

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS  
TUESDAY, JUNE 10, 2014**

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

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Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, June 10, 2014. Chairman Charles Lillie convened the meeting at 7:30 p.m.

**Present:** Chairman Charles Lillie; Board Members David Conlin, Kevin Hart, Thomas Hughes, Jeffery Jones, Peter Lyon, John Miller

**Absent:** Board Member Randolph Judd; 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# 06-27-14**

**APPROVAL OF THE MINUTES OF THE BZA MEETING OF APRIL 8, 2014**

**Motion by Mr. Jones**

**Seconded by Mr. Miller to approve the Minutes of the BZA meeting of April 8, 2014 as presented.**

**Motion carried,**

VOICE VOTE

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

Nays: None

Absent: Judd

**T# 06-28-14**

**1943 HENRIETTA  
(Appeal 14-16)**

The owners of the property known as **1943 Henrietta** request the following variance to construct one emergency egress window well:

- A. 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 north side yard setback is required to be 5.0 ft., with 4.6 ft. existing; therefore a variance of 0.4 ft. is requested.

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

Mr. Cooper advised the home was built in 1943 with the existing 4.6 ft. north side yard setback. The owner currently has a permit to add a second-floor rear addition and a detached garage. Then they decided to finish the basement and the Residential Code requires that they install an egress window well which will need a variance of about 5 in.

Mr. Miller noticed that Sheet A-7 is marked north elevation but it is really the west elevation. Further, there is no indication of a window well shown on the elevation. Mr. Cooper indicated it will be located where the existing basement window is.

Mr. Joe Sladovich, the contractor, spoke on behalf of the petitioner. There are some arborvitaes on that side of the house which will hide the window well. He passed around pictures of what the finished product would look like.

He went through their practical difficulty:

With the house being where it is, it encroaches upon the amount of setback. The side setback is less than 5 ft. and the window well is required to be 3 ft. It cannot be placed on the opposite side because there is a driveway. Further, the back of the house is a crawl space so it cannot go in the rear.

Mr. Cooper added this window well meets Birmingham building standards. The majority of the builders have been using this pre-manufactured modular style on the 40 ft. lots at the south side of town. Mr. Lyon received confirmation that the top of the window well will be at ground level and will intrude as little as possible into the side open space. Any water that collects will tie into existing drain tiles and flow away through the house's foundation drain system.

The chairman took comments from the audience at 7:50 p.m.

Ms. Sharon Douglas Chung, 1919 Henrietta, received clarification about the location of the window well.

**Motion by Mr. Lyon**

**Seconded by Mr. Jones with regard to Appeal 14-16, 1943 Henrietta, to grant the appeal as advertised. The appellant seeks a variance under Article 4, Section 4.30 (C.4) to allow a window well to project further into the side open space than the maximum of 3 ft. required.**

**Mr. Lyon believes that strict compliance would be unduly burdensome. It is not self-created and is unique because of the fact this house is existing non-conforming. To comply with the Code they have to project 3 ft. from the house which happens to be less than 5 ft. from the side yard setback.**

**He believes this does substantial justice to the appellant and the surrounding owners. This is an egress window, level with the ground essentially, and it won't be able to be seen. Mr. Lyon tied his motion to the sketches as presented tonight.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

Absent: Judd

**T# 06-29-14**

**2851 MANCHESTER  
(Appeal 14-17)**

The owners of the property known as **2851 Manchester** request the following variance to construct one emergency egress window well:

- A. 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 west side yard setback is required to be 5.0 ft., with 4.8 ft. existing; therefore a variance of 0.2 ft. is requested.

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

One objection to the variance has been received from the neighbor who lives next door to the construction site.

Mr. Cooper noted the home was built in 1951. The owner is renovating the home, adding a second floor and rear addition, and a detached garage. The basement is also being finished and the Code requires an egress window well. This will require a 2.5 in. variance.

Mr. Miller reiterated that as in the previous case he doesn't see an indication of the window on the elevations. Mr. Jones received clarification that if the property owner seeking the variance wanted to, they could request a permit and construct a privacy fence right along the property line.

Mr. Joe Sladovich, the contractor, spoke on behalf of the homeowner. Everything here is the same as the previous case on Henrietta, except that this is a little less of a variance. With respect to the objection that was received from the neighbor, Mr. Sladovich said that home is sale pending. There have been a number of complaints, and a lot of them stem from the previous contractor. They are the second contractor on this project and he doesn't think there will be any continuing issues.

Chairman Lillie called for comments from members of the public at 8:12 p.m.

Ms. Chung spoke once again. She noted that they have the same former contractor and the difference between the two contractors is like night and day. Within a couple of days after this contractor took over the place was cleaned up and everything was running smoother. She trusts this contractor in terms of their work.

**Motion by Mr. Lyon**

**Seconded by Mr. Jones with regard to Appeal 14-17, 2851 Manchester, to grant the appeal as advertised. The appellant seeks a variance under Article 4, Section 4.30 (C.4) to allow a window well to project further into the side open space than the maximum of 3 ft. required.**

**Mr. Lyon believes that strict compliance would be unduly burdensome. It is not self-created and is unique because of the fact this house is existing non-conforming. To comply with the Code they have to project 3 ft. from the house which happens to be less than 5 ft. from the side yard setback.**

**He believes this does substantial justice to the appellant and the surrounding owners. This is an egress window, level with the ground essentially, and it won't be able to be seen. Mr. Lyon would tie his motion to the sketches as presented tonight.**

**Motion carried, 7-0.**

Mr. Jones noted with his second that on this site there is an existing non-conforming setback that again is the basis of needing the variance.

**VOICE VOTE**

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

Nays: None

Absent: Judd

**T# 06-30-14**

**CORRESPONDENCE** (none)

**T# 06-31-14**

**GENERAL BUSINESS**

Mr. Johnson said he sent an e-mail to the city attorney inquiring about the authenticity of electronic signatures in e-mails, but has not yet received a response.

Mr. Miller had a general concern about the quality of the documentation. He thought that this time it fell below a standard that would allow him a comfort level. Board members should be able to look at the plans beforehand and understand exactly what is happening.

Mr. Johnson said the applicant used the construction documents for their appeal, which is more than was needed for the build out of a small window well. Mr. Miller noted the documentation that was provided was inaccurate. In the future he will view this type of documentation as being too thin for his comfort level.

Mr. Hart commented that most elevations should have the foundation shown with a dotted line below grade. Consensus of the board members was that dimensions were lacking.

Mr. Jones said he would like to see some kind of balance as to the efficiency of time and effort of staff; the board's ability to comment on what they are seeing with an Ordinance tweak; and then the time and energy of everyone else involved. Mr. Johnson indicated that from staff's perspective these particular types of variances are consistently approved every time. They might want to review the Ordinance language.

Mr. Conlin noted that in the past a lot of people didn't know how to remodel and would tear a house down instead. However now the trades situation has become such that people are learning how to remodel. He doesn't know which direction this is going and whether the City will be inundated with these or not. Mr. Cooper commented the Building Dept. is not being swamped with problems like this but there are a number of them. The price point of the original house dictates whether it will be torn down or renovated.

Mr. Lyon asked if the board could formally request staff and the Planning Board to look at an Ordinance change to allow staff to administratively approve egress windows in non-conforming buildings. He certainly would support that.

Mr. Lyon went on to comment he thinks it does a great disservice to substantially destroy a building, leave a little bit of the foundation there, and then call it a remodel. The present assessor's interpretation of the law is different than that of the previous assessor, who had ruled that when a house was torn down and built back up the property tax would become uncapped and increase. The current interpretation is that if a building is torn down it is a loss, and if a new building is put up it is a gain. So, the capped value carries with it and the taxes come out about the same whether a house is torn down or remodeled.

**T# 06-32-14**

## **ADJOURNMENT**

No further business being evident, the board members passed a motion to adjourn at 8:34 p.m.

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Bruce R. Johnson, Building Official