day of acceptance.
 3. All property owners and occupants within 300 feet of the subject property will be given written notice of a hearing by the City of Birmingham.
 4. See the application form for specific requirements. If the application is incomplete, the BZA may refuse to hear the appeal. The Building Official or City Planner may require the applicant to provide additional information as is deemed essential to fully advise the Board in reference to the appeal. Refusal or failure to comply shall be grounds for dismissal of the appeal at the discretion of the Board.

5. In variance requests, applicants must provide a statement that clearly sets forth all special conditions that may have contributed to a practical difficulty that is preventing a reasonable use of the property.
6. Where the Birmingham Zoning Ordinance requires site plan approval of a project by the City Planning Board before the issuance of a building permit, applicants must obtain preliminary site plan approval by the Planning Board before appeal to the BZA for a variance request. If such appeal is granted by the BZA, the applicant must seek final site plan and design review approval from the Planning Board before applying for a building permit.
7. An aggrieved party may appeal a Planning Board decision. Such appeal must be made within 30 days of the date of the decision. The BZA, in its discretion, may grant additional time in exceptional circumstances.
8. Appeals from a decision of the Building Official shall be made within 30 days of the date of the order, denial of permit, or requirement or determination contested. The BZA, in its discretion, may grant additional time in exceptional circumstances.
9. An appeal stays all proceedings in accordance with Act #110, Public Acts of 2006, Article VI, Section 125.3604 (3).

C. The order of hearings shall be:

1. Presentation of official records of the case by the Building Official or City Planner as presented on the application form.
2. Applicant's presentation of his/her case—the applicant or his/her representative must be present at the appeal hearing.
3. Interested parties' comments and view on the appeal.
4. Rebuttal by applicant.
5. The BZA may make a decision on the matter or request additional information.

D. Motions and Voting

1. A motion is made to either grant or deny a petitioner's request
 - a) For a motion to grant or deny a non-use variance request, the motion must receive four (4) affirmative votes to be approved.
 - b) For a motion to grant or deny a use variance request, the motion must receive five (5) affirmative votes to be approved.
 - c) For a motion to grant or deny an appeal of a decision or order by an administrative official or board, the motion must receive four (4) affirmative votes to be approved.

2. When a motion made is to approve or deny a petitioner's request and if there is a tie vote, then the vote results in no action by the board and the petitioner shall be given an opportunity to have his or her request heard the next regularly scheduled meeting when all the members are present.
3. When there are less than seven (7) members of the board present for a meeting, then a petitioner requesting a use variance shall be given an opportunity at the beginning of the meeting to elect to have it heard at the next regularly scheduled meeting.
4. When there are less than six (6) members present for a meeting, then all petitioners shall be given an opportunity at the beginning of the meeting to elect to have the request heard at the next regularly scheduled meeting.

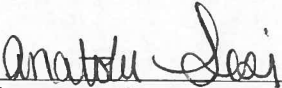
ARTICLE II - Results of an Appeal

- A. The Board may reverse, affirm, vary or modify any order, requirement, decision or determination as in its opinion should be made, and to that end, shall have all the powers of the officer from whom the appeal has been taken.
- B. The decisions of the Board shall not become final until the expiration of five (5) days from the date of entry of such orders or unless the Board shall find that giving the order immediate effect is necessary for the preservation of property and/or personal rights and shall so certify on the record.
- C. Whenever any variation or modification of the Zoning Ordinance is authorized by resolution of the BZA, a Certificate of Survey must be submitted to the Community Development Department with the building permit application. A building permit must be obtained within one year of the approval date.
- D. Failure of the appellant, or his representative, to appear for his appeal hearing will result in the appeal being adjourned to the next regular meeting. If, after notice, the appellant fails to appear for the second time, it will result in an automatic withdrawal of the appeal. The appellant may reapply to the BZA.
- E. Any applicant may, with the consent of the Board, withdraw his application at any time before final action.
- F. Any decision of the Board favorable to the applicant is tied to the plans submitted, including any modifications approved by the Board at the hearing and agreed to by the applicant, and shall remain valid only as long as the information or data provided by the applicant is found to be correct and the conditions upon which the resolution was based are maintained.

ARTICLE III - Rehearings

- A. No rehearing of any decision of the Board shall be considered unless new evidence is submitted which could not reasonably have been presented at the previous hearing or unless there has been a material change of facts or law.
- B. Application or rehearing of a case shall be in writing and subject to the same rules as an original hearing, clearly stating the new evidence to be presented as the basis of an appeal for rehearing.

I certify that I have read and understand the above rules of procedure for the City of Birmingham Board of Zoning Appeals.



Signature of Applicant

February 6, 2019

City Of Birmingham
Board Of Zoning
151 Martin Street
Birmingham, MI 48012

RE: 1423 Bennaville
Birmingham, MI 48009

Dear Board Of Zoning:

As the owner and residential redeveloper of 1423 Bennaville, I am respectfully asking for a variance approval to allow for a second story addition onto an existing non conforming single family home. This variance request is for the east side yard of the home and front yard setback to renovate the front facade of an existing non-conforming single family home.

The variance request is for:

	Required	Existing/Proposed	Variance
Side Yard	5	4.3	0.7
Front Yard	20.1	19.6	0.5

Please note that we had no intention of pursuing a variance, as our initial plan was to build the new second story inward a few feet to meet variance considerations. Unfortunately, it was then discovered that there would be structural issues with the support walls. Our second option was to move the east wall a few feet westward to meet setback requirements, but after having the Birmingham zoning department and architect review the drawings, we now understand that it is not possible to move the wall westward by a few feet because it would jeopardize the structural integrity of the entire existing building.

Therefore,
we kindly ask that you approve our request for the variance side yard of 0.7 and front yard of 0.5 to help us build our second story addition within our drawing guidelines recommended by our structural engineer.

Best Regards,



Anatola Sesi

CASE DESCRIPTION

1708 S. Bates (19-06)

Hearing date: March 12, 2019

The owner(s) of the property known as 1708 S. Bates request the following variance to construct a new single family home with an attached garage:

- A. Chapter 126, Article 4, Section 4.74(C)** of the Zoning Ordinance requires the minimum distance between structures on adjacent lots to be 14.00 feet or 25% of the total lot width, whichever is greater. The required distance between is 14.00 feet. The proposed distance between on the south side is 12.04 feet; therefore, a variance of 1.96 feet is requested.

Staff Notes:

The applicant is proposing to construct a new single family home with an attached garage. The proposed new home meets the zoning ordinance on the property, with the exception of the distance between structures to the south of the property.

This property is zoned R2.

Jeff Zielke
Plan Examiner

1708 S BATES



CITY OF BIRMINGHAM
Community Development - Building Department
151 Martin Street, Birmingham, MI 48009
Community Development: 248-530-1850
Fax: 248-530-1290 / www.bhamgov.org

APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: 2-8-19
Received By: BM

Hearing Date: 3-12-19
Appeal #: 19-06

Type of Variance:	<input type="checkbox"/> Interpretation	<input checked="" type="checkbox"/> Dimensional	<input type="checkbox"/> Land Use	<input type="checkbox"/> Sign	<input type="checkbox"/> Admin Review
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I. PROPERTY INFORMATION:

Address: 1708 S Bates St, Birmingham, MI 48009 Lot Number: 19-36-377-019 Sidwell Number:

II. OWNER INFORMATION:

Name: Tatiana Santander
Address: 1708 S Bates Street City: Birmingham State: MI Zip code: 48009
Email: TS. Santander@gmail.com Phone: (818) 795-5424

III. PETITIONER INFORMATION:

Name: Ghassan Abdelnour Firm/Company Name: GAV & Associates, Inc.
Address: 24001 Orchard Lake Rd 180A City: Farmington State: MI Zip code: 48336
Email: ghassan@gavassociates.com Phone: 248-985-9101

IV. GENERAL INFORMATION:

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Variance Chart Example				
Requested Variances	Required	Existing	Proposed	Variance Amount
Variance A, Front Setback	25.00 Feet	23.50 Feet	23.50 Feet	1.50 Feet
Variance B, Height	30.00 Feet	30.25 Feet	30.25 Feet	0.25 Feet

V. REQUIRED INFORMATION CHECKLIST:

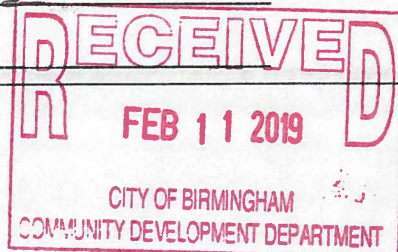
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- ☒ 10 folded copies of site plan and building plans including existing and proposed floor plans and elevations
- ☐ If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting

VI. APPLICANT SIGNATURE

By signing this application, I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application 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: *Tatiana Santander* Date: 2-8-19
Signature of Petitioner: _____ Date: _____

How Sign BM
Revised 12/12/2018



CITY OF BIRMINGHAM
Date 02/12/2019 9:28:50 AM
Ref 00155562
Receipt #69451
Amount \$560.00

**CITY OF BIRMINGHAM
BOARD OF ZONING APPEALS
RULES OF PROCEDURE**

ARTICLE I - Appeals

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7. An aggrieved party may appeal a Planning Board decision. Such appeal must be made within 30 days of the date of the decision. The BZA, in its discretion, may grant additional time in exceptional circumstances.
8. Appeals from a decision of the Building Official shall be made within 30 days of the date of the order, denial of permit, or requirement or determination contested. The BZA, in its discretion, may grant additional time in exceptional circumstances.
9. An appeal stays all proceedings in accordance with Act #110, Public Acts of 2006, Article VI, Section 125.3604 (3).

C. The order of hearings shall be:

1. Presentation of official records of the case by the Building Official or City Planner as presented on the application form.
2. Applicant's presentation of his/her case—the applicant or his/her representative must be present at the appeal hearing.
3. Interested parties' comments and view on the appeal.
4. Rebuttal by applicant.
5. The BZA may make a decision on the matter or request additional information.

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2. When a motion made is to approve or deny a petitioner's request and if there is a tie vote, then the vote results in no action by the board and the petitioner shall be given an opportunity to have his or her request heard the next regularly scheduled meeting when all the members are present.
3. When there are less than seven (7) members of the board present for a meeting, then a petitioner requesting a use variance shall be given an opportunity at the beginning of the meeting to elect to have it heard at the next regularly scheduled meeting.
4. When there are less than six (6) members present for a meeting, then all petitioners shall be given an opportunity at the beginning of the meeting to elect to have the request heard at the next regularly scheduled meeting.

ARTICLE II - Results of an Appeal

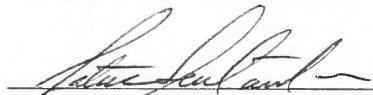
- A. The Board may reverse, affirm, vary or modify any order, requirement, decision or determination as in its opinion should be made, and to that end, shall have all the powers of the officer from whom the appeal has been taken.
- B. The decisions of the Board shall not become final until the expiration of five (5) days from the date of entry of such orders or unless the Board shall find that giving the order immediate effect is necessary for the preservation of property and/or personal rights and shall so certify on the record.
- C. Whenever any variation or modification of the Zoning Ordinance is authorized by resolution of the BZA, a Certificate of Survey must be submitted to the Community Development Department with the building permit application. A building permit must be obtained within one year of the approval date.
- D. Failure of the appellant, or his representative, to appear for his appeal hearing will result in the appeal being adjourned to the next regular meeting. If, after notice, the appellant fails to appear for the second time, it will result in an automatic withdrawal of the appeal. The appellant may reapply to the BZA.
- E. Any applicant may, with the consent of the Board, withdraw his application at any time before final action.
- F. Any decision of the Board favorable to the applicant is tied to the plans submitted, including any modifications approved by the Board at the hearing and agreed to by the applicant, and shall remain valid only as long as the information or data provided by the applicant is found to be correct and the conditions upon which the resolution was based are maintained.

ARTICLE III - Rehearings

A. No rehearing of any decision of the Board shall be considered unless new evidence is submitted which could not reasonably have been presented at the previous hearing or unless there has been a material change of facts or law.

B. Application or rehearing of a case shall be in writing and subject to the same rules as an original hearing, clearly stating the new evidence to be presented as the basis of an appeal for rehearing.

I certify that I have read and understand the above rules of procedure for the City of Birmingham Board of Zoning Appeals.



Signature of Applicant

Applicant

Tatiana Santander
(818) 795-5424

February 8, 2019

Property

1708 S Bates St
Birmingham, MI 48009

Parcel

19-36-377-019

Hardship

Distance between structures
Neighboring house to the South closer than 14 feet

To Whom This May Concern,

We are in the process of building a new home at 1708 S Bates Street, Birmingham MI 48009.

In doing so, we have abided by the 5 ft setback rule away from the south side of the lot line however, that only puts us 12.04 ft away from the neighboring house on Bates Street (Lot 19-36-377-020).

We are asking that the Board consider granting us a variance request of 1.96 ft due to the hardship presented by the structures being closer than the preferred 14 ft.

We appreciate your consideration.

	REQUIRED	PROPOSED	VARIANCE
SOUTH SIDE	14.00 FEET	12.04 FEET	1.96 FEET

Regards,



Tatiana Santander

CASE DESCRIPTION

280 N Old Woodward (19-07)

Hearing date: March 12, 2019

The owner(s) of the property known as 280 N. Old Woodward request the following variance to allow an office use within the first 20.00 feet of the first floor tenant space where retail is required:

- A. **Chapter 126, Article 3, Section 3.04(C)(6)** of the Zoning Ordinance requires buildings that have frontage along the required retail frontages, as specified on the Regulating Plan, to consist of retail with a minimum depth of 20.00 feet from the frontage line within the first story. Therefore, a use variance to allow a non-retail use, as defined by Article 9, Section 9.02, is requested.

Staff Notes:

The subject property is located along Birmingham's Retail Frontage Line. Buildings with frontage along this boundary are required to have retail use as defined by the City's Zoning Ordinance within the first 20 feet of building depth along the boundary. The proposed use for suite 100 of 280 N Old Woodward is a new business incubator open to the general public that provides space to conduct business and host meetings for short term rental without a lease. The 20 foot retail zone required by the Zoning Ordinance is proposed to be used as accessory common space which includes a kitchen, tables, and chairs.

This property is zoned B4, D4 Overlay.

280 N OLD WOODWARD



CITY OF BIRMINGHAM
Community Development - Building Department
151 Martin Street, Birmingham, MI 48009
Community Development: 248-530-1850
Fax: 248-530-1290 / www.bhamgov.org

APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: 2-12-19
Received By: JH

Hearing Date: 3-12-19
Appeal #: 19-07

Type of Variance:	<input type="checkbox"/> Interpretation	<input type="checkbox"/> Dimensional	<input checked="" type="checkbox"/> Land Use	<input type="checkbox"/> Sign	<input type="checkbox"/> Admin Review
I. PROPERTY INFORMATION:					
Address: <u>280 N-old Woodward</u>		Lot Number:		Sidwell Number: <u>08-19-25-453-010</u>	
II. OWNER INFORMATION:					
Name: <u>JFK Investment Company, L.L.C.</u>					
Address: <u>43252 Woodward Ste. 210</u>		City: <u>Bloomfield Hills</u>		State: <u>MI</u>	Zip code: <u>48302</u>
Email: <u>tomkosik@jfkinv.com</u>				Phone: <u>248-333-2373</u>	
III. PETITIONER INFORMATION:					
Name: <u>JFK Investment Company, L.L.C.</u>		Firm/Company Name:			
Address: <u>43252 Woodward Ste 210</u>		City: <u>Bloomfield Hills</u>		State: <u>MI</u>	Zip code: <u>48302</u>
Email: <u>tomkosik@jfkinv.com</u>				Phone: <u>248-333-2373</u>	
IV. GENERAL INFORMATION:					
<p>The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12th day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.</p> <p>To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted. Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.</p> <p>The BZA application fee is \$360.00 for single family residential; \$560.00 for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.</p>					
Variance Chart Example					
Requested Variances	Required	Existing	Proposed	Variance Amount	
Variance A, Front Setback	25.00 Feet	23.50 Feet	23.50 Feet	1.50 Feet	
Variance B, Height	30.00 Feet	30.25 Feet	30.25 Feet	0.25 Feet	
V. REQUIRED INFORMATION CHECKLIST:					
<input checked="" type="checkbox"/> One original and nine copies of the signed application <input type="checkbox"/> One original and nine copies of the signed letter of practical difficulty and/or hardship <input type="checkbox"/> One original and nine copies of the certified survey <input type="checkbox"/> 10 folded copies of site plan and building plans including existing and proposed floor plans and elevations <input type="checkbox"/> If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting					
VI. APPLICANT SIGNATURE					
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: <u>John H. Kosik</u>			Date: <u>2/12/19</u>		
Signature of Petitioner: <u>John H. Kosik</u>			Date: <u>2/12/19</u>		

**CITY OF BIRMINGHAM
BOARD OF ZONING APPEALS
RULES OF PROCEDURE**

ARTICLE I - Appeals

A. Appeals may be filed under the following conditions:

1. A property owner may appeal for variance, modification or adjustment of the requirements of the Zoning Ordinance.
2. A property owner may appeal for variance, modification or adjustment of the requirements of the Sign Ordinance.
3. Any aggrieved party may appeal the decision of the Planning Board and/or the Building Official in accordance with the City of Birmingham Zoning Ordinance, Article Eight, Section 8.01 (D) Appeals. If an appellant requests a review of any determination of the Building Official, a complete statement setting forth the facts and reasons for the disagreement with the Building Official's determination shall include the principal point, or points on the decision, order or section of the ordinance appealed from, on which the appeal is based.

B. Procedures of the Board of Zoning Appeals (BZA) are as follows:

1. Regular BZA meetings, which are open to the public, shall be held on the second Tuesday of the month at 7:30 P.M. provided there are pending appeals. There will be a maximum of seven appeals heard at the regular meeting which are taken in the order received. If an appeal is received on time after the initial seven appeals have been scheduled, it will be scheduled to the next regular meeting.
2. All applications for appeal shall be submitted to the Community Development Department on or before the 12th day of the month preceding the next regular meeting. If the 12th falls on a Saturday, Sunday, or legal holiday, the next working day shall be considered the last day of acceptance.
3. All property owners and occupants within 300 feet of the subject property will be given written notice of a hearing by the City of Birmingham.
4. See the application form for specific requirements. If the application is incomplete, the BZA may refuse to hear the appeal. The Building Official or City Planner may require the applicant to provide additional information as is deemed essential to fully advise the Board in reference to the appeal. Refusal or failure to comply shall be grounds for dismissal of the appeal at the discretion of the Board.

5. In variance requests, applicants must provide a statement that clearly sets forth all special conditions that may have contributed to a practical difficulty that is preventing a reasonable use of the property.
6. Where the Birmingham Zoning Ordinance requires site plan approval of a project by the City Planning Board before the issuance of a building permit, applicants must obtain preliminary site plan approval by the Planning Board before appeal to the BZA for a variance request. If such appeal is granted by the BZA, the applicant must seek final site plan and design review approval from the Planning Board before applying for a building permit.
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ARTICLE II - Results of an Appeal

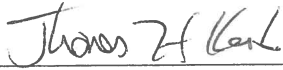
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I certify that I have read and understand the above rules of procedure for the City of Birmingham Board of Zoning Appeals.



Signature of Applicant

NARRATIVE TO SUPPORT
USE VARIANCE APPLICATION

LOCATION: **280 N. Old Woodward**
 (08-19-25-453-010)

PROPOSED USE: **New Business Incubator**
 Open To The Public

A general layout is attached with renderings to support the use requested. The location is in the downtown Redline Retail District and is governed by the zoning ordinance accordingly. The zoning ordinance requires that the first 20 feet of depth of window be used for "retail". The applicant seeks a use variance to allow the use set forth herein on the entire first floor.

This use variance is to allow the use set forth herein in the Redline Retail District which requires the first 20 feet of window frontage to be retail. The ordinance, as applied, presents an undue hardship not created by the applicant and allows others similarly situated to enjoy a benefit not granted to the applicant. A variance to allow the use set forth herein is respectfully requested. Only the use as presented will be conducted at the premises on the first floor.

The proposed use functions as an "incubator" space to customers wishing to initiate new business opportunities by selling to those entities "space" to conduct meetings and gatherings consistent with the needs of a start-up enterprise and consistent with small business owners and operators who want to purchase a location for meetings, presentations, etc. The relationship is directly to the potential user and may include the sale of conference room time and the sale of event space time to those interested and those shopping in the downtown area. This allows a potential or existing new business owner to purchase the right to conduct meetings and start-up gatherings without having a lease or other common real estate relationship. The use provides the sale of these options directly to the consumer who may be shopping for this type of opportunity and may, in fact, purchase the product as a walk-in or by other means of communication. Patrons and local shoppers will be able to recognize the products available and will be allowed to make purchases accordingly. The difference here is that the product sold is one of opportunity. A menu of what is available for purchase will be provided at the location and by other means of advertising. Purchases may be made on line, by telephone and by walk-in retail customers. The goal is to make the items for sale visible at the window and to entice shoppers and interested entities accordingly.

There is a hardship relating to the fact that more than 50% of the frontage along N. Old Woodward is above the grade of the sidewalk making it difficult to lease the space at issue to multiple tenants for retail.

There is a hardship because there is no entrance/door facing N. Old Woodward for multiple retail stores.

The proposed use will certainly create a strong appearance of retail along N. Old Woodward. This use is consistent with the intent of the ordinance.

The applicant is receptive to restructuring the ground floor layout to enhance the retail vision of the shopper and to ensure that local patrons can view the products available for purchase at the location.

Exhibit A – Layout

Exhibit B – Lobby Area

Exhibit C – Work Spaces

Exhibit D – Sales Area

Exhibit A: Proposed Layout

Oakland Ave



Exhibit B: Reception/Lobby Area



Exhibit C: Kitchen/Shared Workspace



Exhibit D: Open/Sales Area



BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, JANUARY 8, 2018
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, January 8, 2019. Vice-Chairman Randolph Judd convened the meeting at 7:30 p.m.

2. ROLL CALL

Present: Vice-Chairman Randolph Judd; Board Members Jason Canvasser, Kevin Hart, John Miller, Erik Morganroth, Francis Rodriguez; Alternate Board Member Richard Lilley

Absent: Chairman Charles Lillie

Administration:

Matthew Baka, Sr. Planner
Bruce Johnson, Building Official
Mike Morad, Asst. Building Official
Carole Salutes, Recording Secretary
Jeff Zielke, Building Inspector

Vice-Chairman Judd used the prerogative of the Chair to appoint a Temporary Chairman, Mr. Canvasser, 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 quazi-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 is one interpretation on this evening's agenda.

T# 01-01-19

3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF DECEMBER 11, 2018

Motion by Mr. Lilley

Seconded by Mr. Morganroth to accept the Minutes of the BZA meeting of December 11, 2018 as presented.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Lillie

T# 01-02-19

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 postponed until February 12, 2019.

T# 01-03-19

**2) 555 S. OLD WOODWARD AVE.
Appeal 19-02**

The owner(s) of the property known as 555 S. Old Woodward Ave. request the following variances to allow the installation of additional signage on the building:

A. Chapter 86, Article 01, section 1.04 (B) permits 1.00 sq. ft. (1.50 sq. ft. for addresses on Woodward Ave.) of sign area per linear foot of principal building frontage. The property owner is requesting a variance to be allowed 1.50 sq. ft. of signage per linear foot of principal building frontage.

B. Chapter 86, Article 01, section 1.05 (K) 2 of the Sign Ordinance permits non-illuminated signs identifying the entire structure by a building name above the first floor.

The property owner is proposing an illuminated building identification sign. Therefore, a variance to add illumination to the building identification sign is requested.

This property is zoned B3.

Mr. Baka recalled that as is the policy with sign variances the applicant appeared before the Design Review Board ("DRB") on January 2, 2019 to request a recommendation from the Board. The DRB recommended approval of both variance requests. They felt that granting the variances would not compromise the design review standards of section 7.09 of the Zoning Ordinance which outlines practical and aesthetic guidelines by which applications are evaluated.

In response to Temporary Chairman Canvasser, Mr. Baka advised the applicant has requested approval to install some new directional signage as well as additional signage for new tenants. Currently they have several vacancies and tenants without signage in the sign band. The allowable amount of signage has been maxed out. One large reason for this is because the building has two levels of retail. Further, if the building address was on Woodward Ave. rather than S. Old Woodward Ave., then a variance would not be needed. Granting this variance as though the building was on Woodward Ave. would increase the allowable signage on the building by 50% or 150 sq. ft. and would allow staff to continue to administratively approve signage.

Mr. Robert Ziegelman, Lukenbach, Ziegelman, Gardner Architects, presented some boards that showed the sign as it would be illuminated and not illuminated. The current 555 sign is behind trees and unlit. With the existing uplighting the sign becomes a blob. So their proposal is to raise the sign and backlight it in order to get rid of the shadows.

Temporary Chairman Canvasser inquired if there are any other possibilities to illuminate the building. Mr. Ziegelman said floodlighting did not work and the least intrusive was backlighting and keeping the letters opaque. The black letters glow from behind and take out the shadows.

There were no comments from members of the public at 7:52 p.m.

Motion by Mr. Morganroth

Seconded by Mr. Rodriguez with regard to Appeal 19-02, A. Chapter 86, Article 01, section 1.04 (B), with regard to the allowance of 1.00 sq. ft. for addresses on Old Woodward Ave., the applicant is requesting 1.50 sq. ft. of linear footage of the principal building; and for B. Chapter 86, Article 01, section 1.05 (K) 2 the request to illuminate the building sign, Mr. Morganroth moves to approve both variances as requested.

He thinks the applicant has provided enough information to explain the need to be able to see the sign that is currently not visible due to the up lighting. He

thinks that with the DRB supporting the changes and suggesting that they don't conflict with the intent, it is another reason why he supports this variance request.

With regard to the 1.50 ft., he thinks this is a unique structure in a unique location where, although the building does abut Woodward Ave., it does not have an address of Woodward Ave. So he feels this is unique and due to the additional tenants and the additional need for signage, he thinks that the request is reasonable.

For those reasons Mr. Morganroth moves to approve the variances and tie the motion to the plans as submitted and to acknowledge that any additional square footage they are currently not asking for will be reviewed to make sure that it meets all of the other requirements.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Lillie

T# 01-04-19

**280 N. OLD WOODWARD AVE.
Appeal 19-03**

The owner(s) of the property known as 280 N. Old Woodward Ave., Suite 100 request an administrative appeal of the interpretation of the proposed use for the property:

A. **Chapter 126, Article 08, section 8.01 (F) 1 (a)** of the Zoning Ordinance authorizes the Board of Zoning appeals to hear and decide appeals from and review any determination made by an administrative official charged with the enforcement of the Zoning Ordinance. The Building Official has determined that the proposed use of the ground floor space located at the property does not meet the requirements of the Redline Retail District as outlined in the Zoning Ordinance. Therefore, the applicant is requesting a reversal of that decision.

This property is zoned B-4.

Mr. Baka advised that the Redline Retail District is an area of Downtown that requires that the first 20.00 ft. of depth along any street designated as retail frontage on the Zoning Map must provide retail uses within that district as defined in the Zoning Ordinance. The proposed use by the applicant is a flexible office space that is available

for temporary short-term rental without a lease. The 20.00 ft. retail zone required by Ordinance is proposed to be used for accessory uses to the principal office use. A recent zoning compliance letter outlining the definitions that dictate the standards for the Redline Retail District has been included for reference.

Late last year there was a change to the Ordinance that created for the first time a definition for Personal Services that is considered compliant with the Redline Retail District. Since that time Personal Service based uses have to be more customer related. There are several quasi-office uses that currently exist in Downtown, all of which are considered legal non-conforming. If they vacate for a period longer than six months, then anyone coming in would have to comply with the new definition.

Temporary Chairman Canvasser established that the board is dealing with Mr. Johnson's interpretation letter and whether or not there was an abuse of discretion or if he acted in an arbitrary or capricious manner in the legal sense when making his decision.

Mr. Emil Jakupovic, Managing Member of the applicant, The Work Company, LLC, tenant of 280 N. Old Woodward Ave., Suite 100, clarified the services they will provide. The idea is to provide workspace that can be used for a variety of different people for a variety of different reasons. Unlike a traditional office space, they do not lease space to tenants. They offer memberships to those wanting to utilize their services on a daily, weekly, or monthly basis. It is a networking hub and also a great start-up incubator. Event space and conference rooms are available to rent. They are open to the general public and anyone may stop by. Their location has approximately 6,000 sq. ft. and was formally occupied by Fidelity Investments. They plan to invest approximately one half to three quarters of a million dollars for construction, furnishings and equipment to outfit the space.

Retail purchases of snacks, small meals and beverages are available through their self-service kiosks. They also provide other retail services, such as package/letter mailing, copying, faxing and other general concierge services.

They feel that their proposal falls under the Personal Services Commercial Use due to them being open to the general public. The Ordinance states Personal Services is an "establishment open to the general public and engaged primarily in providing services directly to individual consumers. . .but not including business to business services, medical, dental, and/or mental health services."

Mr. Judd thought the applicant's presentation was very well done and very thorough. However he pointed out that it goes well beyond the purview that this board deals with, which is abuse of discretion.

Mr. Jakupovic said he cannot provide an example of abuse of power. They are present to dispute the interpretation that they received from Mr. Johnson. Temporary Chairman Canvasser pointed out they are really just talking about the first 20 ft. of their space that lines N. Old Woodward Ave. The remaining portion of the space can be used as proposed.

Mr. Jakupovic established that anyone from the street is encouraged to come in and utilize first 20 ft. of the space. Refreshments are available for purchase by the general public. He provided a floor plan illustrating how the first 20 ft. of the space would look.

Mr. Morganroth asked if the kiosk that dispenses coffee and snacks would be the primary source of income for the business. Mr. Jakupovic replied the primary source of income would be the memberships.

Mr. Judd brought the discussion back to contemplation of the term “abuse of discretion.” It doesn’t deal with a misunderstanding; it deals with whether Mr. Johnson abused the duties that come with the job of being the Building Official. In Mr. Judd’s mind the applicant would have to prove some rather serious prejudices against him by Mr. Johnson in his opinion letter dated December 13, 2018.

Mr. Judd did not believe Mr. Jakupovic has presented any proof of abuse of discretion. Mr. Jakupovic indicated he is there to present the facts and he believes it is up to this Board to decide whether or not Mr. Johnson’s discretion is valid.

There were no comments from members of the public at 8:25 p.m.

Motion by Mr. Judd

Seconded by Mr. Morganroth in the matter of Appeal 19-03, 280 N. Old Woodward Ave., Suite 100, the petitioner has asked for a hearing to determine whether or not the Building Official abused his discretion in reaching the conclusion in his letter dated December 13, 2018 that states: “A review of your letter and floor plan resulted in a determination that the proposed use of this area would not be considered retail per the City’s Zoning Ordinance definitions. The area described and shown appears to primarily serve the office workers rather than the general public.”

Mr. Judd would first off say that the presentation by the appellant in this case is one of the better written presentations he has reviewed in the years that he has been on this board. However, the BZA is dealing with a responsibility on its part which it doesn’t really deal with that often and it deals with terms, as he said, that abuse of discretion is a term of art and indeed it is.

Where the other variances before the Board have set elements that they can address, in this case it is a bit more amorphous. It requires the board to in some

instances look into the heart of Mr. Johnson, the Building Official. That is why he was persistent when he was questioning Mr. Jakupovic on whether or not there was any proof to bolster his claim that Mr. Johnson had abused his discretion in reaching the determination that he has just read.

It is Mr. Judd's feeling that Mr. Johnson has interpreted an Ordinance that was enacted on November 13, 2017 by the City Commission. He fails to see that there is an abuse of discretion in this case; he certainly finds no invidious discrimination. He finds no examples that Mr. Johnson went into this with his mind made up, it was not open, and in fact it sounds as though Mr. Jakupovic and Mr. Johnson have maintained a very good relationship throughout and he would certainly hope that would continue in this case.

For those reasons and also the fact that the examples that Mr. Jakupovic presented of other businesses in town that he feels are the same as he proposes failed to take into account that many of them are grandfathered in based upon the fact that the Ordinance was enacted on November 13, 2017. There are also protections in the Ordinance dealing within a six-month period from when a business goes out and another one comes into that location it in effect is grandfathered also.

So for that reason and others Mr. Judd would state that he moves to affirm the decision of the Building Official in this case, and in doing that denies the appeal of the petitioner in this case.

Temporary Chairman Canvasser complimented Mr. Jakupovic on a well put together presentation, both written and oral. However, they are talking about a very high burden, not whether or not Mr. Johnson may or may not have misinterpreted the statute, but whether or not his interpretation was an abuse of discretion or was somehow arbitrary and capricious. The interpretation by Mr. Johnson wasn't arbitrary or capricious. It was based on his reading of the Ordinances, and therefore we cannot say he has abused his discretion in reaching that conclusion. Therefore the Temporary Chairman did not believe he has any choice but to support the motion.

He went on to say that Mr. Jakupovic has laid out a very thorough and hopefully very successful business plan. He urged him to continue to work with the City to figure out how to best utilize the first 20 ft. of his space to accomplish what he is looking to do.

Mr. Morganroth said he will also support the motion. He pointed out that offering coffee and snacks for a 6,000 sq. ft. location in Birmingham to him does not fulfill the requirement for retail space. That is really kind of irrelevant to whether or not he believes there was any kind of capricious or inappropriate interpretation.

Mr. Miller noted that the petitioner in his presentation kept repeating office space, incubator, start-up, home office, etc. That served to confirm the determination of the City. Therefore it seems to him the City has acted in a very relevant and appropriate way, so he will support the motion.

Mr. Hart indicated that he will support the motion as well. He thought that Mr. Jakupovic was disputing the interpretation of the determination that Mr. Johnson made. He didn't agree with Mr. Johnson but that doesn't mean there was an abuse of discretion.

He wanted to understand whether if someone is seeking a variance based on disagreement with the interpretation, whether that in fact automatically toggles over to accusing the Building Official of an abuse of power.

Temporary Chairman Canvasser said there is no appeal before the board and that could be a different analysis. Mr. Hart noted there is a dispute of the interpretation, which could be an honest disagreement.

Mr. Judd said under the Enabling Act for Zoning, MCL 125.3604 (5) talks about if the BZA receives a written request seeking an interpretation of the Zoning Ordinance or an appeal of an administrative decision, the BZA shall conduct a public hearing on the request. This board doesn't generally get requests for interpretations. If someone wants an interpretation of the Zoning Ordinance, the most direct way would be to ask for a variance. An interpretation might be something the board would refer to the City Attorney.

Mr. Judd noted this case was treated as an appeal from a decision by the Building Official and was noticed as such. The proof they use in that case is an abuse of discretion, which is kind of a "glass banana." That is this board's job.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Lillie

T# 01-05-19

5. CORRESPONDENCE (none)

T# 01-06-19

6. GENERAL BUSINESS (not discussed)

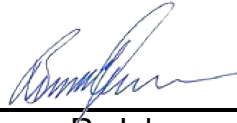
T# 01-07-19

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

T# 01-08-19

8. ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:43 p.m.



Bruce R. Johnson, Building Official

CASE DESCRIPTION

1684 W Lincoln (19-08)

Hearing date: March 12, 2019

The owner(s) of the property, known as 1684 W. Lincoln request the following variance to construct an addition to an existing non-conforming home:

- A. Chapter 126, Article 4, Section 4.61(1)** of the Zoning Ordinance requires a corner lot which has on the side street an abutting interior residential lot shall have a minimum setback from the side street equal to the minimum front setback for the zoning district in which such building is located. The required street side yard setback for this property is 26.50 feet. The proposed setback is 14.50 feet; therefore, a variance of 12.00 feet is requested.

Staff Notes:

The applicant was granted a variance back in October of 2018 for this work. However, it has been noted that the actual variance amount is 0.79-feet more than initially granted. The same variance is being requested to construct the addition with the corrected variance amount necessary.

This property is zoned R1.

Jeff Zielke
Plan Examiner

1684 W LINCOLN



CITY OF BIRMINGHAM
Community Development - Building Department
151 Martin Street, Birmingham, MI 48009
Community Development: 248-530-1850
Fax: 248-530-1290 / www.bhamgov.org

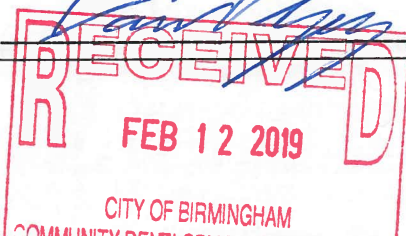
APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: 2.12.19
Received By: BM/AB

Hearing Date: 3.12.19
Appeal #: 19-08

Type of Variance:	<input type="checkbox"/> Interpretation	<input checked="" type="checkbox"/> Dimensional	<input type="checkbox"/> Land Use	<input type="checkbox"/> Sign	<input type="checkbox"/> Admin Review
I. PROPERTY INFORMATION:					
Address: <u>1684 W LINCOLN</u>		Lot Number:		Sidwell Number:	
II. OWNER INFORMATION:					
Name: <u>DAVID + KELLY GENZLINGER</u>					
Address: <u>1684 W LINCOLN</u>		City: <u>BIRMINGHAM</u>		State: <u>MI</u>	Zip code: <u>48009</u>
Email: <u>dgenzlinger@yahoo.com</u>				Phone: <u>386 921 6389</u>	
III. PETITIONER INFORMATION:					
Name: <u>SAME</u>		Firm/Company Name:			
Address:		City:		State:	Zip code:
Email:				Phone:	
IV. GENERAL INFORMATION:					
<p>The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12th day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.</p> <p>To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted. Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.</p> <p>The BZA application fee is \$360.00 for single family residential; \$560.00 for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.</p>					
Variance Chart Example					
Requested Variances	Required	Existing	Proposed	Variance Amount	
Variance A, Front Setback	25.00 Feet	23.50 Feet	23.50 Feet	1.50 Feet	
Variance B, Height	30.00 Feet	30.25 Feet	30.25 Feet	0.25 Feet	
V. REQUIRED INFORMATION CHECKLIST:					
<p><input type="checkbox"/> One original and nine copies of the signed application</p> <p><input type="checkbox"/> One original and nine copies of the signed letter of practical difficulty and/or hardship</p> <p><input type="checkbox"/> One original and nine copies of the certified survey</p> <p><input type="checkbox"/> 10 folded copies of site plan and building plans including existing and proposed floor plans and elevations</p> <p><input type="checkbox"/> If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting</p>					
VI. APPLICANT SIGNATURE					
<p>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.</p>					
Signature of Owner: <u>[Signature]</u>			Date: <u>2/12/19</u>		
Signature of Petitioner: <u>[Signature]</u>			Date: <u>2/12/19</u>		

Rev Sign
Revised 2/12/2018



5. In variance requests, applicants must provide a statement that clearly sets forth all special conditions that may have contributed to a practical difficulty that is preventing a reasonable use of the property.
6. Where the Birmingham Zoning Ordinance requires site plan approval of a project by the City Planning Board before the issuance of a building permit, applicants must obtain preliminary site plan approval by the Planning Board before appeal to the BZA for a variance request. If such appeal is granted by the BZA, the applicant must seek final site plan and design review approval from the Planning Board before applying for a building permit.
7. An aggrieved party may appeal a Planning Board decision. Such appeal must be made within 30 days of the date of the decision. The BZA, in its discretion, may grant additional time in exceptional circumstances.
8. Appeals from a decision of the Building Official shall be made within 30 days of the date of the order, denial of permit, or requirement or determination contested. The BZA, in its discretion, may grant additional time in exceptional circumstances.
9. An appeal stays all proceedings in accordance with Act #110, Public Acts of 2006, Article VI, Section 125.3604 (3).

C. The order of hearings shall be:

1. Presentation of official records of the case by the Building Official or City Planner as presented on the application form.
2. Applicant's presentation of his/her case—the applicant or his/her representative must be present at the appeal hearing.
3. Interested parties' comments and view on the appeal.
4. Rebuttal by applicant.
5. The BZA may make a decision on the matter or request additional information.

D. Motions and Voting

1. A motion is made to either grant or deny a petitioner's request
 - a) For a motion to grant or deny a non-use variance request, the motion must receive four (4) affirmative votes to be approved.
 - b) For a motion to grant or deny a use variance request, the motion must receive five (5) affirmative votes to be approved.
 - c) For a motion to grant or deny an appeal of a decision or order by an administrative official or board, the motion must receive four (4) affirmative votes to be approved.

ARTICLE III - Rehearings

A. No rehearing of any decision of the Board shall be considered unless new evidence is submitted which could not reasonably have been presented at the previous hearing or unless there has been a material change of facts or law.

B. Application or rehearing of a case shall be in writing and subject to the same rules as an original hearing, clearly stating the new evidence to be presented as the basis of an appeal for rehearing.

I certify that I have read and understand the above rules of procedure for the City of Birmingham Board of Zoning Appeals.



Signature of Applicant

February 12, 2019

Mr. and Mrs. David and Kelly Genzlinger
2339 Manchester, Birmingham, MI 48009
1684 W. Lincoln, Birmingham, MI 48009

Board of Zoning Appeals(BZA)
Birmingham, Michigan 48009

Dear BZA Chairman and Members,

We are submitting this appeal to the Board regarding 1684 W. Lincoln. Our family has lived in Birmingham's Pembroke Manor for nearly 20-years, and we have recently purchased 1684 W. Lincoln. Our plan is to renovate this home, and bring it up to Birmingham standards as well as to update it to serve as a wonderful family home for ourselves and three children.

The home is on the northeast corner of Lincoln and Donmar Ct. The house as it sits, is non-conforming to the street-facing side yard setback (Donmar Ct.) side.

The design we are proposing conforms to all setbacks as it relates to the new additional structure's foundation (including garage) behind the house. We are requesting a variance 12' into the street facing side yard. This will enable us to build a true second floor (where a bungalow 2nd level exists today) over the existing footprint of the house. We will also add an addition on the back that will not exceed, but will sit inside, the line of the existing house and requested 12' variance.

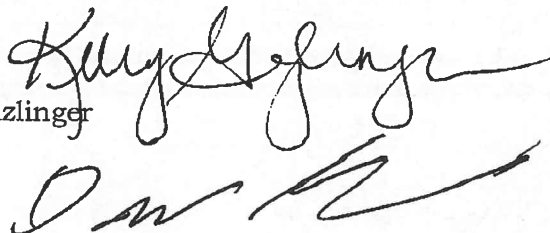
For this small, corner lot, we iterated through many options, including a plan that required two variances that BZA denied, which required two variances. This design now only requires a single variance, and allows us to meet all other requirements:

- Rear setback (30' required and we are at 30')
- Front yard setback (required 35.13, we are inside that at 34.25)
- Height requirement (28' and we are at 27')
- 30% lot coverage (we are at 29.96%)
- 60% green space (we are at 80%)
- Combined front and back (must be 55' and we are at 64.25)

We thank you for your consideration, and appreciate the seriousness of this appeal. We are hopeful that our multiple attempts, and resulting complete conformance to all requirements, other than the street-facing side yard variance on this corner lot, will support granting this variance appeal.

Thank you,

Dave and Kelly Genzlinger

The block contains two handwritten signatures. The top signature is in cursive and appears to read 'Kelly Genzlinger'. The bottom signature is also in cursive and appears to read 'Dave Genzlinger'.

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, OCTOBER 9, 2018
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, October 9, 2018. Vice-Chairman Randolph Judd convened the meeting at 7:30 p.m.

Present: Vice-Chairman Randolph Judd; Board Members Jason Canvasser, Kevin Hart, John Miller, Erik Morganroth; Alternate Board Member Richard Lilley

Absent: Chairman Charles Lillie; Alternate Board Member Francis Rodriguez

Administration: Matthew Baka, Sr. Planner
Bruce Johnson, Building Official
Mike Morad, Asst. Building Official
Carole Salutes, Recording Secretary
Jeff Zielke, Building Inspector

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

T# 10-91-18

APPROVAL OF THE MINUTES OF THE BZA MEETING OF SEPTEMBER 11, 2018

Vice-Chairman Judd noted:

Page 5 - Fourth paragraph, second line, replace "ageing" "with aging."

Motion by Mr. Morganroth

Seconded by Mr. Canvasser to approve the Minutes of the BZA meeting of September 11, 2018 as corrected.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Absent: Lillie, Rodriguez

T# 10-92-18

**1997 VILLA
Appeal 18-34**

The owner(s) of the property known as 1997 Villa request the following variance to construct 6.00 ft. privacy fencing in the front open space:

A. Chapter 126, Article 4, Section 4.11 of the Zoning Ordinance limits the height of fences in the front open space to 3.00 ft. The existing/proposed privacy fencing is 6.00 ft; therefore, a variance of 3.00 ft. is requested.

This property is zoned R-6.

Mr. Baka explained that due to the configuration of the buildings in this multi-family development the front (main) entrance is accessible from the parking area behind the building. The façade facing Villa has sliding door walls that access a patio space for each tenant. There are currently existing 6 ft. wooden divider fence sections between each unit. The applicant is proposing to demolish the existing dividers and install new PVC fencing in their place. Since they are replacing the fencing rather than repairing it they are required to meet the current ordinance or obtain a variance. This proposal concerns just two buildings as the rest of the dividers in the complex are in the rear of their space.

Mr. Morganroth asked if there was discussion about going lower than 6 ft. Mr. Baka responded the dividers are generally intended to create privacy between the back patios. The replacement would be very similar to what is existing.

Mr. Canvasser received confirmation that the existing dividers are considered legal non-conforming. The Ordinance doesn't differentiate between dividers and a fence.

Ms. Rhonda Fazio, Community Manager for Eton Square Apartments, said they have already replaced all of the interior courtyard wood dividers with the same PVC privacy fences. The remaining wood dividers are falling apart and are an eyesore from the

street. She replied to Mr. Canvasser they have not considered anything in place of the fences that would not require a variance. She would like to keep them all the same since the vinyl has already been installed on the interior units.

There were no comments from the audience on this appeal at 7:45 p.m.

Motion by Mr. Miller

Seconded by Mr. Morganroth to approve Appeal 18-34, 1997 Villa. It seems that this request is based upon a situation where the buildings were built in the 1950s. At least two of them in this complex are built kind of reversed of what you would expect to see. Where what would be the back yard there is the front door, and the mail box, and in what is really the back yard that faces the street there is a patio, patio furniture, barbeque grills. Putting these privacy fences between what is in the back yard seems very reasonable, given that these buildings are built the way they are and they were built obviously before current zoning ordinances were in place.

So Mr. Miller thinks it presents an unreasonable difficulty if these fences had to come down and be at only 3 ft. That would defeat the privacy of the backyard area and be quite burdensome to the petitioner.

He thinks the fences being replaced with what is proposed is very reasonable and would do substantial justice to the complex and the neighborhood.

The problem is due to the unique circumstance of the building design and the problem was not self-created. So, again Mr. Miller moves to approve, tied to the plans as submitted.

Motion carried, 6-0.

Mr. Morganroth indicated he supports the motion because of the perpendicular nature of the dividers. He doesn't see them as a fence, but more as a partition for the individual use of the property. That is why he doesn't mind seeing this replacement of a non-conforming use.

ROLLCALL VOTE

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

Nays: None

Absent: Lillie, Rodriguez

T# 10-93-18

**1524 HAYNES
Appeal 18-35**

The owner(s) of the property known as 1524 Haynes request the following variance to construct a second-story addition on an existing non-conforming single-family home:

A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires that no side yard setback shall be less than 5.00 ft. The existing and proposed is 4.60 ft., therefore a variance of 0.40 ft. (4.8 in.) is being requested.

This property is zoned R-2.

Mr. Johnson advised the existing home at this location was constructed in 1955. The proposed second-story addition will not project closer to the property line than the existing first story below. The property meets all other Zoning Ordinance requirements.

Mr. Morganroth received confirmation that the overhang is the minimum to minimize any further encroachment and the addition is not increasing the already existing non-conformity.

Mr. Dan Lynch, Lynch Custom Homes, represented his clients, Joe and Sarah Valentine. The current house is 1,078 ft. It meets the distance between structures from the neighbor to the west. To reduce the variance they could move the house over, which doesn't make much sense. Also they could try to step in the second floor with a little shed roof which would require a vented soffit, It would look silly from the street to have a 4.8 in. jog.

This is consistent with the spirit and intent of the Ordinance. The 4.8 in. is minimal and doesn't impinge on the neighbors

The practical difficulty was not created by the homeowner. The home was built well before it was purchased by the applicants.

The circumstances are unique, and granting the variance would promote substantial justice. All the other homeowners in that zone where the houses were built conforming are able to do a second-story addition and stack it and have a reasonable architectural look. That is why stepping this in would look like they made a mistake. Further, stepping it in would increase the cost, which seems burdensome on the homeowner.

No one from the public wished to comment at 7:55 p.m.

Motion by Mr. Morganroth

Seconded by Mr. Canvasser regarding Appeal 18-35, 1524 Haynes. The applicant is requesting a variance from Chapter 126, Article 2, Section 2.28 for the side yard setback at 5 ft. The applicant needs a 0.40 ft. variance.

Mr. Morganroth proposes to approve this request. The applicant has demonstrated mitigation by exploring all the different options of the hip and gable roofs, discussing the offset, and how that would affect cost as well a function.

The property is existing non-conforming so he thinks it would be unreasonably burdensome to expect the applicant to shift the house over in order to try to remove a non-conformity that is already existing.

Mr. Morganroth thinks it does justice to the homeowner, justice to the neighbors and for that reason he would approve and tie the motion to the plans as presented.

Mr. Canvasser indicated he would support the motion. He noted there will be no enlargement of the pre-existing non-conforming use and should have no impact on any surrounding neighbors.

Mr. Hart said he would also support the motion. As mentioned earlier, the mitigation was investigated fully, there is demonstrated practical difficulty, it is harmonious with the neighborhood and with the existing structure, and he thinks it is a nicely done minimization of the encroachment.

Motion carried, 6-0.

ROLLCALL VOTE

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

Nays:

Absent: Lillie, Rodriguez

T# 10-94-18

242 ASPEN

Appeal 18-36

The owner(s) of the property known as 242 Aspen request the following variance to modify the existing front façade of an existing non-conforming home:

A. Chapter 126, Article 2, Section 2.06 of the Zoning Ordinance requires a minimum front yard setback to be the average of the homes within 200.00 ft. each direction. The required front yard setback for this property is 31.52 ft. The proposed setback is 29.85 ft., therefore a variance of 1.67 ft. is requested.

This property is zoned R-1.

Mr. Zielke noted the applicant is proposing a renovation of the front façade of this existing nonconforming home that was constructed in 1997. The proposed renovation consists of a parallel extension of the front façade to the left and reduction in the non-conformity on the right.

It was noted the wing wall has already been removed as part of interior renovation. Mr. Zielke said there wasn't an issue with removing a non-conformity. This is an exchange of one non-conformity to add another.

Mr. Robert Clarke, Architect, represented the homeowners, Rebecca and Andrew Grove. The homeowners are removing the existing arched wing wall due to the relocation of their front door. The center line of the existing front gable is not currently centered between the existing exterior walls, which will now be emphasized with the removal of the north wing wall. By adding a small wing wall to the south side of the existing front wall, they can accurately center the gable with the existing exterior walls which was not correctly done on the original house.

The homes on either side are forward of this. A home three doors down to the north affects the average front yard setback because it is 9 ft. further back. They have looked at multiple solutions for this and have not come up with one that makes it work because the ridgeline is controlling everything they are doing.

The existing non-conformity was not created by the homeowners because they purchased the home within the last year.

In answer to Mr. Canvasser, Mr. Johnson said that changing or expanding the non-conforming front facade would require a variance. Mr. Clarke verified they are not projecting any further into the street with the additions. They are actually reducing the non-conformity.

Mr. Hart noted that anything that is done to the front of this house would require a variance because it is already located in the front setback.

There were no comments from members of the audience at 8:10 p.m.

Motion by Mr. Miller

Seconded by Mr. Hart to approve Appeal 18-36, 242 Aspen. After he personally inspected the site it was interesting that the need for an appeal is not immediately apparent. So, he views this as a very minimal request based on an existing 1997 non-conforming home. What is being done actually reduces the amount or the length of the non-conformity.

To maintain strict compliance would put the petitioner in an unreasonable situation. Mr. Miller thinks the variance would also do substantial justice to the

neighborhood. The houses immediately surrounding this house are much more forward. As you go down the street they step back again. So this house is really not out of step with the surrounding neighbors. Therefore he thinks substantial justice is done there, and also substantial justice to the expression of the architecture of the home itself.

The problem is due to certainly unique circumstances of the existing non-conformity. He believes it was not self-created and he would tie approval to the plans as submitted.

Motion carried, 6-0.

ROLLCALL VOTE

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

Nays: None

Absent: Lillie, Rodriguez

T# 10-95-18

1684 W. LINCOLN

Appeal 18-32

The owner(s) of the property known as 1684 W. Lincoln request the following variance to construct an addition to an existing non-conforming home:

A. Chapter 126, Article 4, Section 4.61 (1) of the Zoning Ordinance requires a corner lot which has on the side street an abutting interior residential lot shall have a minimum setback from the side street equal to the minimum front setback for the zoning district in which such building is located. The required street side yard setback for this property is 26.50 ft. The proposed setback is 15.29 ft.; therefore, a variance of 11.21 ft. is requested.

This property is zoned R-1.

Mr. Morad explained the applicant is proposing to add a second floor and construct a rear addition to the existing non-conforming home which was constructed in 1948. The rear addition is conforming with the side yard setback down the side street. This is a corner lot in the R-1 Zoning District. Last month they had proposed a garage in the rear and were asking for a rear yard setback. Now they have brought everything forward and only require the one variance. Mr. Morganroth noted the massing in front of the garage is less of a non-conformity than the already existing massing below it.

Mr. Johnson verified the plans are sufficient for the City's purposes.

Ms. Kelly Genslinger was present with her husband, Dave, and they are the homeowners. Ms. Genslinger said when they came last month they had a self-imposed variance on the back that encroached 5 ft. into the rear setback. They have since corrected that and now they are not making their existing nonconformity worse. Presently they are just asking for one setback on the street-facing side of their corner lot.

They think this is not doing anything to impede the neighbors. There is a practical difficulty that they did not create, in that the existing house is non-conforming and they are not making it worse. Also their circumstances are somewhat unique in that not only is this a corner lot, but it is also slightly smaller in the R-1 Zone. It is 8,166 sq. ft., where the minimum lot size in this Zone is 9,000 sq. ft. Even though their lot is significantly smaller by 1,000 sq. ft. they are adhering to all of the setbacks except this one which is pre-existing, non-conforming. Also, they have stepped in going back to continue to meet the setbacks. Lastly, Ms. Genslinger pointed out they have gone through many months of iterations of this plan and she doesn't think there is another option. They mitigated by stepping back and bringing the house in. She feels this plan is harmonious with the neighborhood.

At 8:20 p.m. there were no comments or questions from the audience.

Motion by Mr. Miller

Seconded by Mr. Canvasser to approve with regard to 1684 W. Lincoln, Appeal 18-37. He believes the difficulty is basically due to the location of the non-conforming existing home and its location on the site. That is what really caused the non-conformity here.

The new construction does step back from that existing home and he believes it is in a reasonable location and really respects the adjacent neighbor.

Strict compliance he thinks would impede the applicant in an unreasonable way, given again the location of the existing home.

Also he believes it would do substantial justice to the neighborhood. The variance will permit architectural consistency of the building. The difference between the existing home and what is proposed is very dramatic, all for the good.

Mr. Miller believes this problem was not self-created, so he will move to approve, tied to the plans as submitted.

Mr. Morganroth said he will support the motion. He reminded everyone that at the last meeting the applicant had considerably more variances than are presently being requested. So this definitely shows major mitigation.

Mr. Hart noted he would approve the motion as well. He likes the way the mitigation was accomplished to the north by stepping it back to match up with the front yard setback of the neighboring properties. That shows a real sensitivity to the neighborhood.

Vice-Chairman Judd said he would also support. The applicant listened to what was said at the last meeting and obviously it paid off.

Motion carried, 6-0.

ROLLCALL VOTE

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

Nays: None

Absent: Lillie, Rodriguez

T# 10-96-18

101 S. OLD WOODWARD AVE.

Lululemon

Appeal 18-38

The owner(s) of the property known as 101 S. Old Woodward Ave. request the following variance to block a window along the front facade:

A. Chapter 126, Article 4, Section 4.90 (A)(4) of the Zoning Ordinance prohibits windows from being blocked with opaque materials or furniture, products, signs, blank walls or the backs of shelving. The eastern-most window bay of the north facing façade along E. Maple Rd. is proposed to be blocked with a vinyl application; therefore; a variance to block the eastern most window along the E. Maple Rd. elevation is requested.

This property is zoned B-4.

Mr. Baka advised the area on the interior of the subject window is the location of a fitting room and storage area of the store. In order to provide privacy for the customers using the fitting room and to screen the storage area from public view, the applicant is proposing to cover the window with either vinyl graphics or drapes.

The Zoning Ordinance requires 70% of the storefront facades in commercial areas to be glazing. Staff went out and measured and it turns out they are at 79,5% glazing. So

they subtracted what the applicant is requesting to block and that brought the glazing down to 71%. Therefore the applicant would still meet the Ordinance requirement of 70% clear glazing allowing views into the store. However, that doesn't negate the need for a variance because the Ordinance clearly states that no windows can be blocked.

Answering Mr. Canvasser, Mr. Baka said that anything within 3 ft. inside the window is considered to be window signage or blocking the window. Previously the applicant had three windows blocked but now they are proposing to block two out of 21 windows. Mr. Canvasser asked if staff has a preference of drapes over a decal. Mr. Baka thought the application of vinyl to the window would be more permanent and could be easily maintained.

Mr. Hart noticed there is a wonderful rhythm to the archways on Maple Rd. and along the N. Old Woodward Ave. side. Mr. Baka added that changing the configuration of the windows is definitely a negative for this historic building.

Mr. Ryan Weller, Architect, was present for Lululemon and said he has been working with them for six years. Their new initiative is to provide more visibility into their stores. Due to the complex layout of this space, it was very difficult to pull everything that needed to be opaque away from the windows. However they want to block the delivery receiving area and the ADA fitting room.

Mr. Miller saw that the amount of glass seems to be tremendous, compared to the interior square footage. Mr. Weller noted their plans try to open up as much glazing as possible. He feels that with the amount of metal fixturing they have provided that is almost entirely transparent, the space will really be improved. They like the decal rather than the drapes. It will pull in both elevations because they are doing the same thing with the metal and also applying the design in several areas of the interior.

At 8:45 p.m., there were no public comments.

Motion by Mr. Canvasser

Seconded by Mr. Morganroth in regard to Appeal 18-38 for property located at 101 S. Old Woodward Ave. The request is for a variance from Chapter 126, Article 4, section 4.90 (A) (4) to place a vinyl application on the eastern-most window bay on the north-facing facade along E. Maple Rd.

Mr. Canvasser moves to approve the request. In so doing, he finds that strict compliance with the Ordinance would be unreasonably burdensome. He thinks that the variance would actually do substantial justice to the petitioner as well as not only neighboring property owners, but the community at large. We want to avoid situations where we are looking at stacked boxes and the bare side of a changing room.

He thinks this is due to unique circumstances of the property. We have seen an effort to mitigate the request and he doesn't believe it is self-created.

He would indicate specifically that the approval would be tied to Option 1, the opaque vinyl as requested by the petitioner. So, the motion is tied to the specific drawing for Option 1, labeled underneath *Option for E. Maple Elevation*.

Mr. Morganroth added they have identified the structure as having more than 70% glazing so that even with this opaque application the applicant will have 71% glazing. So this historic structure with its unique shape and uniform glazing on three full walls along the major part of Birmingham is still maintaining the minimum amount of glazing necessary to meet the Ordinance.

Mr. Miller noted the board doesn't want to set any kind of precedent. This is in large part due to the acute angle of the site which causes it to have a very high percentage of glass, compared to the interior square footage. He feels that certainly presents a hardship in this particular case.

Vice-Chairman Judd indicated that he is glad the board has reached concurrence and thanked the petitioner for coming up with a good design and giving a presentation explaining why one option is superior to the other.

Motion carried, 6-0.

ROLLCALL VOTE

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

Nays: None

Absent: Lillie, Rodriguez

T# 10-97-18

CORRESPONDENCE (none)

T# 10-98-18

GENERAL BUSINESS (no discussion)

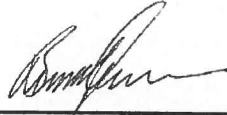
T# 10-99-18

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

T# 10-100-18

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:52 p.m.

A handwritten signature in black ink, appearing to read 'Bruce R. Johnson', written over a horizontal line.

Bruce R. Johnson, Building Official

CASE DESCRIPTION

1592 E Lincoln (19-09)

Hearing date: March 12, 2019

The owner(s) of the property known as 1592 E. Lincoln request the following variances to construct a second floor and rear addition to an existing non-conforming home:

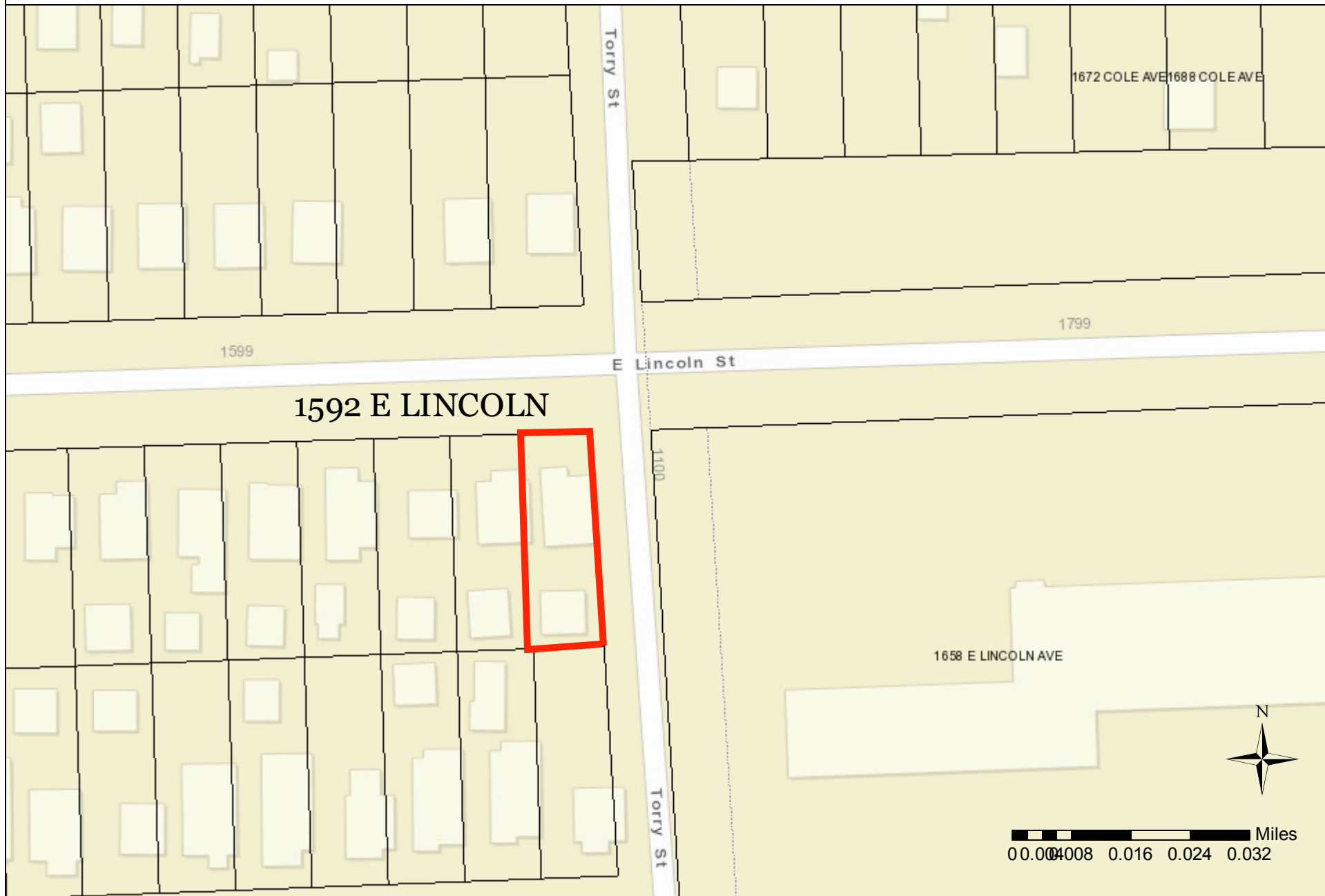
- A. Chapter 126, Article 4, Section 4.61(A)(2)** of the Zoning Ordinance requires that a corner lot where there is no abutting interior residential lot on such side street, the minimum side street setback shall be 10.00 feet for the permitted principal building. The required distance on the side street is 10.00 feet. The existing and proposed distance is 9.65 feet; therefore, a variance of 0.35 feet is requested.
- B. Chapter 126, Article 4, Section 4.74 (C)** of the Zoning Ordinance requires the minimum distance between structures on adjacent lots to be 14.00 feet or 25% of the total lot width, whichever is greater. The required distance between is 14.00 feet. The proposed distance between on the west side is 10.04 feet; therefore, a variance of 3.60 feet is requested.

Staff Notes:

The applicant is proposing to construct a second floor addition on the existing non-conforming foot print and add a small rear addition to the home. The existing home is located in the required street facing side yard setback, along with not meeting the required distance between structures on the opposing side. The neighboring home to the south was granted variances (see attached minutes) for similar issues.

This property is zoned R3.

1592 E LINCOLN



CITY OF BIRMINGHAM
Community Development - Building Department
151 Martin Street, Birmingham, MI 48009
Community Development: 248-530-1850
Fax: 248-530-1290 / www.bhamgov.org
APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: _____

Received By: _____

Hearing Date: 3-12-19

Appeal #: 19-09

Type of Variance:	<input type="checkbox"/> Interpretation	<input checked="" type="checkbox"/> Dimensional	<input type="checkbox"/> Land Use	<input type="checkbox"/> Sign	<input type="checkbox"/> Admin Review
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I. PROPERTY INFORMATION:

Address: 1592 E Lincoln	Lot Number: 346	Sidwell Number: 20-31-301-029
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II. OWNER INFORMATION:

Name: Jeffrey Schroder			
Address: 1592 E Lincoln	City: Birmingham	State: MI	Zip code: 48009
Email: jschroder@plunkettcooney.com		Phone: 586-215-3923	

III. PETITIONER INFORMATION:

Name: Dennis Cowan	Firm/Company Name: Plunkett Cooney		
Address: 38505 Woodward, Suite 100	City: Bloomfield Hills	State: MI	Zip code: 48009
Email: dcowan@plunkettcooney.com		Phone: 248-901-4000	

IV. GENERAL INFORMATION:

The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12th day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.

To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted. Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.

The BZA application fee is **\$360.00** for single family residential; **\$560.00** for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.

Variance Chart Example				
Requested Variances	Required	Existing	Proposed	Variance Amount
Variance A, Front Setback	25.00 Feet	23.50 Feet	23.50 Feet	1.50 Feet
Variance B, Height	30.00 Feet	30.25 Feet	30.25 Feet	0.25 Feet

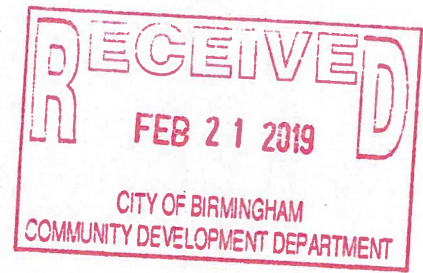
V. REQUIRED INFORMATION CHECKLIST:

- ☐ One original and nine copies of the signed application
- ☐ One original and nine copies of the signed letter of practical difficulty and/or hardship
- ☐ One original and nine copies of the certified survey
- ☐ 10 folded copies of site plan and building plans including existing and proposed floor plans and elevations
- ☐ If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting

VI. APPLICANT SIGNATURE

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: _____	<div style="border: 2px solid red; padding: 5px; display: inline-block;"> RECEIVED FEB 12 2019 CITY OF BIRMINGHAM COMMUNITY DEVELOPMENT DEPARTMENT </div>	Date: <u>2-8-19</u>
Signature of Petitioner: _____		Date: <u>2-8-19</u>



February 11, 2018

City of Birmingham
Building Department
151 Martin Street
Birmingham, MI 48009

**RE: Board of Zoning Appeals- Hardship Letter
1592 E Lincoln**

To Whom It May Concern:

This corner lot property has very distinctive characteristics making it very difficult to propose an addition. The applicant has worked hard to mitigate the number of required variances as the original plans prepared required 3 variances, and the applicant revised the plans after comments from the building inspector¹. The subject property is highlighted on the parcel map that is attached to this letter. The distinctive features of the property include:

- The lot is only has 37 feet of frontage on East Lincoln. Over 90% of the lots on East Lincoln on this block are 40-foot lots. See attached lot frontage analysis.
- The lot is irregularly shaped and the east lot line tapers as it goes forward.
- The existing structure is non-conforming as to the two requested variances.

The table below shows the requested variances for an addition:

Requested Variances	Required	Existing	Proposed	Variance Amount
Variance A, Corner lot side street setback	10.0 feet	9.65 feet	9.65 feet	.35 foot
Variance B, Distance between buildings	14.0 feet	10.4 feet	10.4 feet	3.6 feet

With respect to Variance A, there are special conditions applicable to the property. The corner lot side yard setback is 10 feet, and the side street Torry tapers northwesterly on a very slight angle. As a result, the lot is irregularly shaped resulting in the south side of the existing structure conforming to the 10-foot setback, but the north side of the structure is non-conforming by a few inches. The existing structure is non-conforming creating a hardship.

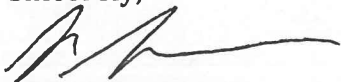
¹ The original plans would have required a third variance for the maximum lot coverage requirement of 30%.

With respect to Variance B, both the subject property and the neighboring property are nonconforming structures that do not meet the existing "distance between structures" requirement. Adding a second story without a variance is not possible. Presently, there are over 300 square feet of finished living space upstairs. The existing nonconformity of the structures creates the hardship and granting the variance will result in substantial justice to the applicant and the other properties in the area that will see improvement to the property, which will improve the neighborhood.

Applicant notes that the adjacent property to the south (shown as 1583 Ruffner on the attached parcel map) required 5 variances in September 2017 and had the same issues as the subject property: a smaller corner lot that tapers and an existing structure that is nonconforming with respect to the side street setback of 10 feet and the distance between structures setback of 14 feet.

Thank you for your consideration of the request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey Schroder', with a long horizontal flourish extending to the right.

Jeffrey Schroder
Homeowner

Open.P1271.P1271.21698842-1

LOT FRONTAGE ON E LINCOLN BETWEEN ADAMS AND TORRY

House No.	Street	Lot Frontage
1592	E LINCOLN ST.	37 feet
1576	E LINCOLN ST.	37 feet
1560	E LINCOLN ST.	40 feet
1544	E LINCOLN ST.	40 feet
1526	E LINCOLN ST.	40 feet
1504	E LINCOLN ST.	40 feet
1496	E LINCOLN ST.	40 feet
1480	E LINCOLN ST.	40 feet
1474	E LINCOLN ST.	40 feet
1440	E LINCOLN ST.	40 feet
1428	E LINCOLN ST.	40 feet
1404	E LINCOLN ST.	40 feet
1392	E LINCOLN ST.	40 feet
1384	E LINCOLN ST.	40 feet
1376	E LINCOLN ST.	40 feet
1368	E LINCOLN ST.	40 feet
1336	E LINCOLN ST.	40 feet
1326	E LINCOLN ST.	40 feet
1308	E LINCOLN ST.	40 feet
1290	E LINCOLN ST.	40 feet
1274	E LINCOLN ST.	39 feet
1258	E LINCOLN ST.	41 feet
1240	E LINCOLN ST.	40 feet
1228	E LINCOLN ST.	40 feet
1212	E LINCOLN ST.	40 feet
1190	E LINCOLN ST.	40 feet
1172	E LINCOLN ST.	40 feet
1170	E LINCOLN ST.	40 feet

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

CASE DESCRIPTION

1810 Humphrey (19-10)

Hearing date: March 12, 2019

The owner(s) of the property known as 1810 Humphrey request the following variances to construct a second floor and rear addition to an existing non-conforming home:

- A. Chapter 126, Article 2, Section 2.10** of the Zoning Ordinance requires a minimum front yard setback is the average of the homes within 200 feet in each direction. The required front yard setback for this property is 27.58 feet. The existing and proposed is 25.00 feet; therefore, a variance of 2.58 feet is requested.
- B. Chapter 126, Article 4, Section 4.61(A)(2)** of the Zoning Ordinance requires that a corner lot where there is no abutting interior residential lot on such side street, the minimum side street setback shall be 10.00 feet for the permitted principal building. The required distance on the side street is 10.00 feet. The existing and proposed distance is 9.55 feet; therefore, a variance of 0.45 feet is requested.

Staff Notes:

The applicant is proposing to construct a second floor addition on an existing non-conforming footprint, along with a rear addition to the home. The existing home is partially located in the required front yard setback and the street facing side yard.

This property is zoned R2.

1810 HUMPHREY



CITY OF BIRMINGHAM
Community Development - Building Department
151 Martin Street, Birmingham, MI 48009
Community Development: 248-530-1850
Fax: 248-530-1290 / www.bhamgov.org

APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: 2-12-19
Received By: BM

Hearing Date: 3-12-19
Appeal #: 19-10

Type of Variance:	<input type="checkbox"/> Interpretation	<input checked="" type="checkbox"/> Dimensional	<input type="checkbox"/> Land Use	<input type="checkbox"/> Sign	<input type="checkbox"/> Admin Review
I. PROPERTY INFORMATION:					
Address: <u>1810 HUMPHREY</u>		Lot Number:		Sidwell Number: <u>08-20-31-331-001</u>	
II. OWNER INFORMATION:					
Name: <u>ANDRE & LATACH KING</u>					
Address: <u>1291 TAUNTON</u>		City: <u>BIRMINGHAM</u>		State: <u>MI</u>	Zip code: <u>48009</u>
Email: <u>ANDRE KING1973@GMAIL.COM</u>				Phone: <u>313-598-8630</u>	
III. PETITIONER INFORMATION:					
Name: <u>ROBIN BAUEN</u>		Firm/Company Name:			
Address: <u>6523 TAMARACK</u>		City: <u>TROY</u>		State: <u>MI</u>	Zip code: <u>48098</u>
Email: <u>BAUENDESIGNS@GMAIL.COM</u>				Phone: <u>248-854-0545</u>	
IV. GENERAL INFORMATION:					
<p>The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12th day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.</p> <p>To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted. Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.</p> <p>The BZA application fee is \$360.00 for single family residential; \$560.00 for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.</p>					
Variance Chart Example					
Requested Variances	Required	Existing	Proposed	Variance Amount	
Variance A, Front Setback	25.00 Feet	23.50 Feet	23.50 Feet	1.50 Feet	
Variance B, Height	30.00 Feet	30.25 Feet	30.25 Feet	0.25 Feet	
V. REQUIRED INFORMATION CHECKLIST:					
<ul style="list-style-type: none"><input type="checkbox"/> One original and nine copies of the signed application<input type="checkbox"/> One original and nine copies of the signed letter of practical difficulty and/or hardship<input type="checkbox"/> One original and nine copies of the certified survey<input type="checkbox"/> 10 folded copies of site plan and building plans including existing and proposed floor plans and elevations<input type="checkbox"/> If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting					
VI. APPLICANT SIGNATURE					
<p>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.</p>					
Signature of Owner: <u>See Attached</u>			Date: <u>2-12-19</u>		
Signature of Petitioner: _____			Date: _____		



Application Date: _____



Hearing Date: _____

Received By: _____

Appeal # _____

Board of Zoning Appeals Application

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

Property Information:

Street address: <u>1810 HUMPHRY</u>		Sidwell Number: _____	
Owners name: <u>1291 TAUNTON</u>		Phone #: <u>313-598-8630</u>	
Owners address: <u>ANDRE & LATACHA KING</u>		Email: <u>ANDREKING1973@GMAIL.COM</u>	
City: State: <u>BIRMINGHAM, MI</u>		Zip code: <u>48009</u>	
Contact person: <u>ANDRE KING</u>		Phone #: _____	

Petitioner Information:

Petitioner name: <u>ROBIN BAILEW</u>		Phone #: <u>248-854-0545</u>	
Petitioner address: <u>6523 TAMMACK DR</u>		Email: <u>BAILEWDESIGNS@GMAIL.COM</u>	
City: <u>TROY</u>	State: <u>MI</u>	Zip Code: <u>48098</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: Andre Latacha King Date: 2/10/19

**CITY OF BIRMINGHAM
BOARD OF ZONING APPEALS
RULES OF PROCEDURE**

ARTICLE I - Appeals

A. Appeals may be filed under the following conditions:

1. A property owner may appeal for variance, modification or adjustment of the requirements of the Zoning Ordinance.
2. A property owner may appeal for variance, modification or adjustment of the requirements of the Sign Ordinance.
3. Any aggrieved party may appeal the decision of the Planning Board and/or the Building Official in accordance with the City of Birmingham Zoning Ordinance, Article Eight, Section 8.01 (D) Appeals. If an appellant requests a review of any determination of the Building Official, a complete statement setting forth the facts and reasons for the disagreement with the Building Official's determination shall include the principal point, or points on the decision, order or section of the ordinance appealed from, on which the appeal is based.

B. Procedures of the Board of Zoning Appeals (BZA) are as follows:

1. Regular BZA meetings, which are open to the public, shall be held on the second Tuesday of the month at 7:30 P.M. provided there are pending appeals. There will be a maximum of seven appeals heard at the regular meeting which are taken in the order received. If an appeal is received on time after the initial seven appeals have been scheduled, it will be scheduled to the next regular meeting.
2. All applications for appeal shall be submitted to the Community Development Department on or before the 15th day of the month preceding the next regular meeting. If the 15th falls on a Saturday, Sunday, or legal holiday, the next working day shall be considered the last day of acceptance.
3. All property owners and occupants within 300 feet of the subject property will be given written notice of a hearing by the City of Birmingham.
4. See the application form for specific requirements. If the application is incomplete, the BZA may refuse to hear the appeal. The Building Official or City Planner may require the applicant to provide additional information as is deemed essential to fully advise the Board in reference to the appeal. Refusal or failure to comply shall be grounds for dismissal of the appeal at the discretion of the Board.

5. In variance requests, applicants must provide a statement that clearly sets forth all special conditions that may have contributed to a practical difficulty that is preventing a reasonable use of the property.
6. Where the Birmingham Zoning Ordinance requires site plan approval of a project by the City Planning Board before the issuance of a building permit, applicants must obtain preliminary site plan approval by the Planning Board before appeal to the BZA for a variance request. If such appeal is granted by the BZA, the applicant must seek final site plan and design review approval from the Planning Board before applying for a building permit.
7. An aggrieved party may appeal a Planning Board decision. Such appeal must be made within 30 days of the date of the decision. The BZA, in its discretion, may grant additional time in exceptional circumstances.
8. Appeals from a decision of the Building Official shall be made within 30 days of the date of the order, denial of permit, or requirement or determination contested. The BZA, in its discretion, may grant additional time in exceptional circumstances.
9. An appeal stays all proceedings in accordance with Act #202, Public Acts of 1969, Section 5(c), which amended Section 5 of Article #207 of the Public Acts of 1921.

C. The order of hearings shall be:

1. Presentation of official records of the case by the Building Official or City Planner as presented on the application form.
2. Applicant's presentation of his/her case—the applicant or his/her representative must be present at the appeal hearing.
3. Interested parties' comments and view on the appeal.
4. Rebuttal by applicant.
5. The BZA may make a decision on the matter or request additional information.

ARTICLE II - Results of an Appeal

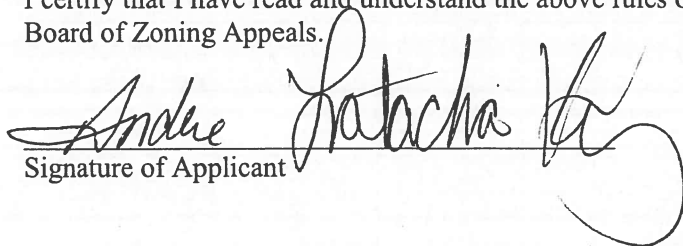
- A. The Board may reverse, affirm, vary or modify any order, requirement, decision or determination as in its opinion should be made, and to that end, shall have all the powers of the officer from whom the appeal has been taken.
- B. The decisions of the Board shall not become final until the expiration of five (5) days from the date of entry of such orders or unless the Board shall find that giving the order immediate effect is necessary for the preservation of property and/or personal rights and shall so certify on the record.

- C. Whenever any variation or modification of the Zoning Ordinance is authorized by resolution of the BZA, a Certificate of Survey must be submitted to the Community Development Department with the building permit application. A building permit must be obtained within one year of the approval date.
- D. Failure of the appellant, or his representative, to appear for his appeal hearing will result in the appeal being adjourned to the next regular meeting. If, after notice, the appellant fails to appear for the second time, it will result in an automatic withdrawal of the appeal. The appellant may reapply to the BZA.
- E. Any applicant may, with the consent of the Board, withdraw his application at any time before final action.
- F. Any decision of the Board favorable to the applicant is tied to the plans submitted, including any modifications approved by the Board at the hearing and agreed to by the applicant, and shall remain valid only as long as the information or data provided by the applicant is found to be correct and the conditions upon which the resolution was based are maintained.

ARTICLE III - Rehearings

- A. No rehearing of any decision of the Board shall be considered unless new evidence is submitted which could not reasonably have been presented at the previous hearing or unless there has been a material change of facts or law.
- B. Application or rehearing of a case shall be in writing and subject to the same rules as an original hearing, clearly stating the new evidence to be presented as the basis of an appeal for rehearing.

I certify that I have read and understand the above rules of procedure for the City of Birmingham Board of Zoning Appeals.


Signature of Applicant

City of Birmingham BZA, letter of hardship or practical difficulty.

Property located at
1810 Humphry

Variance request is based on a practical difficulty because the existing home is non-conforming with current setback requirement. The existing property is on a corner, pie-shaped lot. Additions and renovations being proposed are over existing areas of the home that encroach on the average front yard setback and street side setback.

SETBACKS				
	FRONT YARD SETBACK	SIDE YARD SETBACK	SIDE YARD SETBACK 2	REAR YARD SETBACK
1_REQUIRED	27.58	10.00	5.00	35.00
2_PROPOSED	25.00	9.55	6.81	63.65
3_EXISTING	25.00	9.55	6.81	41.96
4_CHANGE	0.00	0.00	-1.81	-21.69
5_VARIANCE	2.58	0.45	0.00	0.00

Front yard variance request is **2.58'**

Side yard variance request is **0.45'**

Robin Ballew
Ballew Designs LLC.
6523 Tamarack Dr.
Troy, MI 48098

