

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

Dept. of Public Services
851 S. Eton Street, Birmingham, Michigan

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

Present: Chairman Charles Lillie; Board Members David Conlin, Jeffery Jones, John Miller; Alternate Board Members Cynthia Grove, Kevin Hart

Absent: Board Members Thomas Hughes, Randolph Judd, Peter Lyon

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.

03-06-13

APPROVAL OF THE MINUTES OF THE BZA MEETING OF FEBRUARY 12, 2013

Chairman Lillie:
Page 5 – Second paragraph, substitute “shown” for “showed.”

Motion by Mr. Jones
Seconded by Mr. Conlin to approve the Minutes of the BZA meeting of February 12, 2013 with the change.

Motion carried, 6-0.

VOICE VOTE
Yeas: Jones, Conlin, Grove, Hart, Lillie, Miller

Nays: None

Absent: Hughes, Judd, Lyon

03-07-13

**444 BRYN MAWR
(Appeal 13-03)**

The owners of the property known as 444 Bryn Mawr request the following variances to construct an addition to the principal structure:

- A. Chapter 26, Article 2, Section 2.06 requires a minimum rear setback of 30 ft, with 23.3 ft. proposed; therefore, a variance of 6.7 ft. is requested.
- B. Chapter 26, Article 4, Section 4.70 requires that garage doors on an attached garage which are visible from the street may not exceed 8 ft. in width, with a 16 ft. proposed garage on the front façade; therefore, a variance of 8 ft. is requested.

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

Mr. Worthington explained the applicant wishes to re-locate their 16 ft. side-facing garage door to the front; however the Ordinance only allows two 8 ft. doors in the front.

Mr. Miller said that not having a site plan showing the location of houses to the rear makes it difficult for him to judge the impact of the addition.

Mr. Conlin received clarification that the required rear setback is measured from the property line; not the easement.

Mr. Joe Roman, Architect, spoke for the homeowner, Mr. David Viviano, who was present. Mr. Roman presented four letters from neighbors who were in favor of the requested variances. He explained how they tried to minimize the effect of the addition, variance (A). With respect to variance (B) he noted there are eight 16 ft. wide front facing garage doors along Bryn Mawr and only one set of 8 ft. garage doors that face the street. Therefore, they feel they comply with the aesthetics of the street with their 16 ft. garage door.

Chairman Lillie informed the petitioner that the Ordinance has changed and the 16 ft. garage doors are no longer allowed. Just because the rest of the neighborhood looks that way isn't a practical difficulty. Mr. Conlin explained the reason the City Commission wrote the Ordinance the way they did was to break up the front. Mr. Roman responded he could comply by adding two 8 ft. wide garage doors, but it would be tight because the fireplace chimney intrudes into the existing garage footprint. Mr. Miller calculated the petitioner would still have about 21 ft. clear inside the garage.

Mr. Conlin inquired why the petitioner needs a 24 ft. deep family room. Mr. Roman responded the family room was designed for a future need. Dr. Viviano said he hopes to have a living space that someday would accommodate a first-floor bedroom, bathroom, and walk-in closet. He has a congenital spine problem that will only get worse.

Mr. Miller asked if they explored different geometry for the addition that would expand more to the south. Mr. Roman replied they studied several options and this is what they came up with that would meet the needs of the homeowner.

No one in the audience wished to comment at 8:28 p.m.

Motion by Mr. Conlin

Seconded by Mr. Jones with respect to 444 Bryn Mawr, Appeal 13-03. To deny the request for a garage door, variance (B), under Chapter 26, Article 4, Section 4.70, based upon the fact that the petitioner has not been able to demonstrate either the required practical difficulty or the hardship in deviating from the required Ordinance.

Motion to deny carried, 6-0.

ROLLCALL VOTE

Yeas: Conlin, Jones, Grove, Hart, Lillie, Miller

Nays: None

Absent: Hughes, Judd, Lyon

Mr. Miller motioned, seconded by Mr. Conlin, to deny variance (A), also for Appeal 13-03 at 444 Bryn Mawr. He believes that compliance with the Ordinance would not disallow a still sizable addition to be built there. He doesn't believe the variance would necessarily be doing substantial justice to the neighborhood. The absence of a site plan that shows what's going on behind the lot and the impact makes the decision more difficult. He is concerned about the infringement on the back of the lot with such a large addition. Even though there are unique circumstances to the property, he still doesn't feel it would disallow a fairly sizable addition. Therefore he would conjecture that the problem is really self-created in this case.

Mr. Conlin indicated he supported the motion because he feels 24 ft. is an ideal situation for a master suite but it is not a required situation. Sixteen feet is definitely comfortable. A walk-in closet is not necessary. Though he is sympathetic towards the petitioner's future needs, he believes they can be accomplished without this particular variance. Mr. Jones added that this board is bound by the requirements of the Ordinance. The applicant is almost asking for a 30% variance, which is a rather substantial request. Therefore, he supports the motion. Chairman Lillie agreed, and indicated his support of the motion as well.

Mr. Viviano asked about tabling variance (A) for a month. The chairman indicated Mr. Viviano could table his request, but only if he comes back with something new. Just adding more information will not be a reason to return. Health reasons are not one of the criteria for practical difficulty. A lesser amount of variance would not have to be re-advertised. Mr. Miller noted the amount of this variance is a concern for the board.

Mr. Miller believed that working with the geometry of the site, and the use of cantilevered bays or some more clever use of the massing, the applicant should be able to achieve what he needs on the interior with being less imposing on the backyard. Therefore, he withdrew his motion with respect to variance (A).

Motion by Mr. Jones

Seconded by Mr. Conlin to table 444 Bryn Mawr, Appeal 13-03, variance (A) to the next regularly scheduled meeting of the BZA.

Motion carried, 6-0.

VOICE VOTE

Yeas: Jones, Conlin, Grove, Hart, Lillie, Miller

Nays: None

Absent: Hughes, Judd, Lyon

03-08-13

**33828 WOODWARD AVE.
(Appeal 13-04)**

The owner of the property known as 33828 Woodward Ave. is requesting the following variance to permit a regulated use:

- A. The owner of 33828 Woodward Ave. is requesting a dimensional variance to allow a regulated use closer than 1,000 ft. from another regulated use. Per Article 05. section 5-10 (M) of the Zoning Ordinance, regulated uses are permitted if located more than 1,000 ft. from another regulated use. The subject building is located 0 ft. from Birmingham Coins, which operates a pawn shop and is therefore a regulated use; accordingly, a variance of 1,000 ft. is requested. The applicant was granted permission to operate as a regulated use by the City Commission with the condition that they obtain a variance from the BZA for the location; obtain site plan and/or design change approval for the exterior changes that would be necessary to the building; and provide some technical data for the noise emissions to Planning Staff for approval.

This property is zoned B-2B General Business.

Mr. Hart recused himself from this appeal. Because there were just five board members left to hear their appeal, and any motion requires four affirmative votes to pass, Chairman Lillie offered the applicant the opportunity to come back at another time when more board members might be present. The applicant opted to go forward.

Discussion determined that if Ducati decided to add Harley Motorcycles to their showroom, the decibel levels would be much higher (4,000 rpm versus 7,000 rpm) and they would have to go back before the City Commission because of expanding the regulated use.

Mr. Johnson noted he thinks City Commission has determined that the regulated use section of the Ordinance needs to be revamped. He added that he does not think the City Commission had a problem with existing regulated uses being adjacent to the motorcycle dealership. Regulated uses are not of much consequence here because they are entirely different and not in competition with anything else within the 1,000 ft.

Mr. Patti Keller, Kevin Hart Associates, spoke on behalf of Charles Knoll, CK Investments, the owner of Ducati. She explained that Ducati is considered a very sophisticated, upgraded type of motorcycle. The agreement with Auto Europe is that they will still maintain a presence on Woodward Ave. and that Ducati will have their showroom on the northern portion of the building and service will be performed on the alley side. The whole purpose of bringing Ducati in is to equate to the demographics and appeal to the residents of Birmingham.

Mr. Jones observed that if it were granted, this would be the first 1,000 ft. dimensional variance for a business coming into the area, versus for a location that was simply changing a use.

Ms. Keller explained the City Commission was in favor of the regulated use because Ducati is installing a dynamometer room which is specialized for sound and exhaust control and cuts down the decibel level by 40 db. Further, a floor to ceiling wall will be added to further soundproof the room. All of that equates to a 28 db room. The sound and exhaust will travel up through the roof toward Woodward Ave., avoiding the neighborhood.

Ms. Keller submitted a letter of approval from Blossoms.

The chairman called for comments from the public at 9:15 p.m.

Mr. Curtis Wishar with Birmingham Coin and Jewelry said he spoke to the owner and is impressed with what he is bringing to the neighborhood in terms of quality. The noise issue is being addressed. Also, Mr. Wishar feels the owner is respectful of the neighborhood in terms of appropriate behavior and by trying to bring in upscale clientele.

Motion by Mr. Jones

Seconded by Ms. Grove as it relates to Appeal 13-04 to approve. His logic is going to be somewhat convoluted in the sense that it is constrained by the nature of what the statute is; the limitations within which this board can approve a variance; the fact that the City Commission has gone through a number of appeals and conferences with the petitioner; and that albeit he believes the Commission may not have had exactly a whole lot of consideration as to the “narrow concepts” of what this board is bound by.

Mr. Jones nonetheless understands and can see that his motion to approve is that it is a regulated use that is a definitional problem, and he does not see a potential problem with its location being 1 ft. from another regulated use.

Therefore he would besiegebeseech the City Commission as soon as possible to either revise the definitions and give categories as it relates to what or what not a regulated use may be, but he finds this board in a situation where the political decision he agrees with; but it was nonetheless the political decision made by the City Commission and the board is now faced with the narrow concepts of what a zoning board is supposed to do. And yet, looking at the Ordinance he thinks it is convoluted to the point that he would not believe that the petitioner should not be granted the variance, and he therefore moves for it.

Chairman Lillie indicated he would support the motion. It is his opinion that the main purpose of this ordinance is to keep the same regulated uses from being all right together.

Mr. Conlin said he would also support the motion. He feels this petitioner deserves a variance because he doesn't think the ordinance has been updated.

Mr. Miller observed it seems to him this ordinance is a safeguard against incompatible uses or uses that are incompatible with adjacent neighborhoods. He sees that is not the case here. Therefore he would also support the motion.

Mr. Jones added he takes solace in the fact that both the building official and the City Commission are, in fact, reviewing the existence of this ordinance and he has faith that it will be cleaned up so that the board will not be faced with this kind of circumstance again.

Motion carried, 5-0.

VOICE VOTE

Yeas: Jones, Grove, Conlin, Lillie, Miller

Nays: None

Recused: Hart

Absent: Hughes, Judd, Lyon

CORRESPONDENCE (none)

03-09-13

GENERAL BUSINESS (not discussed)

03-10-13

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 9:35.

Bruce R. Johnson, Building Official