

BIRMINGHAM BOARD OF ZONING APPEALS AGENDA

UPDATED: VIRTUAL MEETING DUE TO COVID-19 PANDEMIC

Go To: <https://zoom.us/j/96343198370>

Or Dial: 877 853 5247 US Toll-Free

Meeting Code: 963 4319 8370

August 11, 2020
7:30 PM

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF THE MINUTES

a) July 14, 2020

4. APPEALS

	Address	Petitioner	Appeal	Type/Reason
1)	1535 MARYLAND	FRIESEN	20-35	DIMENSIONAL
2)	220 NORTHLAWN	FARIDAN	20-36	DIMENSIONAL
3)	515 WESTWOOD	BOB STERN BUILDING	20-37	DIMENSIONAL

5. CORRESPONDENCE

6. GENERAL BUSINESS

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

8. ADJOURNMENT

Title VI

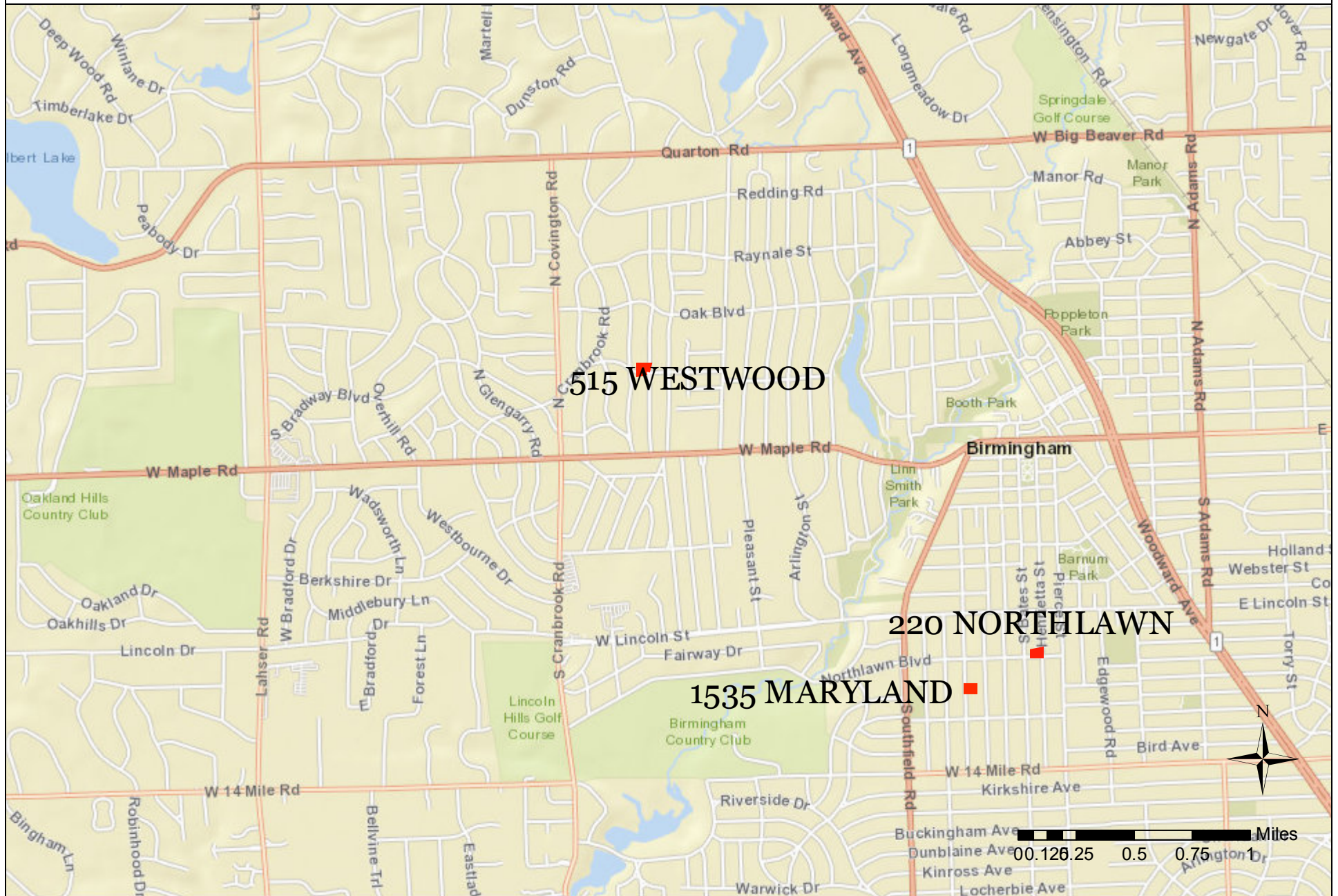
Persons with disabilities that may require assistance for effective participation in this public meeting should contact the City Clerk's Office at the number (248) 530-1880, or (248) 644-5115 (for the hearing impaired) at least one day before the meeting to request help in mobility, visual, hearing, 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) 530-1880 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 ayuda a través del sistema de intercomunicación en la puerta de entrada de estacionamiento en la calle de Henrietta.

AUGUST BZA MAP



BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, JULY 14, 2020
Held Remotely Via Zoom And Telephone Access

1. CALL TO ORDER

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, July 14 2020. Vice-Chairman Canvasser convened the meeting at 7:30 p.m.

2. ROLLCALL

Present: Board Members Jason Canvasser, Richard Lilley, John Miller, Erik Morganroth, Francis Rodriguez; Alternate Board Member Ron Reddy

Absent: Chairman Charles Lillie; Board Member Kevin Hart; Alternate Board Member Jerry Attia

Administration:

Bruce Johnson, Building Official
Eric Brunk, I.T. Manager
Laura Eichenhorn, Transcriptionist
Mike Morad, Asst. Building Official
Jeff Zielke, Asst. Building Official

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. Vice-Chairman Canvasser explained the meeting was being held virtually due to the Covid-19 pandemic. He explained the procedures that would be followed for the virtual meeting.

T# 07-37-20

3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF JUNE 9, 2020

Motion by Mr. Lilley

Seconded by Mr. Morganroth to accept the Minutes of the BZA meeting of June 9, 2020 as submitted.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Lilley, Morganroth, Canvasser, Miller, Rodriguez, Reddy

Nays: None

T# 07-38-20

4. APPEALS

**1) 1165 Hillside
Appeal 20-28**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 1165 Hillside was requesting the following variances to construct a new single family home with a detached garage:

A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 53.20 feet. The proposed is 41.20 feet. Therefore a 12.00 foot variance is being requested.

B. Chapter 126, Article 4, Section 4.75(A)(1) of the Zoning Ordinance requires that a private, attached, single-family residential garages must be setback a minimum 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The proposed is the garage is 2.33 feet in front of the furthest façade. Therefore a variance of 7.33 feet is being requested.

Assistant Building Official Zielke noted the applicant proposed to construct a new home with an attached and detached garage on this irregular shaped corner lot. This appeal was before the BZA in June 2020 and was tabled until July 2020 with additional clarifications provided with the site plan. This property is zoned R1 – Single Family Residential.

Brain Neeper, architect, reviewed his letter to the BZA outlining his request for the variances. The letter was included in the evening's agenda packet.

In reply to Mr. Morganroth, Mr. Neeper explained he brought the laundry room forward in the front in an attempt to draw attention away from the garage's placement.

Mr. Morganroth said that while the home was well-designed, he saw a number of opportunities to minimize the extension of the home into the front yard setback.

Motion by Mr. Miller

Seconded by Mr. Morganroth with regard to Appeal 20-28, A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 53.20 feet. The proposed is 41.20 feet. Therefore a 12.00 foot variance is being requested.

Mr. Miller moved to approve variance request A and tied it to the plans as submitted. He said he thought there might be disagreement among the board members in terms of granting both variances so he wanted to begin with just variance request A. He said the need for this variance was caused by the unusual alignment of the adjacent homes and the unusual shape of the lot. Mr. Miller noted that the BZA often accommodates homes on corner lots since that can cause difficulties with ordinance compliance, and said an irregular lot compounds those issues.

Mr. Miller noted that the proposed home would not be out of character for the neighborhood, with the exception of the adjacent house which is itself outside of the zoning envelope and two other homes which are unusually far back on their lots.

Mr. Morganroth said he would second the motion with the caveat that a disapproval of variance request B could lead to a change in the encroachment for variance request A. Mr. Morganroth asked Vice-Chairman Canvasser how the Board could best approach that issue.

Vice-Chairman Canvasser recommended that the Board discuss and vote on the present motion with variance request B to be addressed subsequent to the vote.

Mr. Rodriguez said he would also support the motion, agreeing with Mr. Miller's stated reasons.

Vice-Chairman Canvasser said he would also support the motion for the reasons previously stated.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Lilley, Morganroth, Canvasser, Miller, Rodriguez, Reddy

Nays: None

Motion by Mr. Miller

Seconded by Mr. Rodriguez with regard to Appeal 20-28, B. Chapter 126, Article 4, Section 4.75(A)(1) of the Zoning Ordinance requires that a private, attached, single-family residential garages must be setback a minimum 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from

the front property line. The proposed is the garage is 2.33 feet in front of the furthest façade. Therefore a variance of 7.33 feet is being requested.

Mr. Miller said he was more conflicted on variance request B. He said he was moving to approve the variance request and to tie it to the plans as submitted. He said the unique lot affected this motion as well, and noted that having the garage door facing the side was better than having the garage door facing the front. Mr. Miller explained that the garage door did not protrude as far forward as other elements of the proposed home, which he said demonstrated an attempt at mitigation of the request. He explained that the site narrows at that point and that the garage was placed in the most appropriate location. He said the location and orientation of the garage would do substantial justice to the neighborhood.

Mr. Morganroth said that while he respected Mr. Miller's perspectives he would not be able to support an approval of variance request B. He said there was opportunity for getting more ordinance-compliant garage space on the lot relative to what was being proposed, and said there was even opportunity for ordinance-compliant connected garage space. He said the garage was too far forward and noted that either an oversized, connected single garage or an unconnected double garage would be possible.

Mr. Reddy said he agreed with Mr. Morganroth. Mr. Reddy said it might be more appropriate to grant a variance for five feet into the rear setback instead of the variance for the front setback.

Motion carried, 4-2.

ROLL CALL VOTE

Yeas: Lilley, Canvasser, Miller, Rodriguez

Nays: Morganroth, Reddy

**2) 280 Millrace
Appeal 20-31**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 280 Millrace was requesting the following variance to renovate an existing non-conforming home:

A. Chapter 126, Article 4, Section 4.61(A)(2) of the Zoning Ordinance requires that a corner lot shall have a minimum setback from the side street of 15.00 feet for permitted attached garages with vehicle entry doors facing the side street. The proposed is 8.20 feet, therefore a variance is 6.80 feet is being requested.

Assistant Building Official Zielke noted the applicant proposed to renovate the existing non-conforming house on this irregular shaped corner lot. This property is zoned R1 – Single Family Residential.

Michael and Lisabeth Coakley, owners, Glenda Means, architect, and David Ganz, builder, were present on behalf of the petition. Mr. Coakley reviewed the letter, which was included in the evening's agenda packet, explaining their reasons for the variance request.

Akhil Gulati said he lived four houses down from the petitioner and said he wanted to voice his support for the petitioner's variance request. Dr. Gulati said that the home is located adjacent to a highly visible intersection and said the part of the lot visible from the street seemed to have a surplus of asphalt and concrete. He said the excess of hardscaping on the lot made the lot seem inappropriate for the neighborhood. Dr. Gulati said it would be beneficial for the neighborhood for this lot to have increased green space and said he was optimistic about what it could do for the neighborhood.

Brian Hock, owner of 251 Baldwin, said he concurred with Dr. Gulati that allowing this variance request would result in a significant improvement to the lot and the neighborhood. He explained that someone driving west on Randall Court right now would be able to see directly into the petitioners' garage, and explained that moving the garage to the north would make the lot substantially more visually appealing. He explained that if one were driving southeast on Lakeside they would not be able to see the garage given the setbacks of the lot.

Motion by Mr. Rodriguez

Seconded by Mr. Morganroth with regard to Appeal 20-31, A. Chapter 126, Article 4, Section 4.61(A)(2) of the Zoning Ordinance requires that a corner lot shall have a minimum setback from the side street of 15.00 feet for permitted attached garages with vehicle entry doors facing the side street. The proposed is 8.20 feet, therefore a variance is 6.80 feet is being requested.

Mr. Rodriguez moved to approve the variance request and tied it to the plans as submitted. He said that a practical difficulty was established due to the unique circumstances of an irregular, pie-shaped corner lot. He said the variance requested was the minimum necessary as it did not seek to increase the garage size, and that granting the variance would not adversely affect the adjacent properties.

Mr. Morganroth commended the petitioners on a useful presentation. He said that the reduction of impermeable surface on the lot would do substantial justice both to the petitioners and the neighborhood. He concurred with Mr. Rodriguez that it was also positive that the variance did not seek to increase the non-conformity.

Vice-Chairman Canvasser said he would also support the motion. He said he thought there was some room for disagreement as to whether the issue was self-created or not, but said he understood why the petitioners were seeking the variance and said it would do substantial justice to the neighbors. He said there was no question that the property presented some unique challenges.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Lilley, Morganroth, Canvasser, Miller, Rodriguez, Reddy

Nays: None

**3) 545 W. Brown
Appeal 20-32**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 545 W. Brown was requesting the following variances to construct a second floor addition on the rear of an existing non-conforming home:

A. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires that the minimum rear yard setback is to be 30.00 feet. The proposed is 13.56 feet. Therefore a variance of 16.44 feet is being requested.

B. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires that the minimum combined front and rear setback is to be 55.00 feet. The proposed is 30.35 feet. Therefore a variance of 24.65 feet is being requested.

Assistant Building Official Zielke noted the appellant proposed to construct a second floor addition to the existing non-conforming home. This home is a single-family residence, which is allowed in the zone, by following the R3 zoning requirements. There was a variance was granted at this location in 1981 (see attached minutes). The appellants approval was granted at the planning board meeting that took place on July 8, 2020. This property is zoned R8 – Attached Single-Family Residential.

Larry and Janine Brycz, owners of 545 W. Brown, reviewed their letter to the BZA which described why they were seeking these two variances. The letter was included in the evening's agenda packet.

Motion by Mr. Lilley

Seconded by Mr. Reddy with regard to Appeal 20-32, A. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires that the minimum rear yard setback is to be 30.00 feet. The proposed is 13.56 feet. Therefore a variance of 16.44 feet is being requested. B. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires that the minimum combined front and rear setback is to be 55.00 feet. The proposed is 30.35 feet. Therefore a variance of 24.65 feet is being requested.

Mr. Lilley moved to approve both variance requests and tied them to the plans as submitted. He noted that the addition would be built well within the roofline of the current garage.

Mr. Reddy said the property had unique circumstances. He explained that the plans remain within the existing non-conformity and do not seek to increase it. He said for those reasons he thought the motion should be approved.

Mr. Miller said he was also supportive of the motion. He said that the house to the south, which was most likely to be impacted by these changes, only had its garage facing the addition. He said this meant there would be minimal impact to the other homes in the neighborhood.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Lilley, Morganroth, Canvasser, Miller, Rodriguez, Reddy

Nays: None

**4) 593 S. Glenhurst
Appeal 20-33**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 593 S. Glenhurst was requesting the following variance for two basement window wells in the required side yard:

A. Chapter 126, Article 4, Section 4.30 C(4) of the Zoning Ordinance permits that window wells are allowed to project into the required side yard setback a maximum of 3.00 feet measured from the inside of the window opening and shall not exceed 6.00 feet in width. The constructed is 8.33 feet in width. Therefore a variance of 2.33 feet is being requested.

B. Chapter 126, Article 4, Section 4.30 C(4) of the Zoning Ordinance permits that window wells are allowed to project into the required side yard setback a maximum of 3.00 feet measured from the inside of the window opening and shall not exceed 6.00 feet in width. The constructed is 7.02 feet in width. Therefore a variance of 1.02 feet is being requested.

Assistant Building Official Zielke noted the applicant constructed two window wells on the side yard that exceeded the width per the ordinance on a new home that was constructed in 2019. This property is zoned R1 – Single Family Residential.

Rick Wiand, builder, was present on behalf of the petition. He reviewed the letter to the BZA, as included in the evening's agenda packet, outlining the reasons for the variance request.

Building Official Johnson clarified that when the plans were reviewed by the Building Department originally the window wells were in compliance. He said they became non-compliant when the home shifted towards the side street.

Mr. Wiand stated that prior to starting construction his team submitted a revised site plan that showed the window wells in their present location. He emphasized for the BZA that his team genuinely believed they were in compliance with the ordinance. He said that if the issue had been noticed in review his firm would have revised the window well and the number of windows to meet the requirements.

Mr. Morganroth said that in situations where a variance is being requested after the home or feature in question is built he considers whether he would have approved the variance before the work was done. He said that he recognized the cost and challenges that exist to return a building to code, but said that cost is not a factor the BZA members are permitted to consider when making their decisions. He said that granting these oversized window wells in the sideyard setback could create a precedent for future builders and homeowners to expect that variances would be granted for other non-ordinance compliant features after the fact.

In reply to Mr. Reddy, Mr. Wiand confirmed that the error regarding the window wells was strictly done by his firm and that the homeowners did not become aware of the issue until several months after moving into the home.

Mr. Reddy noted a variance could be granted when the need for the variance did not arise from any action performed by the petitioner. He noted that the homeowners were the petitioner in this case, and not Mr. Wiand's firm.

Motion by Mr. Miller

Seconded by Mr. Rodriguez with regard to Appeal 20-33, A. Chapter 126, Article 4, Section 4.30 C(4) of the Zoning Ordinance permits that window wells are allowed to project into the required side yard setback a maximum of 3.00 feet measured from the inside of the window opening and shall not exceed 6.00 feet in width. The constructed is 8.33 feet in width. Therefore a variance of 2.33 feet is being requested. B. Chapter 126, Article 4, Section 4.30 C(4) of the Zoning Ordinance permits that window wells are allowed to project into the required side yard setback a maximum of 3.00 feet measured from the inside of the window opening and shall not exceed 6.00 feet in width. The constructed is 7.02 feet in width. Therefore a variance of 1.02 feet is being requested.

Mr. Miller said this case had very unusual circumstances and because of that should not be interpreted as setting any kind of precedent for future cases. He said that if it were not for the sequence of events between the City and the builder that he would not be moving to approve the variances. He noted that the mistake was unintentional on the builder's part. He said withholding the variance would be unnecessarily burdensome in light of the fact that the builder made a good faith effort to build everything up to code. Mr. Miller said these things almost never happen in Birmingham because the City and builders operating within it are usually very careful. He said that for all these reasons, he would move to approve the variance requests and to tie them to the window wells as built.

Mr. Morganroth recalled a previous case where a petitioner had a fence installed that ended up being taller than City ordinance allowed. Mr. Morganroth explained that in that case the Board found that the issue was not about blaming the contractor who installed it, or the homeowner, but was simply about the fact that the fence was too tall. He noted that the BZA instructed the homeowner in that case to take the fence down. Mr. Morganroth said this matter was somewhat self-created because the error

should have been caught. He said for these reasons he could not support the motion as presented.

Mr. Rodriguez stated that he appreciated Mr. Morganroth's comments and reiterated that in no way should this granting of variances in this case be seen as constituting a precedent for future cases. Mr. Rodriguez said that withholding these variances would punish the homeowner who was not part of the process in which the error was made. He noted that, in addition, the petitioner could even theoretically add more window wells to the home as long as the window wells were in compliance with the ordinance. Mr. Rodriguez said that given this particular combination of facts, and the fact that the owner would be punished for something they had no part in, he thought the variances should be granted.

Vice-Chairman Canvasser said he found this case challenging since for the builders the matter was arguably self-created but for the homeowners the matter was arguably not self-created. He said he was having a hard time finding a reason to punish the homeowner by putting them through the process of having their window wells removed and filled in when they had no part in making the error. He said he was looking for some middle ground solution ideally but was not able to find one. He said he was, as a result, leaning towards begrudging support of the motion with a strong caution to the builder to not let this happen again.

Mr. Morganroth said he wanted to point out that if the error had not been made then the owner could not have had the window wells that are now in place. He noted that the homeowner would ultimately suffer minimal damage because the cost of fixing the error would be borne by the builder. Mr. Morganroth said the Board also did not know why the ordinance only allows window wells to project into the required side yard setback a maximum of 3.00 feet measured from the inside of the window opening and said he did not think he was in a position to second-guess the ordinance's logic.

In reply to Vice-Chairman Canvasser, Building Official Johnson explained that the three foot projection is allowed into a required setback because it is the minimum allowable space for emergency egress. He clarified that if the projection did not go into a required setback, however, the window wells could project four feet from the home and still be in compliance with ordinance.

In reply to Mr. Morganroth, Assistant Building Official Zielke confirmed it would be possible to bring the right window well into compliance with the ordinance with not too much difficulty since it was a double section window. He explained that the window well on the left would be a little more difficult since it was a triple section window.

Vice-Chairman Canvasser asked the petitioner for a limited comment regarding the feasibility of closing in the right window well.

Mr. Wiand confirmed that it would be possible.

Mr. Miller said he understood and would still prefer to proceed with the motion as presented.

Motion carried, 5-1.

ROLL CALL VOTE

Yeas: Lilley, Canvasser, Miller, Rodriguez, Reddy

Nays: Morganroth

**5) 691 Oak
Appeal 20-34**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 691 Oak was requesting the following variance to install a retractable awning:

A. Chapter 126, Article 4, Section 4.30 C(5) of the Zoning Ordinance allows uncovered patios to project for a maximum distance of 15.00 feet into the rear open space. The proposed is to have a retractable awning with a 15.00 feet projection into the rear open space. Therefore a variance of 15.00 feet is being requested.

Assistant Building Official Zielke noted the applicant proposed to install a retractable awning to the rear of the home that would provide shade over the patio. This home was constructed in 2019. This property is zoned R2 – Single Family Residential.

Regina Greer and Hoyt Frericks, owners, were present on behalf of the petition. Ms. Greer thanked the Board members for their volunteer service on the Board. Ms. Greer reviewed the letter to the BZA, as included in the evening's agenda packet, outlining the reasons for the variance request.

In reply to Mr. Morganroth, Ms. Greer explained the retractable awning would be bolted onto the house and could be removed by a future resident if they so desired.

In reply to Ms. Greer, Mr. Morganroth explained the City prohibits structure in the allowed setback. He explained the issue is not one of whether shade is permissible in the rear of the home.

Ms. Greer said she did not see her request as being one of structure given the minimal size of the retractable awning proposed. She also said she thought the prohibition was unreasonable.

Vice-Chairman Canvasser said Ms. Greer should absolutely feel welcome to broach her concerns regarding the ordinance with the City Commission because the Commission has the power to act on her concerns should they see fit, while the BZA unfortunately does not.

In reply to Mr. Miller, Building Official Johnson confirmed that if a mechanism for creating shade was not attached to the house and its frame did not protrude into the rear yard setback it would be permissible under the ordinance.

Motion by Mr. Morganroth

Seconded by Mr. Lilley with regard to Appeal 20-34, A. Chapter 126, Article 4, Section 4.30 C(5) of the Zoning Ordinance allows uncovered patios to project for a maximum distance of 15.00 feet into the rear open space. The proposed is to have a retractable awning with a 15.00 feet projection into the rear open space. Therefore a variance of 15.00 feet is being requested.

Mr. Morganroth said he wanted it on the record that he thought the Commission should look at this matter as a separate item. He said that if a structure which is permanent falls within the building envelope it was possible that the temporary opening of the structure into the rear yard setback should be permitted.

Mr. Morganroth then moved to approve the variance as requested. He said the circumstances of this case were unique and that allowing the variance would do substantial justice to the petitioner and the neighbors. He noted that if the petitioner were to put up four umbrellas it would cover the same amount of space in the rear of the home and would be significantly less attractive. Mr. Morganroth observed that when closed the structure does not go into the rear yard setback, and said that since the structure could be removed from the home it was a temporary, not a permanent, structure.

Mr. Lilley said he agreed with Mr. Morganroth, both in that the City Commission should consider modifying the relevant ordinance and in his reasons for moving to grant the variance.

Vice-Chairman Canvasser said he could not vote to support the motion. He said that while he agreed the ordinance should be recommended to the City Commission for review, he did not feel it appropriate to go around the City's current definitions of covered patios and structures. Vice-Chairman Canvasser noted that although they may not be as attractive or functional there are options for patio furniture that would accomplish the petitioner's goals and not run afoul of the ordinance. He said that he felt the issue was self-created and that there was no unique circumstances to the property that would merit the variance.

Mr. Miller said he would support the motion because the ordinance does not address retractable awnings specifically and because the more permanent part of the structure remains within the building envelope when closed.

Motion carried, 5-1.

ROLL CALL VOTE

Yeas: Morganroth, Lilley, Miller, Rodriguez, Reddy

Nays: Canvasser

T# 07-39-20

5. CORRESPONDENCE (included in agenda)

T# 07-40-20

6. GENERAL BUSINESS

T# 07-41-20

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

T# 07-42-20

8. ADJOURNMENT

Motion by Mr. Morganroth

Seconded by Mr. Lilley to adjourn the July 14, 2020 BZA meeting at 9:41 p.m.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Morganroth, Canvasser, Lilley, Miller, Rodriguez, Reddy

Nays: None

Bruce R. Johnson, Building Official

CASE DESCRIPTION

1535 Maryland (20-35)

Hearing date: August 11, 2020

Appeal No. 20-35: The owner of the property known as 1535 Maryland, requests the following variance to construct a detached garage:

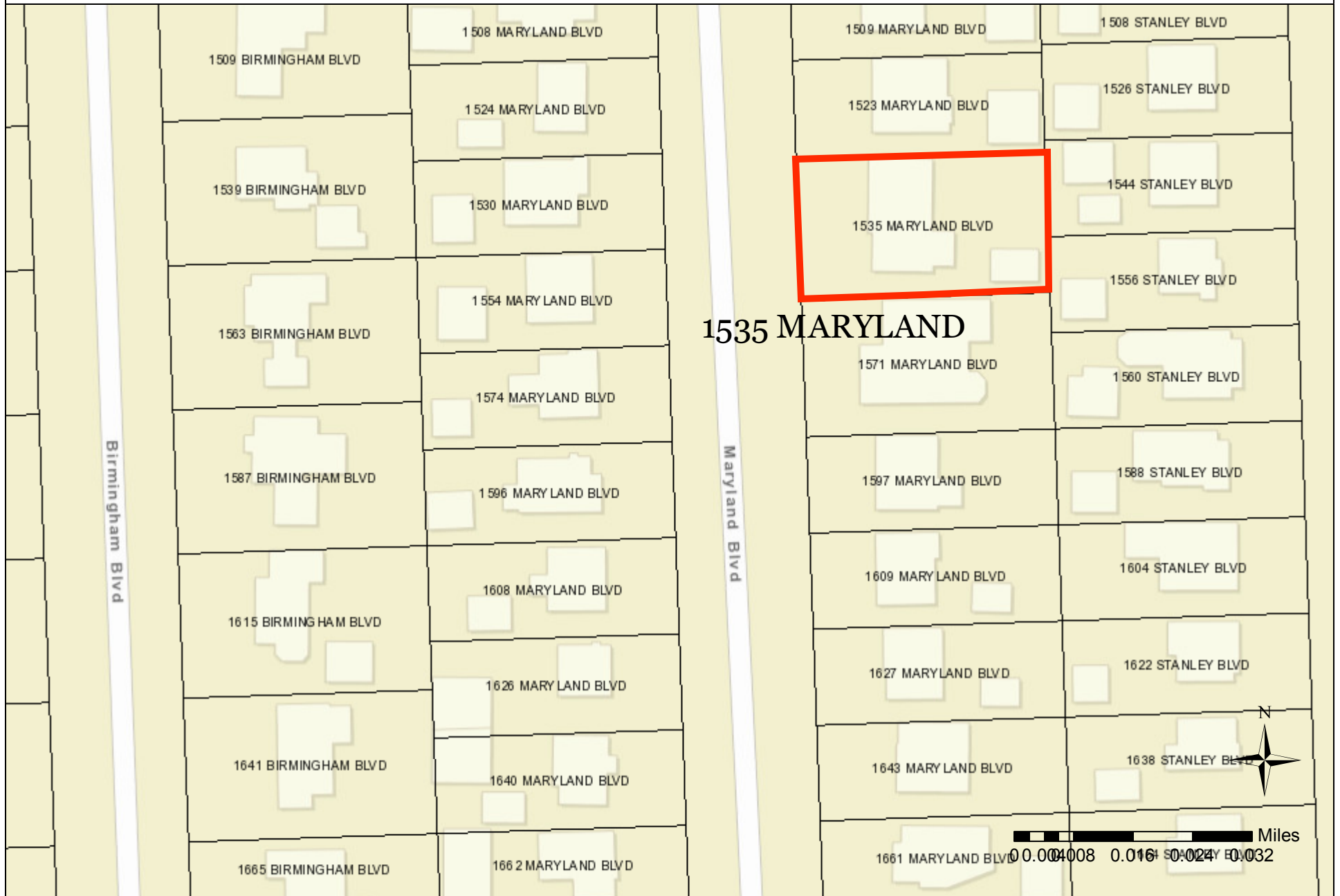
A. Chapter 126, Article 4, Section 4.03(B) of the Zoning Ordinance requires that an accessory building shall not be permitted closer to a principal building on an adjoining lot than the sum of the minimum required side setbacks. The minimum total side yard setbacks are 14.0 feet or 25% of the lot width whichever is greater. The required total is 18.25 feet. The proposed total is 12.00 feet. Therefore, a variance of 6.25 feet is being requested.

Staff Notes: The applicant is requesting variance to construct a detached garage to replace the existing one.

This property is zoned R2 – Single Family Residential.

Jeff Zielke, NCIDQ, LEED AP
Assistant Building Official

1535 MARYLAND MAP



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: 7-10-20

Received By: SWH

Hearing Date: 20035

Appeal #: 20035

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: 1535 MARYLAND BLVD Lot Number: 332/233 Sidwell Number: 08-19-36-308-009

II. OWNER INFORMATION:

Name: CAROL AND THOMAS FRIESEN

Address: 1535 MARYLAND City: BIRMINGHAM State: MI Zip code: 48009

Email: TOM.D.FRIESEN@GMAIL.COM Phone: 248-245-2648

III. PETITIONER INFORMATION:

Name: CAROL + THOMAS FRIESEN Firm/Company Name: (HOMEOWNER)

Address: 1535 MARYLAND City: BIRMINGHAM State: MI Zip code: 48009

Email: TOM.D.FRIESEN@GMAIL.COM Phone: 248-245-2648

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: Carol W. Friesen

Date: 7/10/20

Signature of Petitioner: Carol W. Friesen

Date: 7/10/20

To: Board of Zoning Appeals
City of Birmingham, Mi.

We are Carol and Thomas Friesen who reside at 1535 Maryland Blvd. Birmingham Mi. We are applying for a variance to construct a two car garage on our property to replace a one and ½ car garage that has been razed. The reason for the variance results from distance to our neighbor's house. Their house is 52 ft deep and 6 feet off our property line. The ordinance requires the placement of our new garage 18.25 feet (25% of the lot's 73 ft. frontage) from their house which would make the garage not viable.

The garage has to be positioned forward 7.5 feet on our lot due to power lines running on the east property line. We planned a 4 ft. set back on the south property line, the same as the prior garage, which allows a reasonable size vehicle to make the turn and maneuver into the garage. If we built it at the required distance it would move the structure into the middle of the backyard and make it unusable. This 4 foot setback on the south property line puts the distance between our neighbor's house and the planned garage at a distance of 12 feet not the 18.25 feet required. Again the same distance the prior garage was.

The ordinance doesn't apply to the distance that a house can be built next to a garage but it does apply to how far away a garage can be placed next to a house. Therefore it is not a safety issue and building the garage in the same line as the previous one only enhances the surroundings from before as it replaces an older structure with a new properly trimmed and sided structure. Our neighbor does not object to it as his attached letter illustrates.

We understand that the proper schedule of events would have been to obtain the variance before razing the existing garage, however the following lead us to believe we were not in violation:

1. Our neighbor built his house without a variance to construct 12 ft from our existing garage,
2. Applying for and receiving approval for a construction permit after a site visit,
3. Receiving a demo permit after a site visit.

Now without a variance from the required 18.25 feet to 12 feet, our premises will be without a workable garage anywhere on our lot. Had we been aware of this issue we would not have taken down the existing garage.

I am attaching 10 copies of the signed application, the current survey, the site plan, building plans, the site survey before my neighbor built his house, the approved permits, and the signed letter from Al Ormand the neighbor on the south property line.

We respectfully ask for your consideration for this Dimensional Variances request. The inability to construct a useable garage within reasonable boundaries is a hardship for this lot not only for us but for anyone would own this lot in the future.

Requested Variance	Required	Existing	Proposed	Variance amount
South p/l setback	18.25ft	DNA	12.00ft	6.25ft.

Respectfully



Carol and Thomas Friesen
1535 Maryland Blvd.
Birmingham , Mi.



City of Birmingham
Building Department
And Board of Zoning Appeals

To whom it may concern.

We are the neighbors of Thomas and Carol Friesen who reside at 1535 Maryland Blvd. Our residence borders their south property line. It is my understanding that they planned to replace their one car garage with a new two car garage utilizing the same setbacks from the south and east property line as the garage they razed.

It has been made known to me that the distance from my house to their garage (both the prior and proposed) is not within current building ordinances, and will be 4 ft. from our adjoining property line and approximately 12 feet between our house and their garage.

Please be advised that we have no objection to the placement of the new garage as planned by the Friesen's.



Al and Doris Ormand
1571 Maryland Blvd
Birmingham, Mi. 48009

Dated

7/7/20

CASE DESCRIPTION

220 Northlawn (20-36)

Hearing date: August 11, 2020

Appeal No. 20-36: The owner of the property known as 220 Northlawn, requests the following variances to construct an addition to an existing non-conforming home:

A. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that the minimum rear yard setback to be 30.00 feet. The proposed is 16.19 feet. Therefore a variance of 13.81 feet is being requested.

B. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that the minimum combined front and rear setback is to be 55.00 feet. The proposed is 45.74 feet. Therefore a variance of 9.26 feet is being requested.

Staff Notes: The applicant is requesting variances to construct an addition to the existing non-conforming home.

This property is zoned R2 – Single Family Residential.

Jeff Zielke, NCIDQ, LEED AP
Assistant Building Official

220 NORTHLAWN MAP



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: 7-13-20

Hearing Date: 8-11-20

Received By: BM

Appeal #: 20-36

Type of Variance:	<input checked="" type="checkbox"/> Interpretation	<input type="checkbox"/> Dimensional	<input type="checkbox"/> Land Use	<input type="checkbox"/> Sign	<input type="checkbox"/> Admin Review															
I. PROPERTY INFORMATION:																				
Address: 220 Northlawn Blvd 48009		Lot Number:		Sidwell Number:																
II. OWNER INFORMATION:																				
Name: Thomas Farida																				
Address: 280 Northlawn Blvd		City: Birmingham		State: AL	Zip code: 48009															
Email: *tjfarida@gmail.com				Phone: (248) 496-8282																
III. PETITIONER INFORMATION:																				
Name:		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>																				
<table border="1"><caption>Variance Chart Example</caption><thead><tr><th>Requested Variances</th><th>Required</th><th>Existing</th><th>Proposed</th><th>Variance Amount</th></tr></thead><tbody><tr><td>Variance A, Front Setback</td><td>25.00 Feet</td><td>23.50 Feet</td><td>23.50 Feet</td><td>1.50 Feet</td></tr><tr><td>Variance B, Height</td><td>30.00 Feet</td><td>30.25 Feet</td><td>30.25 Feet</td><td>0.25 Feet</td></tr></tbody></table>						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
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V. REQUIRED INFORMATION CHECKLIST:																				
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Signature of Owner: Tommy Farida				Date: 7/13/20																
Signature of Petitioner:				Date:																

Thomas Farida
220 Northlawn Blvd
Birmingham, MI 48009

July 13, 2020

City of Birmingham Board of Zoning
151 Martin St
Birmingham, MI 48012

To Whom it May Concern:

This letter of practical difficulty is to ask for a variance on converting the existing breezeway at 220 Northlawn Blvd to a winterized room. The breezeway connects the home to the garage. The new area would be expanded slightly but still stay under the current footprint of the house and roof. It would be constructed flush with the existing home and garage.

This room will be used for a bathroom, closet and laundry room. In the current house the laundry is in the basement. By expanding this area it would make the house compliant for any handicapped or elderly person.

Converting the breezeway will not pose any safety risk to neighboring homes. If the footings for the new wall need to be dug by hand we will do it that way to minimize any safety risks.

Thank you for your consideration.

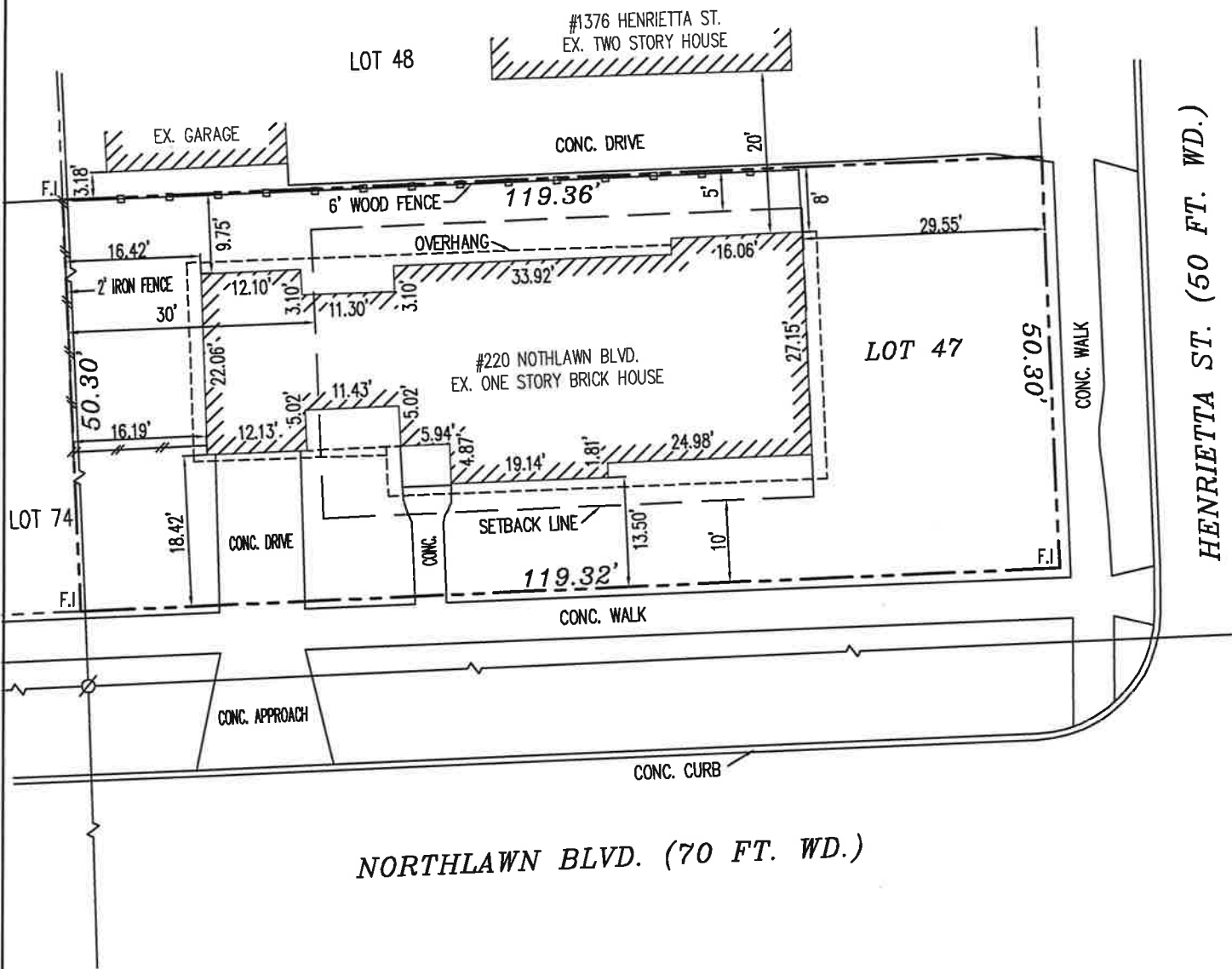
Sincerely,
Tommy Farida



CERTIFICATE OF SURVEY



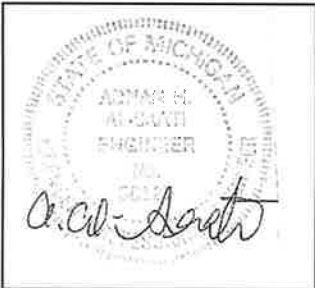
SCALE 1"=20'



PREPARED FOR:
TOMMY FARIDA

- F.I. FOUND IRON
- Ø UTILITY POLE
- ■ — ■ — ■ — WOOD FENCE
- # — # — # — IRON FENCE
- ~ — ~ — ~ ~ OVERHEAD WIRE

JOB #: 20125
DATE: 07-02-2020



LEGAL DESCRIPTION

LOT 47 OF "ASSESSOR'S PLAT NO. 30", CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN.

SURVEY TECH

SURVEYING ENGINEERING
3253 LYNHURST CT.
OAKLAND, MI 48306
TEL. (248) 670-6556
FAX. (248) 377-8883

CASE DESCRIPTION

515 Westwood (20-37)

Hearing date: August 11, 2020

Appeal No. 20-37: The owner of the property known as 515 Westwood, requests the following variance to construct an addition the existing non-conforming home:

A. Chapter 126, Article 4, Section 4.61(A)(1) of the Zoning Ordinance requires that a corner lot which has on its 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 side yard setback is 22.56 feet. The proposed is 16.38 feet, therefore a variance is 6.18 feet.

Staff Notes: The applicant is requesting a variance to construct an addition to the existing home. Variances were granted for additions in 2014 and 2005. The addition in 2005 was not constructed. The applicant was in front of the BZA in June 2020, which was denied at that time (June minutes attached). The proposed variance has been revised.

This property is zoned R1 – Single Family Residential.

Jeff Zielke, NCIDQ, LEED AP
Assistant Building Official

515 WESTWOOD MAP



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: 7-13-20

Hearing Date: 8-11-20

Received By: BM

Appeal #: 20-37

Type of Variance:	<input checked="" type="checkbox"/> Interpretation	<input 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: <u>515 Westwood</u>	Lot Number:	Sidwell Number:
------------------------------	-------------	-----------------

II. OWNER INFORMATION:

Name: <u>Michael Dresden</u>			
Address: <u>515 Westwood</u>	City: <u>Birmingham</u>	State: <u>MI</u>	Zip code: <u>48009</u>
Email: <u>mdresden@electropower.com</u>	Phone: <u>248-505-5794</u>		

III. PETITIONER INFORMATION:

Name: <u>Ron Stern</u>	Firm/Company Name: <u>Red Stern Building Co.</u>		
Address: <u>6419 High Ridge Rd</u>	City: <u>West Bloomfield</u>	State: <u>MI</u>	Zip code: <u>48324</u>
Email: <u>Ron@redsternbuilding.com</u>	Phone: <u>248-593-9191</u>		

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
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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
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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.

*By providing your email to the City, you agree to receive news and notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

Signature of Owner: <u>[Signature]</u>	Date: <u>7/11/20</u>
Signature of Petitioner: <u>[Signature]</u>	Date: <u>7/11/2020</u>

CITY OF BIRMINGHAM
 Date 07/16/2020 11:09:20 AM
 Ref 00170810
 Receipt 536917
 Amount \$310.00



Remodeling • Additions • Kitchens • Baths

July 6, 2020

Attn: City of Birmingham Board of Zoning Appeals

Re: 515 Westwood

Practical Difficulty/Hardship

This letter is in reference to a proposed remodeling project to 515 Westwood. The plans call for adding a 1st floor in law suite, which will be situated behind the existing 3 car garage. We presented a previous plan to the board at the June BZA meeting in which we asked for a rear yard variance. Taking the board's recommendation into consideration, we were able to move the bedroom suite where we will not require that variance. The in law suite will fit in behind the existing garage and will use some of the previously proposed family room space. We will still need the side yard setback variance that we previously requested. This will allow us to create a hallway behind the existing garages that will lead to the entrance of the in law suite. The owner's parents are elderly and are planning on moving in with their son's family. There is not an option to place them on the 2nd floor. We will require a 6.18' side yard setback variance. While we still maintain the required 15' setback, the fact that the house directly across the street on Westwood (528 Westwood, lot 38 and 39) was built in 1929 on a double lot and sits significantly further back than any other house in the area in regards to side yard setbacks. We have included a letter from the neighbor whose garage faces our garage, and they are completely in favor of this project being built as proposed.

The required side yard setback is 22.56'. The proposed side yard setback will be 16.38'. We are requesting a variance of 6.18'. The house is a street facing side yard, in which we need to maintain the average setback of the homes 200' in each direction. The home to the west is located in Bloomfield Village. The house to the east sits on a double lot with a very deep setback compared to the other homes in the area.

Thank you,

Ron Stern

Bob Stern Building Company

6819 High Ridge Rd, West Bloomfield, MI 48324

Phone: 248-593-9191 Fax: 248-593-7822 E-Mail: ron@bobsternbuilding.com

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, JUNE 9, 2020
Held Remotely Via Zoom And Telephone Access

1. CALL TO ORDER

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, June 9, 2020. Chairman Charles Lillie convened the meeting at 7:30 p.m.

2. ROLLCALL

Present: Chairman Charles Lillie; Board Members Jason Canvasser, Kevin Hart (arrival acknowledged by the Chair at 7:52 p.m.), Richard Lilley, John Miller, Erik Morganroth, Francis Rodriguez

Absent: Alternate Board Members Jerry Attia; Ron Reddy

Administration:

Bruce Johnson, Building Official
Eric Brunk, I.T. Manager
Brooks Cowan, City Planner
Laura Eichenhorn, Transcriptionist
Mike Morad, Asst. Building Official
Jeff Zielke, Asst. Building Official

Chairman Lillie 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.

Chairman Lillie took rollcall of the petitioners. All petitioners were present. Chairman Lillie explained the meeting was being held virtually due to the Covid-19 pandemic. He explained the procedures that would be followed for the virtual meeting.

T# 06-31-20

3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF MAY 12, 2020

Motion by Mr. Morganroth

Seconded by Mr. Lilley to accept the Minutes of the BZA meeting of May 12, 2020 as submitted.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Morganroth, Lilley, Lillie, Canvasser, Rodriguez, Reddy

Nays: None

T# 06-32-20

4. APPEALS

**1) 501 S. Eton
Appeal 20-22**

City Planner Cowan presented the item, explaining that the owner of the property known as 501 S. Eton requests the following dimensional variance regarding parking requirements in the MX Zone:

A. Chapter 126, Article 4, Section 4.46(A) states that off-street parking spaces are required based on land use or land uses for the site, and that the number of spaces required per land use is detailed in Table A. Chapter 126, Article 4, Table A requires eating establishments with combined indoor-outdoor consumption to provide 1 parking space for each 75 square feet of floor area and 1 parking space per 300 square feet of commercial office or retail use.

The subject property currently has a total of 21 parking spaces. 13 parking spaces are located on site while an additional 8 parking spaces in the public right-of-way were approved by City Commission in 2007. The Whistle Stop restaurant is one of three tenant spaces in the subject building, the other two spaces are currently vacant. Whistle Stop occupies 1,494 square feet and therefore requires 20 parking spaces as an eating establishment. This requirement leaves one remaining parking space for the two vacant tenant spaces on the southern portion of the building.

The applicant is proposing to combine two tenant spaces and expand Whistle Stop into 2,554 square feet of restaurant use. Doing so would require 34 parking spaces for the eating establishment. The remaining 1,175 square foot tenant space is currently vacant, though if used for office/retail would require an additional 4 parking spaces. Assuming the aforementioned uses for the subject building, a total of 38 parking spaces would be required for the two tenant spaces. Therefore, the applicant has requested a dimensional variance of 17 parking spaces.

City Planner Cowan noted the subject property was built in 1968 and is zoned MX, Mixed Use. At the time of construction, the building was zoned (I) Industrial and had a parking requirement of 2 parking spaces + 1 square foot of parking space per 1 square foot of building space over 2,001 square feet. The building is 3,729 square feet and therefore was required to provide a total of 12 parking spaces when originally constructed. In 1974, the Zoning Ordinance was amended to require food services to provide 1 parking space per 75 square feet of floor area, therefore creating a legal conformity for the subject property.

The applicant appeared before the Planning Board on January 22nd, 2020. The Planning Board expressed their support for the project and motioned to approve the Final Site Plan and Design Review with the condition that the applicant satisfy the parking requirements through either a shared parking agreement or by obtaining a variance from the Board of Zoning Appeals

The Xhomaqis, owners, Jerome Pesick, attorney, and Jawan Matti, architect, were present on behalf of the petition. Mr. Pesick spoke on behalf of the petition.

Mr. Pesick stated that while the Xhomaqis still have an informal parking agreement with Norman LePage, owner of Griffin Claw, the two parties had not been able to reach a formal parking agreement since the appellants' appearance at the May 2020 BZA meeting. Mr. Pesick said that Mr. LePage remains in favor of the Whistle Stop's proposed updates.

On behalf of the appeal Mr. Pesick also reached out to Dominic Mocer, owner of the Irongate Apartments, who expressed his resounding support for the proposed project and offered to share any of their available on street parking with the Whistle Stop. Mr. Pesick stated that the City's Building Department indicated that that kind of shared parking arrangement would not be permitted.

In reply to the Chair, Mr. Pesick said the Xhomaqis estimate that about 50% of their customers walk to the diner in the summer. Mr. Pesick also noted that Mr. Mocer said in an email that the Whistle Stop's proximity to the Irongate Apartments is a draw for potential tenants, which he said further proves that there is substantial appeal for nearby residents to walk to the diner.

Rick Rattner, attorney for Mr. LePage, stated that Mr. LePage would strongly urge the BZA to grant the requested variance to the appellants. Mr. Rattner said that the Xhomaqis have been great neighbors to the Griffin Claw and that can continue. According to Mr. Rattner, current circumstances prevent Mr. LePage from doing more than being a vocal supporter of the appeal and continuing the informal parking arrangement. Mr. Rattner stated that granting the variances would be in support of the health, safety and welfare of the rail district residents and Birmingham residents overall.

Motion by Mr. Rodriguez

Seconded by Mr. Canvasser with regard to Appeal 20-22, A. Chapter 126, Article 4, Section 4.46(A) states that off-street parking spaces are required based on land use or land uses for the site, and that the number of spaces required per land use is detailed in Table A. Chapter 126, Article 4, Table A requires eating establishments with combined indoor-outdoor consumption to provide 1 parking space for each 75

square feet of floor area and 1 parking space per 300 square feet of commercial office or retail use. The subject property currently has a total of 21 parking spaces. 13 parking spaces are located on site while an additional 8 parking spaces in the public right-of-way were approved by City Commission in 2007. The Whistle Stop restaurant is one of three tenant spaces in the subject building, the other two spaces are currently vacant. Whistle Stop occupies 1,494 square feet and therefore requires 20 parking spaces as an eating establishment. This requirement leaves one remaining parking space for the two vacant tenant spaces on the southern portion of the building. The applicant is proposing to combine two tenant spaces and expand Whistle Stop into 2,554 square feet of restaurant use. Doing so would require 34 parking spaces for the eating establishment. The remaining 1,175 square foot tenant space is currently vacant, though if used for office/retail would require an additional 4 parking spaces. Assuming the aforementioned uses for the subject building, a total of 38 parking spaces would be required for the two tenant spaces. Therefore, the applicant has requested a dimensional variance of 17 parking spaces.

Mr. Rodriguez moved to grant Appeal 20-22 and to tie it to the plans as submitted. He said that a practical difficulty was established and that the need for the variance is not self created. He said the variance was necessary due to the unique size, shape, and characteristics of the property, as well as its relation to the neighboring properties. Mr. Rodriguez said granting the variance would do substantial justice to the public.

Mr. Canvasser said he agreed with Mr. Rodriguez. He asked Mr. Pesick and Mr. Rattner to keep dialogue open regarding the possibility of a more formal shared parking agreement in the future.

Chairman Lillie said he would be voting against the motion due to concerns about insufficient parking.

Mr. Hart said he would be voting in favor of the motion. He said the appellant had amply demonstrated practical difficulty. Mr. Hart also noted that since the restaurant is frequented by pedestrians, he was less concerned about potential parking issues. He commended the Xhomaqis for wanting to update their space both for the comfort of their employees and to achieve ADA compliance.

Motion carried, 5-2.

ROLL CALL VOTE

Yeas: Rodriguez, Canvasser, Hart, Lilley, Miller

Nays: Lillie, Morganroth

**2) 1602 Cole
Appeal 20-16**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 1602 Cole, was requesting the following variances to construct a detached garage:

A. Chapter 126, Article 4, Section 4.03(G) of the Zoning Ordinance requires that the maximum building height for accessory structures in R3 District is 14.50 feet to the mid-point. The proposed mid-point is 15.50 feet. Therefore a variance of 1.00 feet is being requested.

B. Chapter 126, Article 4, Section 4.03(J) of the Zoning Ordinance requires that dormers on accessory structures are limited to 50% or less of the width of the roof per elevation or a 10.00 foot interior dimension, whichever is greater. The proposed dormer width on the east side is 100% of the width of the roof, therefore a variance of 50% of the width is being requested.

Assistant Building Official Zielke noted the applicant was in front of the board in March 2020 for variances for this proposed detached garage. This appeal was tabled at that time so the appellant could rework the design. This property is zoned R3 – Single Family Residential.

Craig Ludwig reviewed the letter to the BZA, as included in the evening's agenda packet, outlining his request for the variances.

Motion by Mr. Canvasser

Seconded by Mr. Rodriguez with regard to Appeal 20-16, A. Chapter 126, Article 4, Section 4.03(G) of the Zoning Ordinance requires that the maximum building height for accessory structures in R3 District is 14.50 feet to the mid-point. The proposed mid-point is 15.50 feet. Therefore a variance of 1.00 feet is being requested. B. Chapter 126, Article 4, Section 4.03(J) of the Zoning Ordinance requires that dormers on accessory structures are limited to 50% or less of the width of the roof per elevation or a 10.00 foot interior dimension, whichever is greater. The proposed dormer width on the east side is 100% of the width of the roof, therefore a variance of 50% of the width is being requested.

Mr. Canvasser moved to deny the requested variances. He said the need for the variances was self-created and that strict compliance with the ordinance would not unreasonably limit the petitioner's use of the property.

Mr. Morganroth acknowledged MSG Ludwig's efforts to mitigate the extent of the variance requests. He also expressed admiration for the design of the proposed garage, saying he could understand why MSG Ludwig would pursue it. Mr. Morganroth stated that while he admired the design, the BZA must grant or deny variances according to whether the need for the variances is self-created. Mr. Morganroth said he agreed with Mr. Canvasser that the need for the variances was self-created in this case, and said for that reason he was obligated to support the motion.

Mr. Miller expressed agreement with the previous statements that the issue was self-created.

Motion carried, 6-1.

ROLL CALL VOTE

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

Nays: Hart

**3) 1884 W Melton
Appeal 20-27**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 1884 W Melton, requests the following variances 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 a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 20.00 feet. The proposed is 15.72 feet. Therefore, a variance of 4.28 feet is being requested on the West side.

B. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 20.00 feet. The proposed is 16.06 feet. Therefore, a variance of 3.94 feet is being requested on the East side.

Assistant Building Official Zielke noted the applicant was proposing to construct a new home with an attached garage. The site meets the zoning requirements with the exception of the requested variances mentioned above. This property is zoned R2 – Single Family Residential.

Patrick Raye, builder, and Alex Karchon, owner, were present on behalf of the appeal.

Mr. Karchon stated that the lot width of 1854 Melton is 107 feet.

Steve Gunderson, across-the-street neighbor of 1884 W Melton, stated that he was in full support of the proposal and said he thought it would benefit the neighborhood.

Motion by Mr. Rodriguez

Seconded by Mr. Morganroth with regard to Appeal 20-27, A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 20.00 feet. The proposed is 15.72 feet. Therefore, a variance of 4.28 feet is being requested on the West side. B. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total

lot width, whichever is larger. The required distance is 20.00 feet. The proposed is 16.06 feet. Therefore, a variance of 3.94 feet is being requested on the East side.

Mr. Rodriguez moved to approve both variances and to tie them to the plans as submitted. He stated that the petitioner established practical difficulty and noted that the property has unique circumstances due to the non-conforming homes to both the east and the west. Mr. Rodriguez also noted the need for the variance is not self-created.

Mr. Miller observed that granting the appeal would actually increase conformity in the neighborhood. He said he would support the motion.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**4) 1165 Hillside
Appeal 20-28**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 1165 Hillside, requests the following variances to construct a new single family home with a detached garage:

A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 53.20 feet. The proposed is 41.20 feet. Therefore a 12.00 foot variance is being requested.

B. Chapter 126, Article 4, Section 4.75(A)(1) of the Zoning Ordinance requires that a private, attached, single-family residential garages must be setback a minimum 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The proposed is the garage is 2.33 feet in front of the furthest façade. Therefore a variance of 7.33 feet is being requested.

Assistant Building Official Zielke noted the applicant proposed to construct a new home with an attached and detached garage on this irregular shaped corner lot. This property is zoned R1 – Single Family Residential.

Chairman Lillie expressed his belief that the Board needed more information to discuss this appeal. He said that normally when there is a setback issue the Board receives a drawing of the distances of the homes from the street. He said that while often there is uniformity, occasionally there is one home with a vastly different front setback which could throw off the front setbacks for the street.

Mr. Miller agreed.

Mr. Morganroth agreed, and added that the Board should also receive a drawing of the building envelope to see what is available in terms of space on the lot.

Brain Neeper, architect, was present on behalf of the appeal.

Mr. Morganroth said it was conceivably possible to get the information he needed from the pending discussion.

Mr. Miller said that while it would not be impossible to proceed, he noted that there would likely be controversy regarding this house from other residents in the neighborhood. He said without a drawing that shows the house in relation to the other houses on the street the Board's determination would be more difficult to reach.

Mr. Hart said that without more detailed drawings it would be very difficult to support this appeal. He noted that there are unique circumstances to the lot and that it would benefit the appellant for those to be rendered more clearly.

Motion by Mr. Miller

Seconded by Mr. Morganroth with regard to Appeal 20-28, A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 53.20 feet. The proposed is 41.20 feet. Therefore a 12.00 foot variance is being requested. B. Chapter 126, Article 4, Section 4.75(A)(1) of the Zoning Ordinance requires that a private, attached, single-family residential garages must be setback a minimum 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The proposed is the garage is 2.33 feet in front of the furthest façade. Therefore a variance of 7.33 feet is being requested.

Mr. Miller moved to table Appeal 20-28 until the July 2020 regular BZA meeting. He requested that the appellant submit an expanded site plan that shows the homes up to Lincoln and the homes across the street for the Board's review.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**5) 515 Westwood
Appeal 20-29**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 515 Westwood, requests the following variances to construct an addition the existing nonconforming home:

A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires a minimum rear yard setback is 30.00 feet. The proposed is 23.13 feet. Therefore, a variance of 6.87 feet is being requested.

B. Chapter 126, Article 4, Section 4.61(A)(1) of the Zoning Ordinance requires that a corner lot which has on its 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 side yard setback is 22.56 feet. The proposed is 17.06 feet, therefore a variance is 5.50 feet.

Assistant Building Official Zielke noted the applicant was requesting variances to construct an addition to the existing home that was granted variances in 2014 and 2005. The variance that was granted in 2005 was not constructed, which this proposed variance is similar in nature that requested. This property is zoned R1 – Single Family Residential.

Ron Stern, builder, and Michael Dresden, owner, were present on behalf of the petition.

Mr. Stern reviewed the letter to the BZA, as included in the evening's agenda packet, outlining his request for the variances.

Motion by Mr. Morganroth

Seconded by Mr. Canvasser with regard to Appeal 20-29, A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires a minimum rear yard setback is 30.00 feet. The proposed is 23.13 feet. Therefore, a variance of 6.87 feet is being requested. B. Chapter 126, Article 4, Section 4.61(A)(1) of the Zoning Ordinance requires that a corner lot which has on its 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 side yard setback is 22.56 feet. The proposed is 17.06 feet, therefore a variance is 5.50 feet.

Mr. Morganroth moved to deny the variance requests. He said that while he understood the desire for the variances the need for it was self-created. He said that the proposed spaces in the plans are generous, and that some of those spaces could be reduced to achieve additional mitigation.

Chairman Lillie said he would support the motion to deny. He noted that the BZA is traditionally very judicious about not giving variances for the rear setback. He acknowledged that there was a variance granted allowing building into the rear setback in 2005, but opined that said variance would not have been granted had all regular members of the BZA been present for the vote that night.

Mr. Miller said he looked for another justification for these variances beyond self-creation and said he was unable to find one. He said for that reason he would support the motion.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**6) 1055 Larchlea
Appeal 20-30**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 1055 Larchlea was requesting the following variance to expand the impervious surface in the required front open space:

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 is 65%(2120.00 sf) The proposed is 59%(1932.00 sf). Therefore, a variance of 6.00%(188.00sf) is being requested.

Assistant Building Official Zielke noted the applicant was requesting additional paving in the required front yard. The home was issued a permit in 2018 and is currently still under construction. This property is zoned R1 – Single Family Residential.

Matt Whetstone, landscape architect, reviewed the letter to the BZA, as included in the evening's agenda packet, outlining his request for the variance.

In reply to Mr. Morganroth, Mr. Whetstone confirmed that granting the variances would make the turn into the driveway a bit easier and would allow the resident the exit their vehicle onto hardscape instead of onto grass. He said he hoped the Board would be amenable to granting the variances since while the front yard would exceed the allowed amount of hardscape, the plans overall would provide for more open space than the ordinance requires. He conceded that while these would be improvements for the resident, they could not be described as hardships.

Nitin Paranjpe, resident to the south of 1055 Larchlea, said that gravel from Larchlea gets washed down the hill and ends up on Lincoln. He said it is making ruts on the streets where City property meets the road. Mr. Paranjpe said granting a variance to allow for an increase in hardscape only for resident preference would be unreasonable. He continued that the City should limit the resident of 1055 Larchlea to the ordinance-allowed amount of hardscape in order to prevent water from running into Mr. Paranjpe's yard. People turning from Larchlea onto Lincoln sometimes skid in their vehicles due to the accumulation of gravel at the bottom of the hill, which he said causes a safety issue as well.

Motion by Mr. Rodriguez

Seconded by Mr. Lilley with regard to Appeal 20-30, 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 is 65%(2120.00 sf) The proposed is 59% (1932.00 sf). Therefore, a variance of 6.00% (188.00sf) is being requested.

Mr. Rodriguez moved to deny the requested variance. He cited Mr. Whetstone's acknowledgment that there was no practical difficulty that would necessitate the variance. Mr. Rodriguez said the need was self-created.

Mr. Miller also cited Mr. Whetstone's statement that the variance request was a result of preference and not of hardship. He said that once that is stated the Board has no other choice than to deny the request.

Chairman Lillie said he agreed. He noted that even if Mr. Whetstone had not made the statement there was no proof that a practical difficulty was motivating this request.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 06-33-20

5. CORRESPONDENCE (included in agenda)

T# 06-34-20

6. GENERAL BUSINESS

T# 06-35-20

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

T# 06-36-20

8. ADJOURNMENT

Motion by Mr. Canvasser

Seconded by Mr. Lilley to adjourn the June 9, 2020 BZA meeting at 9:44 p.m.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

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

Bruce R. Johnson, Building Official