

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, FEBRUARY 12, 2013**

Commission Chamber, City Hall
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, February 12, 2013. Chairman Charles Lillie convened the meeting at 8 p.m.

Present: Chairman Charles Lillie; Board Members David Conlin, Thomas Hughes, Jeffery Jones, Randolph Judd, Peter Lyon, John Miller

Absent: Alternate Board Members Cynthia Grove, Kevin Hart

Administration: Bruce Johnson, Building Official
Carole Salutes, Recording Secretary
Scott Worthington, Building Inspector

The chairman welcomed everyone and explained the BZA procedure to the audience. Additionally, he noted that the members of the Zoning Board are appointed by the City Commission and are volunteers. They sit at the pleasure of the City Commission to hear appeals from petitioners who are seeking variances from the City's Zoning Ordinance. Under Michigan law, a dimensional variance requires four affirmative votes from this board, and the petitioner must show a practical difficulty. A land use variance requires five affirmative votes and the petitioner has to show a hardship. Also, appeals are heard by the board as far as interpretations or rulings. There are no interpretations and/or use variances called for this evening. Four affirmative votes are required to reverse an interpretation or ruling.

02-01-13

APPROVAL OF THE MINUTES OF THE BZA MEETING OF DECEMBER 11, 2012

Motion by Mr. Jones

Seconded by Mr. Miller to approve the Minutes of the BZA meeting of December 11, 2012 as presented.

Motion carried, 7-0.

VOICE VOTE

Yeas: Jones, Miller, Conlin, Judd, Hughes, Lillie, Lyon

Nays: None

Absent: None

02-02-13

**299 WESTCHESTER WAY
(Appeal 13-01)**

The owner of the property known as 299 Westchester Way requests the following variances to construct an addition to the principal structure:

- A. Chapter 26, Article 2, Section 2.06 requires a minimum total side yard setback of 15 ft.; with 14.7 ft. existing and 12.5 ft. proposed; therefore, a variance of 2.5 ft. is requested.
- B. Chapter 26, Article 4, Section 4.70 requires that an attached garage be set back a minimum of 5 ft. from the front façade of the principal structure, with 2.8 ft. existing and proposed; therefore, a variance of 2.2 ft. is proposed.

This property is zoned R-1 Single-Family Residential.

Mr. Worthington explained that the homeowner would like to expand the existing garage 2.5 ft. to the south. They meet all the required setbacks for the lot itself; they just don't meet their total side setbacks. Because they are expanding the garage they are required to set it back 5 ft. from the front façade of the house. In response to a question from the chairman, Mr. Worthington stated the width of the lot to the south is 90 ft. Right now they are non-conforming for distance between houses, so granting this variance would just make them non-conforming by an additional 2.5 ft. Further, the existing house is also non-conforming.

Mr. Conlin noted that the existing garage size is still usable. Because they are demolishing it, the applicant could probably move it back to avoid the variance for the 5 ft. setback.

Mr. Brian Toovalian, the homeowner, presented a supporting letter from his neighbor to the north. As it stands, he doesn't have enough width to construct two 8 ft. wide garage doors with 8 in. between them. The current garage is in a dilapidated state and must be re-built. If he were to move the garage back another 2.2 ft. to comply with the Ordinance for the 5 ft. setback, he could not fit a car in all the way. However, he was open to possibly moving the garage back by eliminating the mud room/powder room.

Chairman Lillie advised the board is looking for some compelling reason why the applicant cannot comply with the Ordinances and why he really needs the variances. Mr. Miller didn't know whether, if the plan was laid out differently, the applicant couldn't have the entrance to the garage off the back of the house. Mr. Toovalian agreed that he is open to that.

Mr. Conlin expressed his opinion that the professionals who worked on the plan didn't have the constraints from the Building Dept. that the homeowner has to work with.

There has been nothing to mitigate the second floor intrusion into the side yard setback. He felt the plan needs some more thought within the context of how the BZA has to pass judgment. Mr. Jones added the board has not found a practical difficulty within the plan that has been presented.

Mr. Toovalian agreed to re-work the plan and come back to the next regularly scheduled meeting.

Mr. Miller advised the petitioner to take heed of Mr. Conlin's comments about the second story and the articulation of the south side that pushes into the setback.

Motion by Mr. Jones

Seconded by Mr. Judd to table this item to the next regularly scheduled meeting in order to allow further consideration by the applicant.

Mr. Johnson specified that the variance(s) requested cannot be greater than what has already been requested. If they are, then the applicant will have to re-apply for a new variance(s) in the future.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Jones, Judd, Conlin, Hughes, Lillie, Lyon, Miller

Nays: None

Absent: None

02-03-13

The owners of the property known as 1998 Cole request the following variance to construct a new principal structure:

- A. Chapter 26, Article 4, Section 4.69 requires a minimum of 14 ft. between principal structures, with 11.3 ft. proposed; therefore, a variance of 2.7 ft. is requested.

This property is zoned R-3 Single-Family Residential.

Mr. Worthington recalled the same variance was requested on that lot in 2010 for a different house. This house is larger and deeper. If someone on this block wants to construct a new house they will need a variance because of the "9-5; 9-5; 5-9" rule that has been devised by Mr. Lyon to explain driveways along the street on narrow lots. In response to the chairman, Mr. Worthington said the proposed house will probably be about 33 ft. tall.

Mr. J.R. Ruthig, Principal Re-designer of P.R. Design, spoke on behalf of Mr. Keith Nelson, the property owner who was present. There was a mistake on the plans, as the

owner intends to enter the garage from the rear. Mr. Ruthig spoke to the practical difficulty. This is a corner lot (Cole at Eton) which requires a 10 ft. setback. The western neighbor's house is 5.3 ft. off the property line, which means they would need to be 8.9 ft. off the property line to construct a home and meet the 14 ft. requirement between houses. That only leaves a house which is 21.1 ft. wide. He does not feel a home this narrow is in the context with the existing neighborhood, or meets the intent of the Ordinance. They have tried to respect the Ordinance in designing a house that is not only functional by today's standards, but respects the previous variance that was granted.

Chairman Lillie expressed concern that with this plan the house at 1972 Cole will not see the sun. In his opinion the previous proposal took the neighbor more into consideration than this design does. Mr. Ruthig said their roof will slope away from the neighboring lot.

Mr. Lyon thought it would help to minimize the impact on the neighbor if they swapped the courtyard to the side to break up the wall that the neighbor will see from the west to the east. Mr. Ruthig said currently there is no neighbor on that part of the lot because the house doesn't go that far back. Mr. Lyon thought the board should have more detailed architectural drawings with dimensions.

Mr. Ruthig answered questions from the board. The dormers are just decorative as there are no plans for space above the second floor. There will be no gable dormers as seen on the Eton side on the neighboring side and they pulled the second-story fascia down. The windows on the second floor of the west side facing 1972 are higher so residents cannot look out into the neighbor's house. On the first floor they have taken similar considerations to protect privacy.

Chairman Lillie wondered if the stairs in the garage could be eliminated to bring the house more off the property line. Mr. Ruthig replied there is access to the office from the master bedroom closet. For the purpose of maintaining resale value, stairs have also been designed in the garage to enter the office.

Mr. Conlin was concerned with the long, straight line going back to the rear of the lot that the neighbor would see. Mr. Ruthig spoke of ways he plans to break up the elevation, such as the roofline and material usage. He guaranteed that side of the house would not lack architectural quality. He added that if they were to push the house back further off of Cole, which would minimize their house covering up the neighboring house, it would break context with the street façade along Cole.

No one in the audience wished to comment at 8:53 p.m.

Motion by Mr. Lyon

Seconded by Mr. Jones in regard to 1998 Cole, Appeal 13-02. The appellant seeks a variance under Chapter 26, Article 4, Section 4.69 for a variance of 2.7 ft. against a minimum of 14 ft. between principal structures. He moved to support the

variance as advertised, although he does think the house is larger than it needs to be. The practical difficulty has been established as it was several years ago on the same lot. Birmingham has a bit more constrictive setback rule in that we not only have setbacks, we have sums of setbacks and minimum distances between structures, which is not exactly the norm across the country. Hence, we see these kinds of appeals, not to mention it is a 9-5; 9-5; 5-9. In this case it is a 10 in there instead of a 9.

Mr. Lyon moved to approve. He thinks the appellant has ~~showed~~shown that strict compliance would be unduly burdensome and that the house would be much narrower than similar houses in the subdivision.

He feels it does justice to the neighbors. Probably that house will eventually go the way this one did if it doesn't get torn down. The appellant has done certain design elements to minimize the impact to the neighbor such as dropping the roofline down, the edge of the roof down lower than the normal 8 ft.

It would tie the motion to the sketches as presented and ask that the City ensure that the plans submitted comply with the sketches as nearly as possible.

Mr. Miller announced his intention to support because as the intent of the Ordinance is not to have a narrower house at the end of the block. The intent is uniformity. In all other instances this plan does conform. It would have been nice to have seen that critical elevation but he takes the appellant's word that the missing elevation will be as delightful as the other side elevation.

Mr. Jones supported the motion because as he said in 2010, there are traffic safety issues associated with shifting the house to the east closer to Eton. This is a corner lot and the visibility for turning radiuses and traffic mitigate against moving the house.

Motion carried, 7-0.

VOICE VOTE

Yeas: Lyon, Jones, Conlin, Hughes, Judd, Lillie, Miller

Nays: None

Absent: None

CORRESPONDENCE (none)

02-04-13

GENERAL BUSINESS (not discussed)

02-05-13

ADJOURNMENT

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

Bruce R. Johnson, Building Official