

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, DECEMBER 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, December 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: 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 are no land use variances called for this evening. Also, appeals are heard by the board as far as interpretations or rulings. There are no interpretations on this evening's agenda. Four affirmative votes are required to reverse an interpretation or ruling.

T# 12-65-13

APPROVAL OF THE MINUTES OF THE BZA MEETING OF OCTOBER 8, 2013

Mr. Hughes:

Page 4 - Second paragraph, third line, change "to" to "do."

Motion by Mr. Hughes

Seconded by Mr. Jones to approve the Minutes of the BZA meeting of October 8, 2013 with the correction.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None
Absent: None

T# 12-66-13

**494 PLEASANT
(Appeal 13-29)**

The owners of the property known as 494 Pleasant request the following two variances to allow for the construction of a new home with an attached garage:

- A. Article 2, Section 2.04 of the Zoning Ordinance requires a front yard setback of 56.40 ft. for this lot; with 38.70 ft. proposed. Therefore, a variance of 17.70 ft. is requested.
- B. Article 4, Section 4.30, C, 1 of the Zoning ordinance allows a front porch and steps to project up to 10 ft. into the required front open space for this lot, with 7 ft. proposed. Therefore, a variance of 14.70 ft. is requested.

Staff notes: The Ordinance requires the front open space setback for this lot be the average of homes within 200 ft. to the north and south of this lot. That average includes six existing homes, three to the north and three to the south. Four of the six homes have similar front yard setbacks that average to 38.95 ft. However, two of the homes to the north have a front yard setback average of 91.30 ft. These two homes have much deeper lots (400 ft.) than the adjoining lots (130 ft.) which created the setback requirement for the subject lot and were constructed in 2000 and 2003. The owners of these homes placed the front setbacks much further back than the minimum required by the Ordinance. These two lots have front yard setbacks of 90.40 and 92.20 ft.

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

One letter has been received from the resident at 480 Pleasant expressing no objection to the variance request.

Mr. Miller said more visual information showing all of the lots in consideration when calculating the front setbacks would have been helpful. Mr. Cooper established that the setbacks of the homes within 200 ft. were listed on the drawings. Mr. Conlin added that the board normally receives illustrations with variance requests.

In response to Mr. Jones' inquiry, Mr. Cooper noted several other areas of the City where there is such a huge disparity in lot depths. These situations occur on Pleasant, Northlawn, Latham. It is not a wide spread issue throughout the City.

Mr. Judd questioned why the covered porch constitutes a practical difficulty for the petitioner. Mr. Cooper said he looked at it as a design feature of the house. The City wanted to encourage open front porches on homes and counts them as open space.

Mr. Greg Franco, Great Lakes Custom Builders, said their average front setback is in concert with the other homes that have covered porches. Their porch and steps encroach 7 ft. into the front required setback as opposed to the allowed 10 ft. extension. The houses at 426 and 400 Pleasant that are set back ~~200~~400 ft. create his practical difficulty in calculating the average front setbacks. Given the requested variance, six homes in a row would have similar front and rear yard setbacks. The practical difficulty is that the homes along the street all have covered porches and it is Great Lakes Custom Builders' intention to build a home that is consistent with the neighborhood and street.

The chairman took public comments at 8:20 p.m.

Mr. Jim Juliano, 415 Pleasant, agreed the petitioner has limited space to work with and the proposed home should line up with the other homes along the street that have short lots. Since the porch doesn't exceed the setbacks of the existing homes, he feels it should be allowed.

Motion by Mr. Lyon

Seconded by Mr. Miller with respect to Appeal 13-29, 494 Pleasant, to support the variance as advertised. He believes the appellant has established a practical difficulty in that the strict compliance with the Ordinance would be unduly burdensome.

The issue at hand here is the setbacks. There are within 200 ft. of the subject property some rather deep lots that increase the average setback significantly. The appellant has submitted plans to build a house with a covered, open front porch that complies approximately with the average of the four houses within 200 ft. that are at a reasonable setback for a lot of this depth.

Mr. Lyon believes that strict compliance would be unduly burdensome. He further believes this is not self-created. He also moves that it does substantial justice to the surrounding lots by building a house that is pretty much in line with the other ones which upholds continuity; and that they have designed a house that fits in with the rest of the surrounding neighborhood. The motion is tied to the plans as presented tonight.

Mr. Conlin announced he will support the motion. It is out of the norm for a neighborhood to be as this one is. That is why the BZA is here. He thanked the neighbor for commenting.

Mr. Jones said he also will support the motion because of the unique circumstance of having two lots that are three times the depth of the petitioner's lot. The variance will do justice to the neighborhood.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: None

T# 12-67-13

**660 EMMONS
(Appeal 13-31)**

The owners of the property known as 660 Emmons request the following variance to allow the construction of a new house and detached garage:

- A. Article 4, Section 4.69m C of the Zoning Ordinance requires the distance between principal residential buildings be 4 ft. for this lot, with 10.30 ft. existing and 11.40 ft. proposed. Therefore, a variance of 2.60 ft. is requested.

Staff notes: The owner is proposing to construct a new house with a detached garage on this lot. The proposed new house will meet all setbacks, height, and lot coverage requirements except the distance between principal structures requirement. The existing house to the west of this lot is 6.40 ft. from the shared property line. The owner is proposing the new house be 24.83 ft. in width to minimize the variance request. The existing house proposed for removal is non-conforming with deficiencies in the side yard setbacks, sum of side yard setbacks, and distance between principal structures.

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

Mr. Cooper explained for the chairman that the floor plan calls for habitable attic space. One-third of the second floor with ceiling height of 7 ft. 4 in. is allowed by the Ordinance.

Mr. Miller inquired whether the question of which side the driveway would be on was discussed with the City. Mr. Cooper replied the applicant indicated the neighbor is opposed to changing the driveway layout. He reiterated that the existing house being removed is non-conforming as to side yard setbacks, sum of side yard setbacks, and distance between principal structures. With this variance there will only be one non-conformity.

Mr. Rick Merlini, Live Well Custom Homes, said if he flipped the house, his driveway would take out the neighbor's approach on City property, which encroaches onto his property by 3 ft. That would make her driveway inaccessible.

There were no members of the public who wished to comment on this appeal at 8:37 p.m.

Motion by Mr. Lyon

Seconded by Mr. Miller in regard to Appeal 13-31, 660 Emmons, to approve the variance as advertised. The applicant looks for a variance of 2.6 ft. on the distance between principal residential structures. Mr. Lyon believes in this case strict compliance would be unduly burdensome due to the unique circumstances of this lot, in that the house next door is non-conforming. Building a house here is our typical 9-5, 9-5, 5-9 problem, in that along the block someone on these narrow lots will have two houses somewhat closer than the minimum required by the Zoning Ordinance.

Further, he believes this is unique. It does substantial justice to the surrounding neighbors, and the appellant has let us know that the next door neighbor really doesn't want a driveway on their side, and therefore it pretty much forces the appellant into this appeal. The motion is tied to the plans as presented.

Mr. Jones said he will support the motion. He feels it would cause problems to the neighborhood if the board did not grant the variance and ask the petitioner to flip the house.

Chairman Lillie observed that no matter whether or not the board grants the variance the house will be the same size.

Mr. Conlin had a problem with granting a variance in order to accommodate a neighbor. That crosses a line the board has never crossed before. However, he feels comfortable with the definition of practical difficulty.

Mr. Lyon said if the variance is not granted and the house is flipped, the next door neighbor will need a variance to re-build their house. Eventually that will happen in this neighborhood. Granting the variance will pre-empt that and keep the neighbor happy.

Mr. Judd commented this board is allowed to regard each and every case from whatever it likes. In this instance he feels comfortable supporting the motion.

Mr. Lyon thought that granting the variance does substantial justice to the surrounding neighborhood.

Mr. Miller pointed out this is a grey area. No matter what, there will be non-conformity.

ROLLCALL VOTE

Yeas: Lyon, Miller, Hughes, Jones, Judd

Nays: Conlin, Lillie

Absent: None

Motion carried, 5-2.

**1935 COLE
(Appeal 13-32)**

The owners of the property known as 1935 Cole request the following variance to allow the construction of a new house and detached garage:

- A. Article 4, Section 4.69, C of the Zoning Ordinance requires the distance between principal residential buildings be 14 ft. for this lot, with 11.66 ft. existing and 12.30 ft. proposed. Therefore, a variance of 1.70 ft. is requested.

Staff notes: The owner is proposing to construct a new house with a detached garage on this lot. The proposed new house will meet all setbacks, height, and lot coverage requirements except the distance between principal structures requirement. The existing house to the east of this lot is 2.10 ft. from the shared property line. The owner is proposing the new house be 24.83 ft. in width to minimize the variance request. The existing house proposed for removal is non-conforming with deficiencies in side yard setback, sum of side yard setbacks, and distance between principal structures.

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

Mr. Cooper pointed out the house being removed has multiple non-conformities.

Mr. Rick Merlini, Live Well Custom Homes, noted that granting the variance will increase the existing side yards.

No one from the public wished to comment on this appeal at 8:55 p.m.

Motion by Mr. Miller

Seconded by Mr. Judd to approve Appeal 13-32 at 1935 Cole. He believes this problem is not self-created; it is a unique circumstance due to the location of the adjacent home on the adjacent property. He thinks substantial justice has been provided by increasing the distance between the proposed home and the adjacent home to the east.

Strict compliance would prevent the petitioner from building an appropriately sized home on the lot. It would certainly be unnecessarily burdensome on the petitioner. The motion is tied to the plans submitted.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: None

**1267 SOUTHFIELD RD.
(Appeal 13-33)**

The owners of the property known as 1267 Southfield request the following variance to allow the construction of a detached garage:

- A. Chapter 26, Article 4, Section 4.03, B of the Zoning Ordinance requires the distance between an accessory building and a principal building on an adjoining lot be 25 ft. for this lot; with 18.08 ft. proposed. Therefore, a variance of 6.92 ft. is requested.

Staff notes: The owner is proposing to construct a new detached garage on the lot. No detached garage had existed previously on this lot. The Ordinance requires a distance of 25 ft. for this between the proposed garage and the principal building on the adjoining lot to the south. The principal building on the adjoining lot to the south was constructed in 2000 and is much deeper than the owner's home requesting this variance and several other adjoining homes within that block of Southfield. If the proposed garage existed at the time the home to the south was built, that home would have been allowed in its current location on that lot.

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

One letter in support of the proposed plans has been received from the neighbor at 1293 Southfield Rd.

Mr. Cooper noted the most recent permit the petitioner received from the Building Dept. was at the beginning of October for installation of a swimming pool which is currently under construction. In response to questions from board members, Mr. Cooper indicated that at the time the petitioner came in to request a permit for the pool, neither the garage nor the master plan for the entire property were discussed. Even if the garage is pushed back, a variance will be needed for that wide of a garage. If the pool wasn't there the garage could be moved to the north. If the garage were to be attached, a significantly larger variance would be needed.

Mr. Christian Carreon, the homeowner, presented his master plan for the property. He listed the following practical difficulties in complying with the Zoning Ordinance:

- His 100 ft. lot width requires a large setback requirement of 25 ft.;
- He cannot move the proposed garage 7 ft. north due to the pool;
- He wants to keep as much green space as possible and not increase the driveway by moving the garage to the rear.

Mr. Lyon asked the petitioner what is unique about his property. Mr. Carreon responded that there is no other place that he can put the garage. Mr. Lyon continued that if the pool were not there the garage could be moved further north and east and not

require a variance. Therefore this difficulty is self-created because the petitioner put in the pool. Mr. Carreon indicated that when he built the pool he didn't know about the variance requirement. He was not familiar with Birmingham ordinances.

Mr. Miller noted if the applicant went to a 20 ft. garage, the 7 ft. variance requirement would shrink to 3 ft. Further, a little bit of the pool area could be clipped. Mr. Carreon said he could even build a one-car garage but it wouldn't be nice looking. He agreed that much of the plan he is proposing is based on aesthetics and the location of the existing pool. Chairman Lillie noted that a tandem garage is one way to solve the problem.

Mr. Lyon brought out the fact there was a survey done in October when the applicant built the pool that showed both the proposed pool and the garage.

Mr. Conlin was concerned with the piecemeal aspect of this proposal. More importantly, the applicant is asking for more variance than his lot can sustain. Because of that, Mr. Conlin cannot find a reason to support.

The chairman called for comments from the audience at 9:20 p.m.

Ms. Bernadette Wise who owns the home to the north said she has an issue with the fence around the pool because the posts were chipping her driveway. Mr. Carreon said the fence is now 1 ft. inside his property line.

Motion by Mr. Judd

Seconded by Mr. Miller with regard to 1267 Southfield Rd., Appeal 13-33, the petitioner is seeking a variance under Article 4, Section 4.03, B of the Zoning Ordinance requiring the distance between an accessory building and a principal building on an adjoining lot be 25 ft. The petitioner proposes to place a detached garage in his backyard. Unfortunately, it does not meet the 25 ft. required; having only 18.08 ft.

The petitioner acknowledges that the plan he proposes is part of what he terms a "master plan." However, in the course of construction on his property it has gone in stages. In reviewing the documents, Mr. Judd did not see any document that showed all of the improvements for the construction that occurred. What causes him the most concern is that there is an existing swimming pool in the backyard that seems to be driving this particular appeal, in that the detached garage cannot be placed far enough to the north away from the property to the south.

Mr. Judd does not feel that the petitioner has met his burden for a practical difficulty. He feels that to require the petitioner to comply with the Ordinance would not be unnecessarily burdensome in this area, and would not prevent the owner from using the property for a permitted purpose. It is presently a residence and is occupied as such.

Secondly, Mr. Judd does not feel that granting this variance would do substantial justice to the adjoining property owners specifically. He doesn't feel that the plight of the owner is due to unique circumstances of the property, in that it is a regularly sized, although large, lot.

The biggest concern, as he already noted, is the problem of self creation, in that the swimming pool was placed in the backyard by the petitioner some months ago and seems to be the main feature of this property which is driving this particular appeal. For those reasons he would deny the requested variance.

Mr. Lyon agreed this variance looks rather self-created. He believes the appellant could have added a second two-car garage toward the back of the lot where the Ordinance intended. He believes there is an alternative way to add a garage that requires a lesser variance. Therefore, he cannot support the variance as advertised.

Motion to deny carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: None

T# 12-70-13

CORRESPONDENCE (none)

T# 12-71-13

GENERAL BUSINESS

With regard to this evening's first appeal, Mr. Lyon wondered if guidelines could be added to Rules and Procedures to stress to the appellant they need to include concise and clear graphics to support their case. Mr. Johnson advised that when the new City Website comes up there will be a Requirements page with instructions on how to fill out the application. Mr. Lyon noted the points the applicant needs to prove should be included. They need to address those points. It is in their best interest to provide clear and concise graphics or other material to make their case to the board in an expedient concise manner.

Mr. Jones noted it is important to know where the other setbacks are in order to do the setback calculations. The surveyor that is hired by the applicant establishes the setbacks within 200 ft. Mr. Miller added it would be helpful if the encroaching side elevation was rendered with dimensions and materials.

T# 12-72-13

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 9:40 p.m.

Bruce R. Johnson, Building Official