

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, APRIL 8, 2014**

Dept. of Public Services Meeting Room
851 S. Eton, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, April 8, 2014. Chairman Charles Lillie convened the meeting at 7:30 p.m.

Present: Chairman Charles Lillie; Board Members Kevin Hart, Thomas Hughes, Jeffery Jones, Vice-Chairman Randolph Judd, Peter Lyon, John Miller

Absent: Board Member David Conlin; Alternate Board Member Cynthia Grove,

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# 04-21-14

APPROVAL OF THE MINUTES OF THE BZA MEETING OF MARCH 11, 2014

Mr. Jones:

Page 1 - Remove Vice-Chairman from Mr. Miller's name.

Motion by Mr. Jones

Seconded by Mr. Hughes to approve the Minutes of the BZA meeting of March 11, 2014 with the change.

Motion carried, 7-0.

VOICE VOTE

Yeas: Jones, Hart, Hughes, Judd, Lillie, Lyon, Miller
Nays: None
Absent: Conlin

T# 04-22-14

**515 WESTWOOD
(Appeal 14-13)**

The owners of the property known as **515 Westwood** request the following variances to allow the construction of a first and second floor addition:

A. **Chapter 26, Article 4, Section 4.69** requires the distance between principal residential buildings be 24.69 ft. for this lot; with 22.25 ft. existing and 22.25 ft. proposed. Therefore, a variance of 2.44 ft. is requested.

B. **Chapter 26, Article 2, Section 2.06** requires a front yard setback of 37.97 ft. for this lot; with 33.31 ft. existing and 34.37 ft. proposed. Therefore, a variance of 3.60 ft. is requested.

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

Mr. Cooper advised that the petitioner's home is on the corner of Westwood and Pine. The existing two-story home with attached garage was constructed in 1939. With respect to Variance A, they propose to build a new second story on exactly the same footprint as the existing non-conforming first floor. That same square footage would be non-conforming on the second floor. A new walk-in closet is proposed for the second floor. Variance B is to enlarge the kitchen by expanding the first floor living space into the front yard setback, but less than the existing partially non-conforming front facade.

Chairman Lillie observed the west side of the house is not parallel to the west lot line and the north side is not parallel to the north lot line.

Mr. Ron Stern of Bob Stern Building Co. represented the petitioners, Michael and Heather Dresden, who were present. He noted a number of reasons that the Dresdens with their growing family need the expanded living space. Chairman Lillie noted that he did not address the practical difficulty with complying with the Ordinance. Mr. Stern replied they could not fit an island in the kitchen which would be difficult for the family. At the rear it would not look right to take a corner off of the second floor.

In response to Mr. Miller, Mr. Stern agreed the mud room off of the kitchen could still be functional if it didn't bump out beyond the setback line.

Chairman Lillie noted that just because the family wants to do something isn't a practical difficulty or grounds for getting a variance. Mr. Judd did not see a practical difficulty with

the existing property, but rather the difficulty lies with the use the petitioners have in mind for the property. That evaporates when those people leave. Mr. Stern replied the difficulty is that the petitioners have a large family of six and they cannot eat together in the kitchen.

Mr. Lyon said the board is looking for the answer to why strict compliance would be unduly burdensome. Also, the petitioner might want to consider they are dealing with an existing, non-conforming house and address whether or not they are substantially expanding that. Also, address why they did not put a second floor on the first floor addition at the front of the house. Mr. Stern answered they scaled back the project to just include the first floor at this time. Future plans may be to expand over the kitchen and garage. Further, as far as setbacks they will be staying behind the existing non-conforming area of the house which is the front entrance. They are actually holding the house back.

Mr. Miller commented it would have been helpful to have an existing floor plan to compare with what is proposed.

Mr. Stern said if the lot were perfectly rectangular or square, they would not have an issue with the front setback.

Mr. Lyon asked Mr. Stern whether he would say if they were to add the kitchen onto the front and comply with the zoning rules, the setback from the front and the step into the kitchen would be somewhat unduly burdensome in that they would have a chopped up kitchen. Mr. Stern agreed. Mr. Lyon further inquired whether Mr. Stern would say they have mitigated their request for a variance by only going to one story to reduce the amount of requested variance in order to do substantial justice to the surrounding neighborhood, and Mr. Stern concurred. Additionally he agreed with Mr. Lyon that because the house sits forward in relation to the houses within 200 ft. it presents a practical difficulty in complying with the Ordinance.

Mr. Miller noted that a proposed front elevation wasn't submitted for the house.

The chairman called for comments from the audience at 7:55 p.m.

Ms. Sue Johnston, 528 Westwood, talked about possible construction damage to her property. She didn't think the variances would be a problem, but wanted to see a front elevation drawing.

The majority of board members felt they had enough information in order to make an informed decision.

Mr. Hughes said this is an effort to take a pre-World War II house and develop it into the type of dwelling we are accustomed to seeing in Birmingham now. So, he would

support the petitioner's compliance with the spirit and intent of the Ordinance. He feels this renovation would be an enhancement to the surrounding area

Motion by Mr. Lyon

Seconded by Mr. Jones in regard to Appeal 14-13, 515 Westwood, he would move to approve the variances as advertised. The appellant seeks to gain variances under Chapter 26, Article 4 Section 4.69; and Article 2, Section 2.06.

(A) Section 4.69 requires a variance for the distance between principal residential structures in order to construct a second floor addition on top of an existing non-conforming structure. In this case strict compliance would be unduly burdensome in that bringing the walls in from the existing lower level presents a lot of structural and aesthetic issues. It does substantial justice to the neighbors by not expanding an existing non-conformance at least horizontally. It does expand it a bit vertically. Mr. Lyon believes it does substantial justice to the surrounding folks and it is equitable.

(B) The second variance is Section 2.06 for a front yard setback. This takes a little more evidence. He believes there is a practical difficulty here, although it has not been well articulated. The existing house is non-conforming. The front setback is non-conforming. It does not sit parallel to the front setback. The appellant seeks to square off the house by extending the front wall parallel to the existing front wall and the side wall parallel to the existing side wall. Mr. Lyon believes that strict compliance would be unduly burdensome in that it would be functionally and aesthetically undesirable to do that. The proposed structure is only one floor which he thinks mitigates a large massive structure out into the required front yard setback. So, for those reasons he would move to approve and tie the motion to the plans as submitted.

Motion carried, 5-2.

Mr. Jones concurred with Mr. Hughes. The concept of this area now coming into what we all know is the next rehab is the idea that this age house is also on the corner. We are not talking about bunching something on either side where the neighbors would have concerns. The concept of the corner lot also mitigates the variance request.

Chairman Lillie indicated his support of the motion. The petitioner is staying within the existing plane of the current house. The part that requires a variance is minimal. It is quite possible that had this been a square or rectangular lot the applicant might not have needed a front setback variance. In addition, they are decreasing the amount of variance for the front setback.

Mr. Miller said he will not support the motion. To push out into the front yard setback without providing a front elevation of the house sets a precedent that he is very uncomfortable with.

ROLLCALL VOTE

Yeas: Lyon, Jones, Hart, Hughes, Lillie

Nays: Judd, Miller

Absent: Conlin

T# 04-23-14

**2123 WINDEMERE
(Appeal 14-14)**

The owners of the property known as **2123 Windemere** request the following three variances to allow for the construction of a second level addition and the installation of a basement egress window well:

A. **Chapter 26, Article 2, Section 2.08** requires a front yard setback of 35.40' for this lot; with 34.80 ft. existing and 34.80 ft. proposed. Therefore, a variance of 0.60 ft. is requested.

B. **Chapter 26, Article 2, Section 2.08** requires a side yard setback of 5.00 ft. for west side of this lot; with 4.80 ft. existing and 4.80 ft. proposed. Therefore, a variance of 0.20 ft. is requested.

C. **Chapter 26, Article 4, Section 4.30 (C. 4.)** allows window wells to project into the required side yard setback a maximum of 3.00 ft. measured to the inside of the well opening. This lot's westerly side yard setback is required to be 5.00 ft.; with 4.80 ft. existing. Therefore, a variance of 0.20 ft. is requested.

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

One e-mail was received in support of the variance requests.

Mr. Cooper said the petitioner is requesting to add a second floor on the existing footprint, add a two-story addition to the rear of the home, and build a covered front porch. The rear addition and the covered front porch comply with the Zoning Ordinance. The owner is proposing to stack the new second floor front wall onto the existing non-conforming front first floor wall and stack the new second floor west wall onto the existing non-conforming west first floor wall. Down the road they plan a basement renovation and are currently proposing to install a basement emergency egress window well.

It was noted that the driveway of the house to the west is right up against the lot line and the window well is proposed to be on that side.

Mr. Brad Martin, the property owner, said the practical difficulty is they want to be able to stack the second story wall on top of the first floor wall and also be able to run the duct work to the second floor. Further, they cannot finish off the basement without having an egress window. In response to the chairman, he noted the addition will not have a basement so the window well cannot be placed in the rear of the house.

Chairman Lillie took comments from the audience at 8:15 p.m.

Ms. Marianne Gada read a letter into the record from her daughter and son-in-law, Bradley and Natalie Gilling, the property owners on the west side of the subject house. They are concerned that the proposed variance for an egress window creates a danger to their children as it would be 1 ft. 9 in. from their driveway. Further, the proposed construction plan is to go up an additional floor to permit a third floor of habitable attic space. Allowing construction of a towering structure closer to their property line than allowed creates a new standard that goes against the original laws designed for the City. They expect the City to enforce the code as written. Lastly, by removing green space with the proposed addition, they would assume a proper drain solution will be enforced.

Chairman Lillie pointed out the Ordinance allows a window well and the petitioner is only asking for a 3 in. variance for it. Mr. Lyon suggested the neighbors could put up a fence along the lot line. Also, there will be a cover on the window well. The reality is the subject house is existing, non-conforming. Mr. Johnson confirmed the drainage issue will be addressed at the time of construction.

Motion by Mr. Judd

Seconded by Mr. Jones in regard to Appeal 14-14, 2123 Windemere, the petitioner brings a request for three variances. This is a 1951 house that is compatible with the other style houses that were built in that neighborhood in 1951. However there has been a change in the neighborhood, either through demolition of homes and reconstruction or the re-use of a home by placing a second story within the existing plane of the house walls. This is the case really with 2123 Windemere.

The petitioner seeks three variances. The first is (A) Chapter 26, Article 2, Section 2.08 requiring a front yard setback of 35.40 ft. for this lot; with 34.80 ft. existing and 34.80 ft. proposed. Therefore, a variance of 0.60 ft. is requested. As noted, this is the existing front yard setback; there is no change. Mr. Judd feels that strict compliance with the required front yard setback would unreasonably prevent the owner from using the property. He feels that to grant the variance would do substantial justice to the applicant. He does not think this is due to unique circumstances in the property; nor does he feel that the situation is self-created. For those reasons he would move to grant it.

The second is (B) Chapter 26, Article 2, Section 2.08 requiring a side yard setback of 5.00 ft. for the west side of this lot; with 4.80 ft. existing and 4.80 ft. proposed. Therefore, a variance of 0.20 ft. is requested. Once again, this is in regard to placing a second story on the existing first story weight bearing walls. It is within the plane. Mr. Judd would move to grant this. He feels that strict compliance would unreasonably prevent the owner from using the property for a permitted purpose. He finds conformity with such restrictions unnecessarily burdensome. He feels granting this would do substantial justice to the applicant and to surrounding property owners. In this case there certainly are unique circumstances in that this is a pre-existing non-conformity. While this does enlarge the non-conformity, once again they are within the plane. He feels that the property owner has certainly mitigated any non-conformity by staying within the plane. He does not feel this problem is self-created and he would move to grant.

The third variance (C) is Chapter 26, Article 4, Section 4.30 (C.4) which allows window wells to project into the required side yard setback a maximum of 3 ft. 0 in. measured to the inside of the well opening. As noted, we are only dealing with a 3.0 in. variance in this case. Since the addition will utilize the basement as required, certainly for new construction, and in this case for re-use construction, there must be an emergency egress from the basement for safety reasons. Mr. Judd would grant this variance. He feels that to hold them to strict compliance would unreasonably prevent the owner from using the property for a permitted purpose and would be unnecessarily burdensome. He feels to grant it would do substantial justice to the applicant as well as to other property owners. He feels it is due to unique circumstances of the property and certainly this is a mitigation of a necessity under our Ordinance and for the public health, safety, and welfare. He would tie his motion to the plans, and moves to grant all three variances.

Mr. Jones commented it would not surprise him a bit if this request occurs again in the near future simply because these houses are in a lovely area that overlooks the park. He will support the motion.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Conlin

T# 04-24-14

CORRESPONDENCE (none)

T# 04-25-14

GENERAL BUSINESS

Mr. Johnson promised to check with the city attorney as to authenticity of e-mails.

T# 04-26-14

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:37 p.m.

Bruce R. Johnson, Building Official