

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, AUGUST 13, 2013**

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

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, August 13, 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: 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# 08-45-13

APPROVAL OF THE MINUTES OF THE BZA MEETING OF JULY 9, 2013

Motion by Mr. Judd

Seconded by Mr. Lyon to approve the Minutes of the BZA meeting of July 9, 2013 as presented.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

T# 08-46-13

**323 GREENWOOD AVE.
(Appeal 13-21)**

The owners of the property known as 323 Greenwood Ave. request the following variance to allow the property owner known as 319 Greenwood Ave. to construct a new driveway:

- A. Chapter 26, Article 4, Section 4.31 (A. 1.) requires that a minimum of 65% of the front open space is free of paved surfaces, with 48.35% existing and 48.35% proposed; therefore, a variance of 16.65% is requested.

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

Mr. Cooper explained the since January 1957 the owners of 323 and 319 Greenwood have had a shared Driveway Easement Agreement along their shared property line in order to access their detached garages in each rear yard. In August 1998 the home and garage was demolished on 323 Greenwood. The current home with an attached front loading garage was then constructed with its own driveway. The variance request allows the existing driveway on 319 Greenwood to be replaced as it currently exists and allows the driveway on 323 Greenwood to be replaced and slightly reconfigured, but adding no more open space coverage than currently exists.

Chairman Lillie noted that the size of the driveway is being slightly reduced in the rear.

Mr. Patrick Funke, Michael J. Dul & Associates, Inc., Landscape Architects, spoke on behalf of the petitioners, Sam and Laura Fogleman at 323 Greenwood, and for John Ross and Lisa Martin at 319 Greenwood. He noted it is very difficult to maintain the City's 65% open space requirement on a 40 ft. wide lot. They explored different options to come within the Ordinance requirements but got nowhere. There is an existing utility pole which DTE says cannot be moved.

Their unique situation is the utility pole, plus the 1957 shared Easement Agreement which runs the entire length of the properties, back to front. Their intent this evening is simply to improve the driveway by replacing the deteriorated asphalt with exposed aggregate concrete and acid edged concrete. Further, they propose to improve the drainage by installing a curb that pitches water away from 323 Greenwood and down to hit the City street. That will eliminate the drainage trespass from 319 onto 323. Also, if they change the walkway to 3 ft. instead of 5 ft., it will eliminate the necessity for the Foglemans to back out into the curb every day. He went on to confirm for Chairman Lillie that they are adding a little more open space in the rear.

There was no one in the audience who wished to comment on this petition at 8:28 p.m.

Motion by Mr. Judd

Seconded by Mr. Hughes in regard to Appeal 13-21, 323 Greenwood, to approve the variance as advertised. In doing so, Mr. Judd notes the peculiar circumstances with this piece of property. As we all are aware, there are standards for practical difficulty, one of which is whether strict compliance would unreasonably prevent the owner from using the property for a permitted purpose, or be unnecessarily burdensome.

In this case, while these are points that he has often spoken in favor of, eliminating impervious surface and doing our best to unify the property, this is a very unusual circumstance in the case of first impression, in that we have a shared driveway. While shared driveways are not in and of themselves that unusual in a town the age of Birmingham, this one is a strange creature due to a 1957 reciprocal Easement Agreement that was executed, which brings us to where we are.

Mr. Judd was surprised the board was dealing with the piece of property at 319 Greenwood and the variance would be for 323 Greenwood, which shows how unusual this case is.

He also feels that granting this variance would do substantial justice to the applicant as well as to the surrounding property owners. Certainly no one would be adversely affected by this. It is really only the two property owners and as previously noted, he thinks it would be unreasonable and unnecessary to hold them to strict compliance.

Whether the plight of the property owner is due to unique circumstances, well, it definitely is in that this is due to the Agreement. And, the one area that might give us some problems is whether or not this is self-created. But, he thinks it would be rather Draconian to go back to 1957, although he is sure that Mr. Hughes was part of this. Mr. Judd also notes there is a mitigation involved here, a reduction of the drive surface in the back area of the property, and it has also been pointed out that looked at as a whole, the two front yards as a whole would comply.

So, taking all into account, once again he would approve the variance as advertised and tied to the plans. (Apologies to Mr. Hughes)

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

T# 08-47-13

**1240 E. LINCOLN ST.
(Appeal 13-22)**

The owners of the property known as 1240 E. Lincoln St. request the following variance to construct a new detached accessory structure in the rear yard open space:

- A. Chapter 26, Article 4, Section 4.03 (B) requires the accessory structure be a minimum of the sum of the required side setbacks as determined in Section 4.67 (C) from a principal structure on an adjoining lot. The required setback for the proposed accessory structure on this lot is 14.0 ft. from a principal structure on the adjoining lot. The applicant is proposing 10.5 ft. Therefore, a variance of 3.5 ft. is requested.

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

This property was approved at the May 14, 2013 regular BZA meeting for distance between principal structures for construction of a new house. However, staff did not notice that it was closer than 14 ft. to the house next door. Accordingly, the property owner is back for a determination on the proposed garage.

Mr. Cooper explained there is an existing garage on the westerly lot line that is further from the neighboring house; however, it is back in the utility easement. Bringing forward the new garage to get out of the utility easement and meeting all of the other setback requirements, the best they can do is the 10.5 ft. If the variance is granted it will improve an existing condition because the new garage will meet the western setback requirement of at least 3 ft. and it will be out of the easement for above ground utilities. In response to Mr. Judd, Mr. Cooper said the new garage is generally similar in size to the existing garage. The problem is caused by moving the new garage forward to get it out of the utility easement.

Mr. Johnson explained for Mr. Conlin that he discussed with the owner that he should keep the distance from the lot line consistent with what was existing. Where the garage could be 3 ft. from the side property line, it is proposed to be 4 ft., so there was some mitigation.

Mr. Habib Madrati, the architect, spoke for the property owner, Mr. Moez Mansoor, who was present. Mr. Madrati presented a sketch that showed if they were to place the garage 14 ft. away from the neighbor it would be almost impossible to back out. They have made the garage 19 ft. clear when normally 20 ft. is the standard. He believes the hardship is self-evident.

The chairman called for comments from the audience at 8:43 p.m.

Mr. Richard Murray, 1228 E. Lincoln, spoke in favor of granting the variance. The current garage is essentially a tear down.

Motion by Mr. Miller

Seconded by Mr. Lyon regarding Appeal 13-22 at 1240 E. Lincoln St. He would move to approve the appeal. He believes this is certainly a unique circumstance due to the easement in the back. With respect to the location of the existing garage, the new garage improves that. So Mr. Miller thinks they are doing substantial justice obviously to the property owner and to the neighbor.

Strict compliance would make locating the garage in the back quite difficult, so Mr. Miller believes that it would become burdensome to the owner to have to meet strict compliance with the Ordinance. So, for those reasons, again he would move to approve the appeal, tied to the submitted plans.

Mr. Jones noted that the applicant has attempted to mitigate the need for the variance by proposing a garage that is not 20 ft. x 20 ft.; but is, in fact, 19 ft. x 19 ft.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

T# 08-48-13

**1524 HAYNES ST.
(Appeal 13-19)**

The owners of the property known as 1525 Haynes St. request the following variance to construct an emergency egress window well:

- A. Chapter 26, Article 4, Section 4.30 (C. 4.) allows window wells to project into the required side yard setback a maximum of 3.0 ft. measured to the inside of the well opening. The lot's westerly side yard setback is required to be 5.0 ft., with 4.5 ft. existing; therefore, a variance of 0.5 ft. is requested.

The measurement in both the Ordinance and Code is to the interior dimension of the window well.

One letter has been received to the effect that any improvement is fine.

Mr. Johnson explained the property owner, Mr. Joe Valentine, recently got married and wants to improve the basement area of his house and add a bathroom. Next year he plans an addition off the rear of the house. Egress window wells are not permitted in the front open space so there wouldn't be room in the front for the window well. On the east side is the driveway right next to the house. Therefore, the only spot to put the window well is on the west side of the house.

Mr. Johnson and Mr. Valentine explored different types of egress window wells. They found a pre-manufactured unit that has an outside wall that is only a couple of inches wide. With this type of window well Mr. Valentine will not be closer to his neighbor's property line than if the house was conforming and he built a typical window well out of either masonry or concrete poured walls. In that case the total projection could be up to 48 to 50 in. The projection of this pre-manufactured unit ends up to be about 42 in.

Mr. Conlin received confirmation that the pre-fabricated unit that is being considered meets the minimum requirement of 36 in. for inside dimension. The egress well will be about 1.5 ft. from the neighbor's driveway and sticks up about 3 to 4 in.

Mr. Miller noticed a 9 ft. stretch in the back that is adjacent to the driveway. Mr. Johnson explained that currently there is a lot of mechanical equipment in that area that would require quite a bit of inside work if a window well was placed there.

Motion by Mr. Lyon

Seconded by Mr. Jones regarding Appeal 13-23, 1524 Haynes St. to grant the variance as advertised. The appellant seeks a variance under Chapter 26, Article 4, Section 4.30 (C. 4.) to construct an egress window in the basement that will project 6 in. further into the required side yard setback.

Mr. Lyon believes that strict compliance in this case would be unduly burdensome given that there is really no other place to put this required egress window.

He also finds that it does substantial justice to the homeowner. It allows him to use the basement in a much safer, modern way. It does substantial justice to the surrounding neighbors, in that this is a very low, just off the ground, and hard to see item. He believes this is not self-created in that the requirements for egress windows are relatively new and not even thought of back when this house was built. He would tie the motion to the plans as indicated tonight.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

T# 08-49-13

CORRESPONDENCE (none)

T# 08-50-13

GENERAL BUSINESS (none)

T# 08-51-13

ADJOURNMENT

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

Bruce R. Johnson, Building Official