

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS  
TUESDAY, JUNE 11, 2013**

Commission Room of the Municipal Building  
151 Martin, Birmingham, Michigan

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Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, June 11, 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:** Matthew Baka, Sr. Planner  
Ken Cooper, Asst. Building Official  
Bruce Johnson, Building Official  
Carole Salutes, Recording Secretary

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.

**T# 06-28-13**

**APPROVAL OF THE MINUTES OF THE BZA MEETING OF MAY 14, 2013**

**Motion by Mr. Judd**

**Seconded by Mr. Jones to approve the Minutes of the BZA meeting of May 14, 2013 as presented.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

Absent: None

**T# 06-29-13**

**2295 E. LINCOLN  
(Appeal 13-13)**

The owner of the property known as 2295 Lincoln is requesting the following dimensional variance for 27 spaces:

- A. A dimensional variance for 27 parking spaces. The proposed uses on this site require 84 off-street parking spaces with 43 provided. On June 3, 2013 the applicant was granted permission by the City Commission to count 14 abutting on-street spaces towards their parking requirement for a total of 57 spaces provided. Therefore, a variance of 27 parking spaces is requested.

This property is zoned MX Mixed Use.

Mr. Baka recalled that in 2006 this property came for a parking variance and it was stated in the minutes of the meeting that if the use were to change the applicant would have to return to the board for a renewed variance. Now the Quality Coach Collision tenant is expanding their footprint within this building. The Planning Dept. has taken into consideration the unoccupied portion of the building. If the empty space turns out to be a higher use than anticipated, the property owner would have to come back before this board.

The applicant is not allowed to store cars in the parking spaces, so they have an agreement with Bob Adams Towing to store their cars.

Mr. Luke Orlins, Project Architect, Carnovale Associates, Inc., spoke on behalf of the property owner, Mr. Don Bailey, the property owner; Mr. Jeff Conroy, the owner of Quality Coach; and Mr. Terry Adams, the owner of Bob Adams Towing. By consolidating his business to 2295, E. Lincoln, Mr. Conroy will be able to store all of his vehicles inside out of view and reduce the impact on the neighborhood. If there is an overflow of damaged vehicles, Bob Adams Towing will store them. The insurance for Quality Coach does not allow any storing of vehicles outside of a secure area.

The chairman called for comments from the audience at 8:23 p.m.

Mr. Terry Adams, the owner of Bob Adams Towing, confirmed that his property and facility are not for sale.

**Motion by Mr. Lyon**

**Seconded by Mr. Jones in regard to 2295 Lincoln, Appeal 13-13, to approve the variance as advertised. He believes in this case strict compliance with the zoning rules would be unduly burdensome. The appellant seeks a variance of 27 parking spaces in order to put a bump shop/collision shop/auto body repair into an**

**existing building. He believes this does substantial justice to the appellant and the surrounding area. The bump shop, as discussed, does not really have intensive parking usage and the parking on site is probably more than adequate. However the zoning rule requires substantially more than what would normally be thought of for a bump shop.**

**Mr. Lyon doesn't believe this is self-created in that the appellant did not build the building and is just moving into it. He would tie the motion to the plans as presented and the appellant's promises to abide by the local ordinances, regulations, and laws existing now and in the future.**

**Amended by Mr. Jones and accepted that there will not be any outside storage of vehicles.**

Mr. Lyon noted that a variance on this property for more parking spaces was granted in 2006.

Mr. Conlin observed this represents an improvement because cars can be stored inside versus outside.

**Motion carried, 7-0.**

ROLLCALL VOTE

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

Nays: None

Absent: None

**T# 06-30-13**

**1323 HUMPHREY  
(Appeal 13-14)**

The owner of the property known as 1323 Humphrey requests the following variance:

- A. Chapter 26, Article 2, Section 2.09. The owner of 1323 Humphrey is requesting a variance to remove the principal structure and leave an accessory structure on the lot while a new house is built. The Zoning Ordinance requires that an accessory structure is permitted as long as it is accessory to a principal structure. Therefore, a variance is requested to have an accessory structure without a principal structure on the lot for a specified period of time.

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

The chairman commented this request is unusual and doesn't fit a true dimensional variance.

Mr. Cooper said the garage was built in 2002 and the petitioner wants to save it because it is in good condition.

Mr. Luke Micakovic with ICON Restoration & Construction, LLC said they have already submitted construction plans. It was discussed that six months would be a reasonable period of time to complete the rough framing of a house on this lot.

There were no comments from the audience on this appeal at 8:37 p.m.

**Motion by Chairman Lillie**

**Seconded by Mr. Conlin to grant the appeal for 1323 Humphrey as advertised.**

**The variance would be temporary and subject to the following conditions:**

- 1) Plans for construction of a dwelling on the property are submitted, reviewed, and approved by the City;**
- 2) A permit to demolish the existing home shall not be issued until approval of construction plans by the City;**
- 3) From the date the Demolition Permit is issued, the petitioner shall have six months to demolish the existing home and complete rough framing of a new house;**
- 4) This variance shall terminate upon the City's approval of the rough framing of the new construction or six months from the issuance of the demolition permit, whichever shall first occur; and**
- 5) The building official has discretion to extend the six month time frame stated in 3 and 4.**

**Motion carried, 7-0.**

**ROLLCALL VOTE**

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

Nays: None

Absent: None

**T# 06-31-13**

**363 GEORGE ST.  
(Appeal 13-15)**

The owner of the property known as 363 George St. requests the following variances to construct a rear yard addition:

- A. Chapter 26, Article 2, Section 2.10. The Zoning Ordinance requires that the rear yard setback be 30 ft., with 24.53 ft. existing and 24.53 ft. proposed; therefore, a variance of 5.47 ft. is requested.

- B. Chapter 26, Article 2, Section 2.10. The Zoning Ordinance requires a combined front and rear setback of 55 ft., with 47.18 ft. existing and 47.18 ft. proposed; therefore, a variance of 7.82 ft. is requested.

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

Mr. Cooper explained the petitioner needs garage space and some additional living space. They were before this board in December with a project plan but changed their mind on it.

Ms. Merrilee Reynolds, the home owner, apologized for being before the board a second time. The cost for the former project turned out to be more than they could handle, so they decided on a different plan. The proposed addition does not extend the line of the house any further back than is existing on the north side and on the south side. The lot behind is very deep and the house is far away.

Chairman Lillie asked for comments from members of the public on this appeal at 8:48 p.m.

Mr. Kent Lasson who lives on George St. spoke in support of the Reynolds' variance request.

**Motion by Mr. Jones**

**Seconded by Mr. Lyon in relation to Appeal 13-15 at 363 George St. to grant the variance as advertised. He feels that strict compliance with the Ordinance would unreasonably prevent the owner from using the property for permitted purposes.**

**He thinks that granting the variance would, in fact, do substantial justice to the other property owners in the district, as one has already said.**

**He feels this is a unique circumstance due to the size of the lot and he doesn't believe the problem is, in fact, self-created. The motion is tied to the plans as presented.**

Chairman Lillie noted for the record that the petitioner is not extending the house beyond the existing rear and front planes of the existing house.

**Motion carried, 7-0.**

ROLLCALL VOTE

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

Nays: None

Absent: None

**1999 HAZEL  
(Appeal 13-16)**

The owner of the property known as 1999 Hazel requests the following variance:

- A. Chapter 26, Article 4, Section 4.69 C. The owner of 1999 Hazel is requesting a variance to construct a new residential structure. The Zoning Ordinance requires the distance between principal residential structures be 14 ft. for the width of this lot. A distance of 11.01 ft. is being proposed; therefore, a variance of 2.99 ft. is being requested.

The petitioner was not present for their hearing.

**Motion by Mr. Jones  
Seconded by Mr. Lyon to table this appeal to the next regularly scheduled BZA meeting.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

Absent: None

**T# 06-33-13**

**1360 NORTHLAWN  
(Appeal 13-17)**

The owner of the property known as 1360 Northlawn requests the following variances to construct an addition:

- A. Chapter 26, Article 2, Section 2.08. The Zoning Ordinance requires that the distance between principal residential structures is 20 ft. for the width of this lot, with 19.94 ft. existing and 9.8 ft proposed; therefore, a variance of 10.2 ft. is being requested.
- B. Chapter 26, Article 4, Section 4.69 c. The Zoning Ordinance requires the combined side yard setbacks for the width of this lot to be 20 ft., with 25.27 ft. existing and 15.13 ft. being proposed, a variance of 4.87 ft. is being requested.

Clarification: The variances were advertised as noted above. Since the public notice was advertised, the applicant's surveyor and architect has determined the width at the required front setback line for this lot is 77 ft. The variances were noticed with the required front setback line for this lot at 80 ft. Therefore, the variances being requested are less than were advertised.

Variance (A): The Zoning Ordinance requires that the distance between principal residential structures be 19.25 ft. for the width of this lot, with 19.94 ft. existing and 9.8 ft. proposed; therefore, a variance of 9.45 ft. is being requested.

Variance (B): The Zoning Ordinance requires the combined side yard setbacks for the width of this lot to be 19.25 ft., with 25.27 ft. existing and 15.13 ft. being proposed; therefore, a variance of 4.12 ft. is being requested.

This property is zoned R-2 Single-Family Residential.

Mr. Cooper explained the owners are planning construction on the west side of their home which would include a new garage and expanding some second-floor space above.

Chairman Lillie determined the front of the house is non-conforming. In response to Chairman Lillie, Mr. Cooper indicated the existing house comes pretty close to complying with the required 20 percent side yard setbacks. In a reply to Mr. Jones, Mr. Cooper did not believe any records within the City talk about any encroachment by the house to the west. Both houses appear to have been there for a long time. The petitioners told the Building Dept. that landscapers and contractors use the side of their house to gain access to some rear yards in the neighborhood because of the severe sloping between the rear yards and the Rouge River. The City is not aware of any easement.

Rick Rattner, Attorney, 380 N. Old Woodward Ave., was present with Mr. Brian Howard, Architect; and the petitioners, Sean and Suhee Kurschat.

Mr. Rattner showed a PowerPoint. The area along the west is almost unworkable for a garage due to existing conditions. The house was constructed in 1939 and has fallen into total disrepair and the petitioner desires to rehabilitate it. Mr. Rattner thought that strict application of the Ordinance would prevent the owner from using the house for a permitted purpose, which is for his residence.

Mr. Rattner indicated there is a petition signed by several neighbors in favor of these variances. Chairman Lillie established that the fact a lot of neighbors are in favor does not constitute a practical difficulty.

Mr. Rattner went on to explain the residence on the west built closer than 5 ft. to the lot line and their wing wall encroaches over the petitioner's driveway. Therefore, the current residence is hindered by the close proximity of the neighbors.

The literal enforcement of the Chapter will result in unnecessary hardship, which is due to the unusual physical nature of this property. In order to bring the house up to date they think this particular design is the least they can do to make the house livable. The variances requested are the minimum necessary to install the garage. The second floor

is stepped back seven or eight feet from the property line. The encroachment of the neighbor to the west is resolved by the relocation of the garage.

The variances are not contrary to the spirit and intent of the Ordinance or health, safety, and welfare of the community. Mr. Kurschat has already done work on the retaining wall and plans additional work relative to the drainage in this environmentally sensitive area. The refurbished house will be attractive and compatible with the neighborhood.

Lastly they think that granting the variances will result in substantial justice to the property owner. It will benefit the community to get the variances granted.

Chairman Lillie observed that the petitioner can use the house without getting the variance. Further, he knows of only one situation in the City where the minimum distance between houses is only 10 ft. If the variance were granted, there would not be enough room on the side to maintain the house. Mr. Rattner answered that because of the difference in elevation in this case, the minimum 10 ft. between houses would not block off light and air.

In response to Mr. Lyon, Mr. Brian Howard described why it works architecturally to place a mudroom next to the garage. There are numerous levels to the house and they are saving it from the standpoint of form and original character. Board members suggested they could expand on the other side in order to minimize being so tight on the west side of the house. A tandem garage was also suggested, but Mr. Howard did not think that makes sense. Mr. Lyon observed that at 80 ft., this is not necessarily a narrow lot. Mr. Howard said the only opportunity they have to save the structure is to go to the west because the slope locks them into position.

Mr. Conlin thought the petitioner is asking for too much house on that lot. In his mind the hardship is self-created.

Mr. Judd asked what they have to show that drainage down the hill will be dramatically improved. Mr. Rattner said drainage has to be better because it is not controlled now. The construction and engineering drawings will be reviewed to make sure that happens.

Mr. Miller observed that a tandem garage is workable here, but less convenient. He had concern about the addition of the mudroom and the seeming absolute need for a side-by-side garage. It seems possible to push even the side-by-side garage 6 ft. over.

Mark R. Dundon, Esq., from the Daly Law Firm, spoke to represent the neighbors to the west, Mr. and Mrs. Jeremy Ball. His overall perspective was that the term "necessity" is being used to justify a three-story house. The Deed restriction allows a minimum of 15 ft. between houses. This will be substantially closer. Further, the proposed two-car garage also goes up. He doesn't understand why this is the only solution. Substantial justice would not be accorded to his clients. The Balls have attempted to be conciliatory and have stated they would be amenable to the Kurshats moving 5 ft. closer to their home; not the 10 ft. that is being requested.



Mr. Conlin stated that the petitioner has no choice but to allow proper drainage. If they do something that causes damage they must take care of it. Mr. Johnson said if the variances were granted and construction documents were submitted, the City will require more intensive engineering to make sure that it can be built and provides protection to the adjoining property owners.

**Motion by Mr. Lyon**

**Seconded by Mr. Judd in regard to 1360 Northlawn, Appeal 13-17, to deny the variance as advertised. There are four points that need to be proven here. The first is that strict compliance would be unduly burdensome. He thinks there has been enough discussion to show that there are alternatives to using the house as-is. The house has been used as-is for a number of years. Therefore, he doesn't think that point has been proven.**

**Second is that this is the minimal variance required. He doesn't believe that has been proven either. Third is this does substantial justice to the appellant and to the surrounding homeowners. The appellant can use the residence as intended now. The appellant could potentially tear it down and build a new one. There are a lot of things that can be done without a variance.**

**Fourth, Mr. Lyon thinks it does substantial injustice to the neighbors to move within 5 ft. of the lot line on a very steep grade in Birmingham. Therefore, he moves to deny the variance.**

Mr. Conlin pointed out there are many more options for that property that still exist, but maybe not supporting the square footage of the particular plan that has been put forth.

Mr. Jones said the uniqueness of the property itself almost works against this application to the extent there are other alternatives. That is why he will support the motion.

Mr. Judd indicated he will support the motion because of the self-created problem in this case. When the petitioner purchased this property the challenges were abundantly obvious.

Mr. Lyon noted that when all is said and done, this is just too much house, too close. It does not reach the standard of requiring a substantial variance.

Mr. Hughes said the bottom line is there has been insufficient evidence to support the requested variances. There are numerous problems with this lot. Major consideration has to be given to the ground water discharge that will result from any additional construction on this site.

Chairman Lillie did not feel the petitioner was able to show a practical difficulty.

**Motion to deny carried, 7-0.**

ROLLCALL VOTE

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

Nays: None

Absent: None

**T# 06-34-13**

**CORRESPONDENCE** (none)

**T# 06-35-13**

**GENERAL BUSINESS**

- Building Official Report: Fence extension at 1165 Southfield Rd.

The chairman explained that if the board agrees with the building official's analysis of the Ordinance, the person involved is not required to file for a variance. Or, if the board disagrees, the person has to petition for a variance.

Mr. Johnson said in this case the fence is legal, non-conforming and it makes sense to extend it behind what has already been approved. He expressed his opinion that in the Ordinance a fence needs to be moved to the definition of a structure, and structures also need to be regulated under nonconformities.

**Motion by Mr. Lillie**

**Seconded by Mr. Miller to approve Mr. Johnson's interpretation that in the situation of this fence the person asking to install the fence does not need to request a variance, and that the BZA requests the Planning Board to take a look at the Ordinance in question and revise it to clarify the anomalies.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

Absent: None

- The problem with 1323 Humphrey

Chairman Lillie did not think the BZA should have to get into this issue. It should be an administrative function. The building plans should be approved before a demo permit is issued. Mr. Johnson said the concern is the department issuing a permit that will allow something the Ordinance doesn't, even for a short period of time. However, if they issue the permits at the same time as part of the same project and the applicant is

moving forward, the project wouldn't be out of conformance until it fell apart. Therefore, the City will work on a Letter of Understanding for the applicant to sign. That process will require a ten thousand dollar (\$10,000) bond.

**T# 06-36-13**

**ADJOURNMENT**

No further business being evident, the board members passed a motion to adjourn at 10:30 p.m.

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Bruce R. Johnson, Building Official