

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, SEPTEMBER 10, 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, September 10, 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. There is one land use variance called for this evening. Also, appeals are heard by the board as far as interpretations or rulings. There are no interpretations called for this evening. Four affirmative votes are required to reverse an interpretation or ruling.

T# 09-52-13

APPROVAL OF THE MINUTES OF THE BZA MEETING OF AUGUST 13, 2013

Motion by Mr. Judd

Seconded by Mr. Jones to approve the Minutes of the BZA meeting of August 13, 2013 as presented.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

T# 09-53-13

**1992 HOLLAND
(Appeal 13-24)**

The owners of the property known as 1992 Holland request the following variance to allow the construction of a new house and detached garage:

- A. Chapter 26, Article 4, Section 4.69 requires the distance between principal residential buildings to be 14 ft. for this lot, with 11.30 ft. proposed. Therefore, a variance of 2.70 ft. is requested.

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Staff notes: The owner is proposing to construct a new house with a detached garage on this lot. The owner is proposing to have a 10 ft. setback from the easterly side property line which is the nearest the home can be because this is a corner lot. The existing house to the west of this lot is 5.50 ft. from the shared property line. The owner is proposing the new house be 24 ft. in width to minimize the variance request.

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

Mr. Cooper said the petitioner will have 5.85 ft. for his side setback. He meets all the Ordinance requirements except for the distance between principal structures. That problem is caused because the second lot in from the house favors the easterly side of the lot.

Mr. Rick Merlini, the property owner, said his practical difficulty is that there was a different set of ordinances governing the distance between houses when the subdivision was platted. The home to his west is non-conforming, and if he were to conform his house would be 18 ft. wide. He reduced his normal house width of 26 ft. down to 24 ft. His proposal increases the distance between the two houses.

There were no comments from the audience on this appeal at 8:10 p.m.

Motion by Mr. Lyon

Seconded by Mr. Jones in regard to Appeal 13-24, 1992 Holland, to approve the variance as advertised. The appellant seeks a variance under Chapter 26, Article 4, Section 4.69 for the minimum distance between buildings of 14 ft. with 11.30 ft. proposed. Therefore, a variance of 2.70 ft. is requested.

Mr. Lyon believes that strict compliance would be unduly burdensome in that this is a 10-5, 5-9 situation because this is a corner lot. He does not believe this is self-created, in that the Ordinance was passed after the subdivision was platted. He believes requiring a 10 ft. side yard setback without a 9 ft. setback on the other side is unduly burdensome and limits the house to about 21 ft., which is impractical.

Granting this variance, he believes. does substantial justice to both the homeowner and the neighbors, given that the property owner has increased the distance between buildings with his new proposed building from where the existing buildings are now approximately 1 ft. He tied the motion to the plans as presented.

Mr. Lyon added there is always one odd man out on the block with the 40 ft. lots. He thinks the board will see quite a few of these as newer houses are built.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

T# 09-54-13

**390 GOLFOVIEW
(Appeal 13-25)**

The owners of the property known as 390 Golfview request the following three variances to allow the construction of a second level addition:

- A. Chapter 26, Article 2, Section 2.06 requires a front yard setback of 27.85 ft. for this lot, with 24.75 ft. existing and 24.75 ft. proposed. Therefore, a variance of 3.10 ft. is requested.
- B. Chapter 26, Article 2, Section 2.06 requires a rear yard setback of 30 ft. for this lot, with 15.51 ft. existing and 15.51 ft. proposed. Therefore, a variance of 14.49 ft. is requested.
- C. Chapter 26, Article 2, Section 2.06 requires a combined front and rear setback of 55 ft. for this lot, with 40.26 ft. existing and 40.26 ft. proposed. Therefore, a variance of 14.74 ft. is requested.

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Staff notes: This home has an existing second floor living space that consists of two bedrooms, two bathrooms, and a loft area. The applicant is proposing to remove the existing second floor space and reconfigure as proposed.

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

Mr. Cooper explained this lot has plenty of width but is lacking in depth. The petitioner is proposing to build over the existing plane of the home. Because of the short front and

rear yards a rear yard setback variance is needed to build the second floor addition. The combined front and rear setback requirement also causes a problem for the owner.

Mr. Conlin observed this is a desirable neighborhood and there will be a lot of pressure on the existing homes to expand.

Mr. Miller said the house to the rear will be the most affected with the 15.51 ft. variance. He noticed the back of the house is very plain, without much articulation. Mr. Cooper responded he has not talked with the owner about that, but his opinion is that it resembles other additions in the area where everyone goes for curb appeal and the sides and back are more plain.

Mr. Matthew Rudnick, the home owner, was present along with his wife, Rebecca. Mr. Rudnick indicated they intend to modify the second story so it contains four bedrooms and is more family friendly. The new elevation will get rid of the flat roof in the rear section. He passed along pictures which revealed that trees with dense foliage separate their home from the home to the rear on Argyle.

There was no one in the audience who wished to comment on this appeal at 8:23 p.m.

Motion by Mr. Hughes

Seconded by Mr. Jones in the matter of 390 Golfview, Appeal 13-25, that the variances as requested and as described in the Notice be approved. It seems to him that the irregularity of the lot and the site is nothing that is self-created. It is practically impossible to do anything other than what the petitioner has proposed.

He thinks this will enhance the utility of the property and is consistent with development in the area. It does substantial justice to the individual applicant in this appeal. He moved that the motion is supported by the plans and drawings which have been submitted and shall be part of this motion.

Mr. Jones commented on the uniqueness of the lot.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

T# 09-55-13

547 N. OLD WOODWARD AVE.

Luxe Bistro

(Appeal 13-27)

The owners of the property known as 547 N. Old Woodward Ave. request the following variance to allow outdoor dining on a property zoned R-6, Multi-Family Residential.

- A. Article 02, Section 2.15 permitted uses in the R-6 Zoning District. 547 N. Old Woodward Ave is located in the R-6 Zoning District. The owners are requesting that they be permitted to allow the neighboring bistro establishment to construct an outdoor dining patio on their property. Outdoor dining is permitted in the abutting O-2 Zone where the bistro is located and not permitted in the R-6 Zoning District; therefore, a use variance is requested.

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Staff notes: The owners are proposing to allow the construction of an outdoor patio on their property to be used by the Luxe Bistro, which is directly abutting to the south. The owners have agreed to lease the property to Luxe Bistro. Luxe is pursuing the agreement because they have an extremely limited amount of sidewalk space for outdoor dining and the angled parking in front of the restaurant is not suitable for an on-street deck. The proposed patio would be enclosed with a CMU wall and covered with a canvas canopy. Landscaping and lighting are also proposed.

This property is zoned R-6 Multi-Family Residential.

In response to the chairman, Mr. Baka advised that the petitioner on this appeal is Luxe Bistro. The application was signed by the property owner, Hickory Hills Condominiums, Maria A. Gustinger. He was under the impression that someone from the Condominium Assoc. would be present for this hearing.

Several board members agreed it appears that the Condominium Assoc. is involved in the variance request, but it needs to be clear. Mr. Lyon said the question is whether the people present this evening from Luxe Bistro have authority to represent the condominium property owners and request a variance. He believed a Condominium Assoc. member needs to appear before the BZA and provide a Certified Board Resolution from the Association authorizing him/her to act on the Association's behalf.

Motion by Mr. Lyon

Seconded by Mr. Conlin in respect to Appeal 13-27, 547 N. Old Woodward Ave., Luxe Bistro, to adjourn this to the next regularly scheduled meeting and request that the property owner or a duly authorized representative of the property owner with a Certified Board Resolution come forward and make the case.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

It was agreed that the board could make it part of their Rules of Procedure in the case of an appeal from a condominium owner to require the Exhibit B Drawings ~~which show what the following documents have said: Exhibit A, Condominium By-Laws, that say how it operates; and the Master Deed that describes what the place is to the Master Deed which show the units, the common elements, and the limited common elements.~~

In the case of an appeal by an entity, the BZA will need a Board Resolution. In the case of an LLC, an authorization will be needed from the manager or a member.

Mr. Johnson agreed to draft a paragraph to this effect and add it to the agenda for the next meeting.

T# 09-56-13

CORRESPONDENCE (none)

T# 09-57-13

GENERAL BUSINESS

Mr. Bedros Bedian, the property owner of 261-275 E. Maple Rd. said he wants to add two condominium units on the top of his building. Parking must be within 300 ft. and it is 350 ft. away. He did not want to spend the money for drawings to get Planning Board approval and then come before this board for a variance just to have his appeal denied over 50 ft. Chairman Lillie advised that he must follow procedure laid out in the Zoning Ordinance. Mr. Jones added this board does not give advisory opinions.

Rules of Procedure Discussion, Article 1 (B) Meeting Start Time:

Mr. Johnson said he would like to be consistent with other boards and commissions with a start time of 7:30 p.m.

Motion by Mr. Judd

Seconded by Mr. Hughes to adopt the 7:30 p.m. start time effective January 1, 2014.

Mr. Lyon did not agree with moving the start time up 7:30 because the members may not have a chance to have dinner prior to the meeting. Further, he didn't believe the board would adjourn any earlier.

Motion carried, 5-2.

VOICE VOTE

Yeas: Judd, Hughes, Jones, Judd, Lillie

Nays: Lyon, Miller

Absent: None

T# 09-58-13

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 9:05 p.m.

Bruce R. Johnson, Building Official