

BIRMINGHAM BOARD OF ZONING APPEALS AGENDA

Municipal Building Commission Room
151 Martin Street, Birmingham, Michigan
December 10, 2019
7:30 PM

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF THE MINUTES

- 1) November 12, 2019

4. APPEALS

	Address	Petitioner	Appeal	Type/Reason
1)	2282 W LINCOLN	MARCHETTI	19-41	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.

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, NOVEMBER 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, November 12, 2019. Chairman Charles Lillie convened the meeting at 7:30 p.m.

2. ROLLCALL

Present: Chairman Charles Lillie; Board Members Jason Canvasser, Kevin Hart, Richard Lilley, John Miller, Erik Morganroth, Francis Rodriguez

Absent: Alternate Board Member Ron Reddy

Administration:

Bruce Johnson, Building Official
Mike Morad, Asst. Building Official
Jeff Zielke, Asst. Building Official
Brooks Cowan, City Planner
Laura Eichenhorn, Transcriptionist

Chairman Lillie welcomed everyone and invited Vice-Chairman Canvasser to conduct the meeting for its duration.

Vice-Chairman Canvasser explained BZA procedure to the audience. He noted that the members of the Board of Zoning Appeals 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. 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.

Vice-Chairman Canvasser took rollcall of the petitioners. All petitioners were present.

T# 11-79-19

3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF OCTOBER 15, 2019

Chairman Lillie recommended the second sentence under Call to Order be changed to read "Vice-Chairman Canvasser convened the meeting at 7:30 p.m." Then, under administration, he recommended the sentence reading "Jason Canvasser acted as Chairman for the duration of the evening's meeting" be removed.

Motion by Mr. Morganroth

Seconded by Mr. Lilley to accept the Minutes of the BZA meeting of October 15, 2019 as amended.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

T# 11-80-19

4. APPEALS

**1) 1124 Smith
Appeal 19-39**

Assistant Building Official Zielke presented the item, explaining the owner of the property known as 1124 Smith requested the following variance to construct a new home with a detached garage:

A. Chapter 126, Article 4, Section 4.74 (C) of the Zoning Ordinance requires the minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is greater. The required distance is 14.00 feet. The proposed is 10.00 feet. Therefore, a 4.00 foot variance is being requested.

Assistant Building Official Zielke noted the property is adjacent to a corner lot with an existing nonconforming structure located on it. The property is zoned R3 – Single Family Residential.

Jim Vervisch, builder on the project, was present on behalf of the appellant.

Motion by Mr. Miller

Seconded by Mr. Morganroth with regard to Appeal 19-39, A. Chapter 126, Article 4, Section 4.74 (C) of the Zoning Ordinance requires the minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is greater. The required distance is 14.00 feet. The proposed is 10.00 feet. Therefore, a 4.00 foot variance is being requested.

Mr. Miller moved to approve Appeal 19-39 and to tie it to the plans as submitted. He stated that strict compliance with the ordinance would unreasonably prevent the petitioner from using their property due to the positions of the houses on either side.

Mr. Miller said the problem was not self-created and that the proposed solution was reasonable.

Mr. Morganroth explained he would be supporting the motion because while the home is narrow the owners still out forth effort to minimize the non-conformities on both sides of the home.

Chairman Lillie said he would support the motion because if the houses on either side of the appellants' home were not present, the appellant would not need a variance.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**2) 33680 Woodward
Appeal 19-40**

City Planner Cowan presented the item, explaining the owner of the property known as 33680 Woodward requested that the BZA reverse a decision of the building official.

A. Chapter 126, Article 8, Section 8.01(D) of the Zoning Ordinance, which states the Board of Zoning Appeals may hear and decide appeals from any decision made by an administrative official as it relates to the Zoning Ordinance. The BZA may reverse or affirm, wholly or partly, or may modify such decisions.

The applicant is aggrieved by the decision of the Building Official with the interpretation of Chapter 126, Article 9, Definition of health club/studio and Chapter 126, Article 2, Section 2.31, Permitted Uses in the B2-B Zone.

The applicant has applied to open Roots Jiu Jitsu Academy at the subject property of 33680 Woodward. The Building Official has determined that this type of use is categorized as a Health Club/Studio, which is defined in Chapter 126, Article 9, Definitions as "A place designated for and equipped for the conduct of sports, exercise and physical fitness activities." A Health Club/Studio use is not permitted within the B2-B zone.

The applicant has requested that the BZA reverse the interpretation of Roots Jiu Jitsu as a Health Club/ Studio by the Building Official, in favor of classifying the use as a School, which is defined in Chapter 126, Article 9, Definitions as "An institution, either public or private, offering instruction in primary, secondary or collegiate courses of study." School use is permitted within the B2-B zone.

City Planner Cowan specified that the property is zoned B2-B. In regards to relevant history of the site, a pilates studio applied to occupy the subject space in 2003. The Building Official

determined a pilates use was classified as a Health Club/Studio and therefore was not permitted in the B2-B zone. The applicant appealed this interpretation to the BZA on August 12, 2003 (Appeal 03-37), requesting that the Board reverse the Building Official's decision in favor of determining that a pilates studio satisfied the definition and classification of a School, which is permitted in the B2-B zone.

After considering the applicant's case, the BZA motioned to overturn the ruling of the Building Official, determining that the applicant satisfied the Zoning Ordinance's definition of School. Relevant meeting minutes for Appeal 03-37 are attached. It is of note that this hearing in 2003 included a discussion by the Board of a prior case on April 9th, 2002 (Appeal 02-54) where the Building Official's interpretation of a martial arts studio Kuk Sool Won as a Health Club/Studio was also overturned by the BZA in favor of the Zoning Ordinance's definition of School for the property at 33488 Woodward. Relevant meeting minutes for Appeal 02-54 are attached as well.

In 2012, after the pilates studio Body Pure moved out, the dance studio Ballroom moved into the subject site as a permitted use classified as a school. The subject tenant space has been vacant since 2017.

Kevin Denha, property owner and manager, was present to represent the appeal.

Vice-Chairman Canvasser advised Mr. Denha that the BZA would need to see that Building Official Johnson either abused his discretion, made an arbitrary or capricious decision, or based his decision on an erroneous finding of a material fact or an erroneous interpretation of the zoning ordinance.

Mr. Denha replied that the students are taught both martial arts and life skills in Jiu Jitsu class, which makes the proposed establishment more of a school than a health club or studio.

Vice-Chairman Morganroth said he was very open to hearing a persuasive argument for the proposed establishment being a school. He noted that the instructor of the proposed classes was not present and therefore could not explain to the BZA how the proposed establishment would fit the definition of a "school". Vice-Chairman Morganroth asked Mr. Denha to elaborate on how this would be more of a school than "a place designated for and equipped for the conduct of sports, exercise and physical fitness activities," as per Chapter 126, Article 9, Definitions.

Mr. Denha said that just because there was open space instead of traditionally divided classrooms did not mean that school-like teaching could not occur in the space.

In reply to Mr. Miller, Mr. Denha stated his team did not consider pursuing a use variance from the BZA. He said he decided to follow this course after reviewing previous City rulings regarding the property.

Mr. Hart observed that an individual would not be able to enter the proposed establishment at an unscheduled time and independently 'work-out' as one might do at a gym or fitness club. He noted that any individual hoping to use the establishment's facilities would have to attend a scheduled class taught by an instructor.

Mr. Denha confirmed that was the case.

Seeing no further comment from the Board, Vice-Chairman Canvasser invited comment from the public.

Jeff Wilmot of Glenn Wing Power Tools shared concern that the patrons of the Jiu Jitsu studio would use the public parking in front of the building, instead of parking in the designated parking in the back. If this occurred, it would limit the amount of parking available to Glenn Wing Power Tool patrons and patrons of other adjacent retail shops. Mr. Wilmot explained this happened in the past and had a negative impact on his establishment.

Vice-Chairman Morganroth noted that a school use, which is permitted in that space, would likely cause a similar parking issue.

Mr. Wilmot confirmed that would likely be the case.

Michele Major of Sol Potion Studio echoed Mr. Wilmot's concerns. She explained that any establishment where the patrons stay for a longer period of time causes parking congestion in that area.

Joe Hajjar of ML Spirits echoed Mr. Wilmot's and Ms. Major's concerns regarding parking.

Mr. Wilmot, Ms. Major, and Mr. Hajjar all expressed their respect for Mr. Denha and their appreciation of the renovations he did to the building. They said their only concern was the matter of parking, and they all concurred that they wanted to see Mr. Denha succeed in the space more generally.

Chairman Lillie stated that, while there were clearly parking concerns, the BZA would not be able to weigh in on parking because it was not the issue before the Board. He clarified that the only question before the Board was whether the proposed establishment could be considered a 'school' as defined in the ordinance.

Motion by Vice-Chairman Canvasser

Seconded by Mr. Lillie with regard to A. Chapter 126, Article 8, Section 8.01(D) of the Zoning Ordinance, which states the Board of Zoning Appeals may hear and decide appeals from any decision made by an administrative official as it relates to the Zoning Ordinance.

Vice-Chairman Canvasser moved to deny appeal 19-40. He explained that the BZA is confined by a very high burden of proof in such a matter. Since the BZA makes its determinations on a case-by-case basis, prior decisions regarding similar matters or the same property are informative but not binding. Based on the ordinance definitions of school and health club/studio, Vice-Chairman Canvasser stated the Building Official made an appropriate determination in regards to this case.

Chairman Lillie said there had not been a showing that the proposed establishment would meet the definition of school as set out in the ordinance.

Mr. Miller said he would also be supporting the motion, and said the Building Official's determination was correct.

Mr. Rodriguez said he would be supporting the motion. He also said there are some ambiguities regarding 'schools' in the ordinance definitions of Districts B-1, B-2 and B-3, and said the City should seek to clarify those.

Vice-Chairman Canvasser concurred with Mr. Rodriguez. Vice-Chairman Canvasser said he did not make his motion based on any parking considerations, but agreed it would behoove the City to revisit the definition of 'school' in City ordinance.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Canvasser, Lillie, Rodriguez, Miller, Morganroth, Hart, Lilley
Nays: None

T# 11-81-19

5. CORRESPONDENCE (included in agenda)

T# 11-82-19

6. GENERAL BUSINESS (none)

T# 11-83-19

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

T# 11-84-19

8. ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:25 p.m.

Bruce R. Johnson, Building Official

CASE DESCRIPTION

2282 W. Lincoln (19-41)

Hearing date: December 10, 2019

Appeal No. 19-41: The owner of the property known as 2282 W. Lincoln, request the following variance to improve the existing driveway:

A. Chapter 126, Article 4, Section 4.31(A)1 of the Zoning Ordinance requires a minimum of 65% of the front open space in all single-family districts shall be free of paved surfaces. The required open space is 1851.20 square feet (65%). The proposed is 1522.00 square feet (53.44%). Therefore, a 329.20 square feet (11.56%) variance is being requested.

Staff Notes: This site is located near the high school. An impervious permit had been issued in 2005 to rework the existing driveway into a circular driveway.

This property is zoned R1 – Single Family Residential.

Jeff Zielke, LEED AP
Assistant Building Official

2282 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: 11-12-19
 Received By: BM

Hearing Date: 12-10-19
 Appeal #: 19-41

Type of Variance: Interpretation Dimensional Land Use Sign Admin Review

I. PROPERTY INFORMATION:

Address: 2202 W Lincoln Lot Number: _____ Sidwell Number: _____

II. OWNER INFORMATION:

Name: Roger Marchetti
 Address: 2202 W. Lincoln City: Birmingham State: MI Zip code: 48009
 Email: _____ Phone: _____

III. PETITIONER INFORMATION:

Name: Roger Marchetti Firm/Company Name: _____
 Address: 2202 W. Lincoln. City: Birmingham State: MI Zip code: 48009
 Email: rogermarchetti@gmail.com Phone: 858-344-0601

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: Roger Marchetti Date: 11/12/2019
 Signature of Petitioner: Roger Marchetti Date: 11/12/2019

Ret: 0116487
 Receipt: \$1,270.00
 Amount: \$350.00

CITY OF BIRMINGHAM
 Date: 11/12/2019 3:33:41 PM

Roger Marchetti
2282 W. Lincoln
Birmingham MI 48009

November 12, 2019
City of Birmingham
Community Development – Building Department
Board of Zoning Appeals

Dear Board Members,

We are applying for a variance at our property located at 2282 W. Lincoln, Birmingham. The appeal is for the expansion of the permeability ratio for the front yard. The primary special condition for this property is safety. There is no parking along Lincoln ave due to the narrow width of the road. Parking is not allowed because site lines are obstructed and it can be dangerous backing out onto Lincoln. There is also no parking behind our home along Carrolwood Blvd Ct. Due to our close proximity to Seaholm High School, cars line up in front of our house. They are idling and moving slowly to pick up students both morning and afternoon of school days, making for a tricky situation.

The way in which our driveway is designed it is nearly impossible to back up and move forward along the driveway and enter Lincoln Ave facing forward. A much safer way to exit the property, especially when students are walking by and student drivers are passing. In addition our 2 car garage narrows from 16' to 10' making it difficult to park 2 cars. By expanding our driveway with a brick border, it allows our vehicles to safely manipulate our property and enter Lincoln. We thank you for your consideration in this matter.

Sincerely,

Roger Marchetti



Safety concerns on Lincoln Rd near Seaholm high school heading westbound, specifically from Golfview Blvd to Woodlea St.

1 message

sryan0311@aol.com <sryan0311@aol.com>
To: jzielke@bhamgov.org

Mon, Nov 11, 2019 at 3:41 PM

Hello Jeff,

Here is what I can contribute regarding safety concerns on Lincoln Rd near Seaholm High School. Feel free to share what you deem appropriate.

To Whom it May Concern,

I am writing today regarding what I believe is a safety concern for Seaholm students and a hardship for residents who live on the north side of Lincoln Rd while traffic is heading west bound specifically during arrival and dismissal. I was at City Hall to obtain a permit on 11-8-19 and overheard a discussion regarding a home in this area. I believe they have a semicircle shaped driveway. I can't imagine trying to back out of a typical driveway in any home on the north side of Lincoln from Golfview Blvd. to Woodlea St. during drop off or pick up times. On a good day it is hectic on this part of Lincoln on a day like today, when students were released early due to bad weather, it was total chaos. Parents were lined up not only along the curb as usual they were also blocking the travel lane past Golfview Blvd., preventing buses that pick up students with disabilities from getting through. Students cross Lincoln wherever they feel like and parents even line up in the turn lane facing eastbound on Lincoln to pick them up. Although the renovation of what in the past had been a teacher only parking lot has expanded the number of spaces available, the downside is you have inexperienced young drivers entering and exiting an area where there is no light or four way stop. The residents living on the side streets near Seaholm have been granted no parking during certain time periods, yet the homes I am speaking of are facing a safety hazard and hardship far more than a parked car. I encourage anyone making a decision regarding this residents situation spend time at Seaholm at the corner of Lincoln and Golfview from 7:05 to 7:35 and 2:20 - 3:05 any day M - F to get an understanding of what goes on. Perhaps a traffic safety study should be done to improve conditions for students and residents.

Thank you for your time,

Shannon Ryan
1348 Buckingham Ave.
Birmingham, Mi 48009

