

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, FEBRUARY 11, 2014**

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, February 11, 2014. Chairman Charles Lillie convened the meeting at 7:30 p.m.

Present: Chairman Charles Lillie; Board Members Thomas Hughes, Jeffery Jones, Vice-Chairman Randolph Judd, Peter Lyon (arrived at 7:48 p.m.), John Miller; Alternate Board Member Cynthia Grove

Absent: Board Member David Conlin; Alternate Board Member 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# 02-07-14

APPROVAL OF THE MINUTES OF THE BZA MEETING OF JANUARY 14, 2014

Mr. Miller:

Page 3 - Last paragraph, first sentence, insert the following after "when": "exterior doors are open and. . ."

Mr. Johnson:

Page 1 - Vice Chairman Randolph Judd convened the meeting

Page 5 - Fourth paragraph, first sentence, delete "it has been the Building Dept.'s interpretation" and replace with "the Building Code requires. . ."

**Motion by Mr. Judd
Seconded by Mr. Miller to approve the Minutes of the BZA meeting of January 14,
2014 as corrected.**

Motion carried, 6-0.

VOICE VOTE

Yeas: Judd, Miller, Grove, Hughes, Jones, Lillie

Nays: None

Absent: Conlin, Lyon

T# 02-08-14

**1111 EMMONS
(Appeal 14-06)**

The owners of the property known as 1111 Emmons request the following variance to allow for 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 to be 14 ft. for this lot, with 9 ft. proposed. Therefore, a variance of 5 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. This is a corner lot and the side yard setback on the west side is 10 ft., instead of 9 ft. if this was an interior 40 ft. width lot. The existing house to the east of this lot is 4 ft. from the shared property line. The owner is proposing the new house be 24.50 ft. in width to minimize the variance request. The existing house proposed for removal is non-conforming with the distance between principal structures requirement towards the east.

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

Two letters have been received respecting this appeal, one in favor and one in opposition.

Mr. Cooper noted that usually on a 40 ft. lot a 26 ft. wide house can be built. The applicant has tried to mitigate the distance between structures by reducing the width of his house. If this house and the house next door are constructed as planned the 9 ft. distance between them that is proposed tonight will increase to 10.2 ft.

Mr. Phil Vincenti, the owner and the builder of 1111 Emmons, said they tried to mitigate the distance between houses as much as possible by pushing the house over an additional 6 in. and creating a 5.5 ft. setback, and also narrowing the house as much as they could. Addressing the neighbor's issue, they intend to put in a catch basin. Any storm water that his house sheds will be caught by the catch basin or shed to the road and into the sewer. In response to Ms. Grove, he indicated the footprint of the new house is larger than the house that was removed.

The chairman asked for comments on this appeal from the audience.

Mr. Kalim Assab who lives on Emmons received confirmation about how the front setback is calculated. Mr. Cooper explained it is the average of any residential homes within 200 ft. in each direction on the same side of the street.

Motion by Mr. Miller

Seconded by Mr. Judd to approve Appeal 14-06 on 1111 Emmons. He believes that because of the condition of the lot and the position of the adjacent house it would unreasonably prevent the petitioner from using the property appropriately for the permitted purpose.

He believes that the variance does do substantial justice to aligning the house with the rest of the neighborhood. There is a unique circumstance to this corner lot and he does not believe that the problem was at all self-created. The motion is tied to the plans as submitted.

Along with his support of the motion, Mr. Judd noted the mitigation of the petitioner in presenting and preparing his plans.

Mr. Jones concurred that not only has the petitioner mitigated circumstances to where he is putting the building in terms of the proposed construction next door, but also in response to a letter that has been received from a neighbor. The catch basin is not only responsive to this woman's concerns, but is in keeping with how the City will also deal with the matter.

Motion carried, 6-0.

VOICE VOTE

Yeas: Miller, Judd, Grove, Hughes, Jones, Lillie

Nays: None

Absent: Conlin, Lyon

T# 02-09-14

**2602 PEMBROKE RD.
(Appeal 14-08)**

The owners of the property known as 2602 Pembroke Rd. request the following variance to construct two emergency egress window wells:

- A. Chapter 26, Article 4, Section 4.30 C, 4 of the Zoning Ordinance allows window wells to project into the required side yard setback a maximum of 3 ft. measured to the inside of the well opening. This lot's easterly side yard setback is required to be 5 ft. with 4.76 ft. existing; therefore, a variance of .4 ft. is requested.

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

Staff Notes: The Zoning Ordinance allows window wells to project into required side yards a maximum of 3 ft. in accordance with the Building Code requirement that the minimum horizontal projection and width for emergency escape window wells be not less than 36 in. The measurement in both the ordinance and code is the interior dimension. The measurement to the outside varies depending on the materials used to construct the window well.

Mr. Cooper said the applicant plans to renovate his basement. His side setback is existing, non-conforming at 4.76 ft. The Residential Code requires an emergency egress well from the bedroom and he would like to get some light into the family room with an additional egress well. He is requesting the window well on the side and not in the rear because of future construction that is planned for the property. Granting this variance will not have any negative effect on the neighbor if he wants to do any type of renovation.

Mr. Zane Kadro said they need more room for their growing family. Their future plan is to extend the house back for a living/dining room and go up. For now the basement will afford a little more space. He doesn't see any other way of arranging the basement to make it work.

There was no one in the audience who wished to comment on this appeal.

Motion by Mr. Judd

Seconded by Mr. Lyon in regard to Appeal 14-08, 2602 Pembroke Rd. The appellant seeks a variance, really on a side yard setback question, where the two window wells will be placed. He believes that strict compliance with the ordinances would unreasonably prevent the owner from using the property for a permitted purpose and be unnecessarily burdensome.

He feels that to grant the variance would do substantial justice to the applicant and to other property owners. There is certainly a unique circumstance here based upon the pre-existing nonconformity in the side yard setback.

To answer the question of whether or not this problem is self-created, as Mr. Thomas Hughes told us at our last meeting, the term "self-created" is a term of art, and as such Mr. Judd will rely upon that definition and opinion. Based upon that he would move to approve the variance as advertised and tied to the plans.

Mr. Jones noted that the amount of the request is exceptionally diminimous.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Absent: Conlin

T# 02-10-14

CORRESPONDENCE (none)

T# 02-11-94

GENERAL BUSINESS

Mr. Johnson reminded everyone that the next meeting will be at DPS.

T# 02-12-14

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:10 p.m.

Bruce R. Johnson, Building Official