

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, AUGUST 12, 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, August 12, 2014. Chairman Charles Lillie convened the meeting at 7:30 p.m.

Present: Chairman Charles Lillie; Board Members David Conlin, Jeffery Jones, Peter Lyon, John Miller; Alternate Board Member Cynthia Grove

Absent: Board Members Thomas Hughes, Randolph Judd; 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# 08-39-14

APPROVAL OF THE MINUTES OF THE BZA MEETING OF JULY 8, 2014

Mr. Jones:

Page 5 - Third paragraph, change Sandra "Badier" to "Sandra Battier."

Motion by Mr. Jones

Seconded by Mr. Conlin to approve the Minutes of the BZA meeting of July 8, 2014 as corrected.

Motion carried, 6-0.

VOICE VOTE

Yeas: Jones, Conlin, Grove, Lillie, Lyon, Miller

Nays: None

Absent: Hughes, Judd

T# 08-40-14

**1188 BIRD
(Appeal 14-20)**

The owners of the property known as 1188 Bird 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 10.5 ft. proposed; therefore, a variance of 3.5 ft. is requested.

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

Two communications have been received in opposition to the variance request.

Mr. Cooper explained that the applicant is proposing to construct a new house with a detached garage on this lot. The proposed new house and garage will meet all setbacks, height, and lot coverage requirements except the distance between principal structures requirement. There is a cantilevered area that is about 12 ft. in width that projects 0.3 ft. from the shared property line. The existing house to the east of this lot was built in 1926 and was constructed 0.3 ft. from the property line. The owner is proposing the new house be 24 ft. 10 in. in width to minimize the variance request.

Chairman Lillie received confirmation that to comply with the Ordinance the cantilevered area should be 5 ft. from the lot line. Minimum side setbacks for this lot total 14 ft.

In response to Mr. Lyon, Mr. Cooper stated if a projection is more than 8 ft. in width it is counted as lot coverage. The side setback from the existing home to be demolished is 11 ft. 8 in. from the cantilevered area of the house to the east. Answering Mr. Conlin, Mr. Cooper said the house to the east remains as it was constructed in 1926 with no variances granted.

Mr. Rick Merlini, the homeowner, said he is requesting a variance of 3.5 ft. on the eastern side yard. He is not able to comply with the requirement of 14 ft. between homes because of the existing non-conforming house to the east of the proposed new home. If the variance is granted there will be 10.5 ft. between the homes, which is 1 ft. less than currently exists. His hardship is due to the existing condition that the home to the east is only 0.3 ft. off the shared lot line. He has made some adjustments to his

plan in order to minimize the variance request. The home will be 24 ft. 10 in. rather than 26 ft. wide.

Mr. Conlin pointed out that in order to comply with the Ordinance without a variance, the proposed home would have to be 20 ft. 2 in. in width. That would not allow for a stairwell and would prevent construction of a second floor. Mr. Merlini added there are not many homes in Birmingham less than 24 ft. wide.

Chairman Lillie opened up comments from the audience at 7:54 p.m.

Mr. Herman Fleisher, 1208 Bird, to the east of 1188, stated he is not in favor of the variance because the two houses west of him would also need a variance in the long run because they have a shared driveway. The chairman reminded him that each variance stands on its own. Granting or denying has no effect on him or his neighbors.

Mr. David Findling, 1172 Bird, presented pictures of what currently exists. In 2005 he renovated his house and chose not to tear it down but to keep the existing structure and add an addition on the back. He tore down the garage and built a bigger garage. The reduction in the setback that is being requested is 25%. A smaller house could be constructed on this lot that wouldn't permit an adjoining structure as close as what exists between their two houses. The goal of the Zoning Ordinance is to bring conformity to the neighborhood.

Mr. Lyon asked Mr. Findling why he should be allowed to have a house that is more than 29 ft. wide. His house is non-conforming. So, why, in the spirit of equity, should the fact that he has a non-conforming house not allow his neighbor to use his lot in an otherwise conforming fashion. Mr. Findling answered it is not a question of whether or not he is conforming; it is a question of whether or not each new construction follows the zoning. Chairman Lillie observed if that were true, there would be no reason for the BZA to exist. However, people come in and they need a variance. Mr. Findling said the spirit of the Zoning Ordinance is not to do equity; it is to create conformity. Mr. Lyon stated if non-conformities are allowed to impact everything else, conformity will never be reached.

Mr. Jones noted the BZA is constrained by its mandate to review substantial justice for the entire community. That is where the board focuses its concerns. Mr. Findling thought a reasonable compromise would be to keep the existing footprint as it is now. That would still allow for a buildable lot. That is his request to the board.

Mr. Conlin thanked Mr. Findling for the work he did on his argument. He feels there is a difficulty that is being imposed on the owner of the adjacent property by virtue of the existing non-conformity situation. He thinks this is a very strong practical difficulty. A lesser variance is a possibility.

Ms. Wendy Hugh, 1166 Bird on the west side of the subject property, said her house was built on the original footprint. Very nice houses can be built on these small plots.

Motion by Mr. Miller

Seconded by Mr. Lyon with respect to 1188 Bird, Appeal 14-20. He believes the problem is due to unique circumstances caused by the house directly to the east being very close to the property line. Because of that, he does not believe that this problem was self-created and he believes this would render an unnecessary burden on the applicant.

So for those reasons he believes the petitioner should be allowed the variance. The driveways as they proceed from lot to lot the way it is proposed would all align and the minimum of a 9 ft. setback has been exceeded to 10.2 ft. So, Mr. Miller thinks the petitioner has made a good attempt at allowing substantial justice to the neighbors on both sides; particularly on the side to the east by exceeding the 9 ft. minimum. For those reasons he would motion for the petitioner's variance, tied to the plans as submitted.

Mr. Conlin said the existing homeowner has a perfect right to build a fence along his lot line which would then deny access to the home to the east. He hopes, however this turns out, there won't be a situation out of spite where a beautiful house cannot be maintained and as a result detract from the property values.

Mr. Jones believed that strict compliance with the Ordinance would prevent the applicant from the reasonable use of his property. The hardship results from the application of the current Ordinance to the existing circumstance. He doesn't believe the applicant's hardship is one of his own doing and thinks it is specific to this property. He noted the appellant has attempted to minimize the extent of the variance request. For those reasons he will support the motion.

Chairman Lillie said he too will support the motion. He believes that strict compliance with the Ordinance is unduly burdensome. He feels it does substantial justice to other property owners. The problem was not self-created; the applicant did not build the house next door. It is a unique circumstance to have someone this close to the lot line.

Mr. Lyon said he will also support the motion. He feels that strict compliance would be unduly burdensome. He thinks each property owner has the right to use their property without undue influence from other property owners. If the board actually enforced strict compliance in this case it would really unreasonably prevent the owner from using his lot to the average extent that is prevalent in the neighborhood. He believes this is not self-created and it is an existing non-conformity that is driving this issue. The appellant has done mitigation to the size of the variance by reducing the width of his proposed house.

Mr. Miller thought approving this variance will help render overall conformity to the neighborhood and it isolates the non-conformity as opposed to perpetuating it.

Ms. Grove indicated she will support the motion because she believes the problem was not self-created and it is an extremely unique situation.

Motion carried, 6-0.

ROLLCALL VOTE

Yeas: Miller, Lyon, Conlin, Grove, Jones, Lillie

Nays: None

Absent: Hughes, Judd

T# 08-41-14

**1072 DAVIS
(Appeal 14-21)**

The owners of the property known as 1072 Davis 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 10.4 ft. proposed; therefore, a variance of 3.6 ft. is requested.

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

Mr. Cooper advised the owner is proposing to construct a new house with a detached garage on this lot. The proposed new house and garage will meet all setbacks, height, and lot coverage requirements except the distance between principal structures requirement. A new house is also proposed to be built to the west of this lot. That house is proposed to be 5.2 ft. from the shared property line and will be constructed first. The proposed house to the west will meet all setback requirements, based on the corner lot to the east being vacant. The permit for the proposed house to the west of this lot is being issued first. Therefore, a variance is required for 1072 Davis, but not for the house to the west. The owner is proposing the new house be 24 ft.10 in. in width and to build the home to the west 5.2 ft. from the shared property line to minimize the variance request.

Mr. Miller said the house is 10 ft. off the property line adjacent to the existing house. That could have been 9 ft. and conform to the Zoning Ordinance. That would relieve by 1 ft. the narrowness of the dimension between the two proposed houses. Mr. Cooper related that Mr. Merlini indicated he would prefer a 10 ft. driveway rather than a 9 ft. driveway.

Mr. Rick Merlini, the applicant, said he is requesting a variance of 3.6 ft. on the western side yard dimension. He believes the hardship is the 9 ft.-5 ft. rule that exists with all corner lots. He has made some changes to his plan to help minimize the variance request. He has moved both the homes to create 5.2 ft. side yard between them rather than 5 ft. Also he reduced the width of the homes on both lots to 24 ft. 10 in. to minimize the impact on both lots.

With respect to 9 ft. driveways, if the neighbor erects a fence they cannot open the car door to get in and out.

There were no comments from the audience on this appeal at 9:49 p.m.

Motion by Mr. Lyon

Seconded by Mr. Miller in regard to Appeal 14-21, 1072 Davis, to approve the variance as advertised. The appellant seeks a variance under Article 4, Section 4.69 C of the Zoning Ordinance that requires 14.0 ft. between principal residential structures, with 10.4 ft. proposed. Therefore a 3.6 ft. variance is requested.

Mr. Lyon believes that strict compliance would be unduly burdensome in that this is a 10 ft.-5 ft., 5 ft.-9 ft., 5 ft.-9 ft. rule on the corner. Because of trying to get the driveways all on one side and the required 10 ft. setback on the corner, it drives a pair of houses on each block to be somewhat non-conforming and not conform with the minimum distance between buildings.

He believes that granting the variance does substantial justice to the appellant and to his neighbor (the neighbor is himself). Also it helps the surrounding neighborhood.

He does not feel this is self-created because it is a hard fact of the Zoning Ordinance that drives this particular case and he believes that reasonable use of the property for an intended purpose trumps this. The motion is tied to the plans as presented.

Mr. Miller said the fact the driveway of the existing house two houses off the corner, or adjacent to these two lots, is on the west side sets up the inevitable problem that would happen with the next two lots. Because of the geometry of that condition this is not a self-created problem that created this unique circumstance.

Mr. Conlin said making the driveway narrower on the house to the west would have mitigated the variance, but he believes the open air aspect of allowing a 10 ft. driveway is desirable. Consequently he will support the motion.

Motion carried, 6-0.

ROLLCALL VOTE

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

T# 08-42-14

**1125 EMMONS
(Appeal 14-22)**

The owners of the property known as 1125 Emmons 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 10.7 ft. proposed. Therefore, a variance of 3.3 ft. is requested.

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

One letter has been received in opposition to the variance request.

Mr. Cooper explained The owner is constructing a new house with a detached garage on this lot. The proposed new house and garage will meet all setbacks, height, and lot coverage requirements except the distance between principal residential buildings requirement. The permit for this house was issued and construction commenced prior to us realizing a variance is necessary.

The corner house under construction to the west (1111 Emmons) is located 5.50 ft. from the shared property line after receiving a variance on February 11, 2014 to be 9.0 ft. from the house that existed on the lot where this house is currently being constructed at 1125 Emmons. Since 1111 was empty, it did not appear that the Building Permit application the Building Dept. was reviewing at that time for a new house at 1125 Emmons would require a variance. That would have been true if the permit had been issued before the one at 1111.

However, that was not the case and 1125 Emmons now requires a variance for distance between principal buildings. On a positive note, instead of having 9.0 ft. between structures on these lots as approved in February, we now will have 10.7 ft. The variance that was granted in February for 1111 Emmons was based on the house that used to be on 1125 Emmons before it was torn down. Therefore, with the two new homes there will be 10.7 ft. between them. The owner is building the new house at 24 ft. 10 in. in width to minimize the variance request.

Mr. Rick Merlini, the property owner, said he is requesting a variance of 3.3 ft. on the westerly side yard. He cannot comply with the 14 ft. requirement on the west lot line because the existing home on that side is a corner lot that is 5 ft. off the lot line. Therefore Mr. Merlini has no driveway between them to create the 14 ft. requirement.

He has made changes to his plan to help minimize the variance request. The width of the house has been reduced to 24 ft. 10 in. Also he has moved the home to 5 ft. 2 in. off the lot line rather than the normal 5 ft. This variance if approved will decrease the original variance that was granted by almost 1.5 ft.

He doesn't feel this will impact the neighborhood in an improper way. In fact, the distance between homes will actually be greater if the variance is approved.

There was no discussion from members of the public at 9:01 p.m.

Motion by Mr. Lyon

Seconded by Mr. Jones in regard to Appeal 14-22, 1125 Emmons, he would move to grant the variance as advertised. The appellant seeks a variance under Article 4, Section 4.69 C of the Zoning Ordinance that requires the minimum distance between buildings to be 14 ft. for this lot; with 10.7 ft. proposed. Therefore a variance of 3.3 ft. is requested.

For the record, it really doesn't matter that there is a house already under construction there. Even if it were 100% done it has no bearing on his decision because this board doesn't consider economics and professionals make mistakes. That is the business they are in and there are these problems.

However, Mr. Lyon does believe that strict compliance would be unduly burdensome in that it would unreasonably prevent the appellant from using the property in a permitted fashion. He doesn't believe this is self-created in that the house to the corner is 5 ft. away, which is conforming. However, the house to the other side which is also conforming at 5.7 ft. kind of puts the pinch on this lot as to where do you put the driveway. It is our somewhat classic 10 ft.-5 ft., 5 ft.-9 ft., 5 ft.-9 ft. rule.

He believes this does substantial justice to the appellant and the neighborhood. Also he believes the unique circumstance is the proposed house is between two lots that are conforming but they do not have a large side setback. The motion is tied to the plans as presented.

Mr. Miller commented that similar to the last situation the house three houses in from the corner has its driveway on the east side. That sets up an automatic problem because one of the next two houses from the corner will need a variance in order to have the lot be used for the permitted purpose. Therefore, he believes this is a unique circumstance that was not self-created by the petitioner.

Motion carried, 6-0.

ROLLCALL VOTE

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

T# 08-43-14

**2388 COLE
(Appeal 14-23)**

Withdrawn.

T# 08-44-14

CORRESPONDENCE (none)

T# 08-45-14

GENERAL BUSINESS

Mr. Jones complimented whoever is doing the location maps and appreciates the computer program that shows different lots. Mr. Conlin thought it is wonderful that Mr. Cooper has the opportunity to get a shot at some of the variances that the board hasn't even seen before. Mr. Johnson added that he does a great job of telling applicants what their chances may be.

Mr. Lyon commented the depth of analysis by Mr. Cooper and this board is a quantum leap above what he has seen in other communities.

T# 08-46-14

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 9:14 p.m.

Bruce R. Johnson, Building Official