

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, JULY 8, 2014
City Commission Room
151 Martin Street, Birmingham, Michigan

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

Present: Chairman Charles Lillie; Board Members David Conlin, Thomas Hughes, Jeffery Jones, Randolph Judd, Peter Lyon

Absent: Board Member John Miller; 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# 07-33-14

APPROVAL OF THE MINUTES OF THE BZA MEETING OF JUNE 10, 2014

Motion by Mr. Jones

Seconded by Mr. Judd to approve the Minutes of the BZA meeting of June 10, 2014 as presented.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Absent: Miller

T# 07-34-14

**656 RUFFNER
(Appeal 14-18)**

The owners of the property known as **656 Ruffner** 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 to be 14.0 ft. for this lot; with 13.1 ft. proposed; therefore, a variance of 0.9 ft. is requested.

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

Mr. Cooper advised the home that is being removed currently has a 9.9 ft. distance between structures and is 6.8 ft. from the property line. If the requested variance is granted, the home will be 13.1 ft. from the property to the east and 10 ft. from the property line. Therefore, granting the variance would be an improvement. Currently the home sits 3.7 ft. from the property line on the west, and with the variance that would change to 5 ft. and remove the non-conformity. The proposed construction meets all other setback, height, and lot cover requirements.

In response to Chairman Lillie, Mr. Cooper explained that the neighbor's home is only 3.1 ft. off the property line, where 5 ft. would be the common number. As a result, the proposed building is being squeezed.

Mr. Joe Trificante from Torino Quality Homes spoke for the petitioner. Because of the closeness of the neighbor, they are forced to scale the home back to a width of 25 ft. The new property is improving the setbacks in several ways as mentioned and he is asking for the .9 ft. (10.8 in.) variance. No one has objected to the variance request.

Mr. Lyon asked why they could not build a 24 ft. wide house and Mr. Trificante replied it would be very challenging to get adequate room sizes. A super narrow, full two-story home would look somewhat top heavy.

There were no comments from the public on this appeal at 7:38 p.m.

Mr. Trificante added that there are only two or three older, non-conforming homes left on that street. So, conceivably some day the neighboring house will come down and the new home will meet the new guidelines.

Motion by Mr. Jones

Seconded by Mr. Hughes as relates to Appeal 14-18 at 656 Ruffner to approve the variance as requested. He believes that strict compliance under these circumstances would unreasonably prevent the owner from the property for a permitted purpose. He believes that essentially as the petitioner said, and from a drive-by by himself, it would do substantial justice both to the applicant as well as to the other property owners; this being a very old house, a very narrow lot, and he is quite correct in what one would envision by driving down the street as being the inevitability of it.

Mr. Jones thinks it is due again to the unique circumstances of the adjoining property owner being as close as they are at 3.1 ft. He doesn't believe that the problem is self-created. Further, he believes that based on what is existing the petitioner has mitigated as well as assisted in the creation of greater space than currently exists.

For those reasons he would tie his motion to the plans and for those reasons he would vote to grant the variance.

Mr. Conlin indicated his support for the motion. The petitioner has demonstrated the practical difficulty relative to the existing non-conforming house next door. This board has seen a number of times where new construction is impacted by existing, non-conforming older construction. It is clear that the non-conformity will probably be corrected when the neighboring house is replaced.

Motion carried, 6-0.

ROLLCALL VOTE

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

Nays: None

Absent: Miller

T# 07-35-14

**2187 YORKSHIRE
(Appeal 14-19)**

The owners of the property known as **2187 Yorkshire** request the following variance to allow the construction of an addition to the existing house:

A. Article 4, Section 4.03 D of the Zoning Ordinance requires the distance between principal residential buildings and accessory buildings be 10.0 ft., with 3.5 ft. existing and 3.5 ft. proposed; therefore, a variance of 6.5 ft. is requested.

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

Mr. Cooper advised that the owners are proposing to construct a rear addition to their home. The home was constructed along with a detached garage in 1925, with alterations in 1942 and 1969. The detached garage is located 3.5 ft. from the west side of the house. The petitioner's original proposal to remove the garage and build an attached garage required variances for side yard setbacks and the sum of side yard setbacks. So, they have mitigated down to what they feel is a reasonable request to just extend the existing non-conformity.

Mr. Cooper responded to an inquiry from Chairman Lillie. The petitioner did not propose to take the existing garage down and build in the rear because they want to keep their yard as open as possible. Further answering Chairman Lillie with regard to the 10 ft. Ordinance requirement between principal residential buildings and accessory structures, Mr. Cooper advised that the petitioner proposes to use 5/8 in. fiber board the same as an attached garage would require to meet the Fire Code.

Mr. Cooper noted this garage is built slightly forward and center on the lot. Usually garages are not built in that location. Mr. Conlin questioned the economic burden on the homeowner relative to working with the existing structure as opposed to working with a new structure.

Chairman Lillie pointed out that the proposed plan doesn't show that the west elevation extends out beyond the rear roof line of the garage.

Mr. Cooper said this proposal keeps the same look and style as the existing home.

Mr. William Thomas, Architect, spoke on behalf of the petitioner. The garage has a lot of character and they propose to bring it back to what it was. If they were to build a garage further into the back yard, a sport court would have to be destroyed in order to put a driveway through. Not showing the rear roofline extension is a graphical error on the plans. He went on to describe their proposed alterations.

Mr. Conlin said that it will be expensive to put footings under the garage. The expense may be justified by the fact that it would allow the garage to remain as an existing non-conforming structure. Mr. Thomas responded that by the Code they are not required to increase or modify the footings unless they are doing additional structural changes, which they are not.

Chairman Lillie cautioned if they end up having to tear the garage down they would have to come in for a variance to build it back. Mr. Johnson added the renovation of the garage cannot exceed 75% of the current assessed market value.

Discussion noted the high fire rating of the proposed materials being used on the garage. Mr. Thomas described how adding a new set of stairs down into the basement within the enclosure of the new addition will resolve the continuing water issue with the existing exterior set of stairs leading to the basement.

The chairman called for discussion from the audience at 8:13 p.m.

Mr. Tony Vitale, 2168 Yorkshire, spoke to support the changes. He feels they will not hinder the visual integrity of the neighborhood.

Ms. Sandra ~~Badier~~ **Battier**, 2220 Yorkshire, commented that the property has a lot of character and this upgrade will only enhance their neighborhood. She hoped the board will vote for them to go forward.

Motion by Mr. Judd

Seconded by Mr. Jones in regard to Appeal 14-19, 2187 Yorkshire, the petitioner seeks a variance to Article 4, Section 4.03, D of the Zoning Ordinance which deals with distance between structures. In particular, there is an existing Ordinance which requires 10 ft. between structures for purposes of fire prevention or abatement.

The petitioner wishes to put an addition on the rear of the house to the north which would increase and extend the existing non-conformity of the distance between structures further. So, our real question is whether or not to permit this. After reviewing the plans and hearing the presentation by the architect and members of the Building Dept., Mr. Judd feels that strict compliance with the regulations would unreasonably prevent the owner from using the property for a permitted purpose and would be unnecessarily burdensome.

He feels that to grant the variance would do substantial justice to the applicant as well as other property owners. The plight of the owner is due to unique circumstances in that this is a 1925 house that does not sit squarely on the property and obviously exists in an era of Building Codes which we no longer would tolerate, and that has been admitted.

Whether the problem was self-created, he would say no. They don't have to build an addition in this configuration. Other alternatives have been offered, such as removal of the existing detached garage and moving it further to the north, but that would come into conflict with some other existing features, such as a sport court.

Mr. Judd also feels that there has been mitigation done on this, in that the repairs and remodeling of the existing detached garage will be brought up to a stricter condition by using materials which are more fire resistant and hardy.

He tied the motion to the plans and moved to approve.

Mr. Jones said he did have concerns but the overriding thing to him was the obvious nature of the need for improvement to the house. He has come to the conclusion that this is the least offensive and the most ameliorative plan.

Mr. Lyon noted he will support the motion because from everybody's perspective but the owner's, nothing is changing except that everything will be nicer and newer.

Chairman Lillie announced his support for the motion because based on the information presented tonight they have established a practical difficulty. His concern was the fire hazard, but those questions have been answered.

Mr. Hughes said he also will support the motion. He believes there has been sufficient information provided that supports the existence of a practical difficulty that would justify granting the variance as requested.

Mr. Conlin said the reason he likes the plan is because of its aesthetics. However, that doesn't count. The other thing is that he questions the economics.

Chairman Lillie pointed out everyone has to keep in mind that economics and aesthetics are not the standards for establishing a practical difficulty.

Mr. Lyon indicated the way he looks at it is that the garage is substantially behind the front of the house. It tries to stay within the spirit of the Ordinance that detached garages need to be back from the house. It is there and it is not self-created. Also they are doing a lot to mitigate any safety risks.

Motion carried, 5-1.

ROLLCALL VOTE

Yeas: Judd, Jones, Hughes, Lillie, Lyon

Nays: Conlin

Absent: Miller

T# 07-36-14

CORRESPONDENCE (none)

T# 07-37-14

GENERAL BUSINESS

A. Rules of Procedure Article 1, B (2)

- Discuss application deadline

Mr. Johnson said the deadline currently is the 15th of the month. There are a few months of the year that it just gets too tight and staff is pressed to get the public notice out to the paper in time. Staff will come back to next month's meeting suggesting either the 10th or 12th of the month.

Discussion noted confusion exists because the Ordinance is worded so that it combines use for both a dimensional variance and a use variance.

Mr. Johnson reported that he heard back from the city attorney regarding electronic signatures on e-mails. The BZA can accept them if they wish. However, an original signature must be on an application to appear before the board.

Mr. Hughes observed that sometimes he has difficulty locating a posted notice on a property.

Mr. Conlin thought everyone should compliment Mr. Cooper on the job he did and the time he spent working with tonight's petitioner on Yorkshire.

T# 07-38-14

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:31 p.m.

Bruce R. Johnson, Building Official