

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, OCTOBER 14, 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, October 14, 2014. Chairman Charles Lillie convened the meeting at 7:32 p.m.

Present: Chairman Charles Lillie; Board Members Jeffery Jones, Kevin Hart, Thomas Hughes, Randolph Judd; Alternate Board Member Cynthia Grove

Absent: Board Member John Miller

Administration: Bruce Johnson, Building Official
Ken Cooper, Asst. 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. Four affirmative votes are required to reverse an interpretation or ruling. There are no interpretations on this evening's agenda.

The chairman congratulated Mr. Hart on becoming a permanent member of the BZA, and Mr. Judd for being reappointed.

T# 10-52-14

APPROVAL OF THE MINUTES OF THE BZA MEETING OF SEPTEMBER 9, 2014

Motion by Mr. Jones

Seconded by Mr. Hughes to approve the Minutes of the BZA meeting of September 9, 2014 as written.

Motion carried, 6-0.

VOICE VOTE

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

T# 10-53-14

**460 W. MAPLE RD.
(Appeal 14-25)**

The owners of the property known as 460 W. Maple Rd. request the following variances to allow the attachment of an existing accessory structure to the existing principal structure:

- A. Article 2, Section 2.16 of the Zoning Ordinance requires a rear yard setback of 30.0 ft. for this lot; with 0.70 ft. existing and 0.70 ft. proposed. Therefore, a variance of 29.3 ft. is requested.
- B. Article 2, Section 2.16 of the Zoning Ordinance requires a side yard setback of 5.0 ft. for this lot; with 2.75 ft. existing and 2.75 ft. proposed. Therefore, a variance of 2.25 ft. is requested.

This property is zoned R-6 Multiple-Family Residential.

Mr. Cooper noted this is an existing historical home with an existing historical barn at the rear of the lot. A use variance was granted in 2009 and extended in 2010 to permit an office use. In 2011 the BZA granted a variance to place a basement under the existing detached barn. In 2013 approval was granted by the Historic District Commission ("HDC") to do the work that is under discussion this evening.

The applicant is proposing an underground connection and an above ground covered walkway between the house and barn. With that connection, they become attached. These proposed connections now require the side yard and rear yard setbacks of the non-conforming accessory structure to comply with the Zoning Ordinance as a single structure. If the requested variances are granted this evening the former variances become moot.

Mr. Lillie summarized that the large variance is required because the applicant is attempting to attach the barn to the main building.

Mr. Richard Rattner, Attorney, 380 N. Old Woodward Ave., spoke on behalf of the petitioner, Mr. Eric Jirgins and Young and Young Architects. The only person who will view the proposed change is the lady who lives next door and she has no problem with it. Mr. Rattner went on to explain that the underground walkway solidifies the barn because of the way the tunnel is built. So, they think it is an advantage to the property as well as allowing a convenience.

A strict interpretation of the Ordinance unreasonably prevents this property owner from reasonable use and enjoyment of his property. The normal development options are not available to the applicant due to the unusual characteristics and special historic condition of the property

The literal enforcement of the Ordinance causes unnecessary hardship, or for these dimensional variances, practical difficulties due to the conflict between modern ordinance requirements and Historic District and site area problems. The covering makes the ramp safe, and protected from snow, ice and rain.

The cover over the walkway makes that walkway safer for those using it. Likewise, it is safer to remain indoors to move from one part of the building to another. The requested variances contribute to the health, safety and welfare of the occupants and public invitees to the site.

Other property owners on other sites do not have tight physical restraints or Historic District regulations to contend with, nor the design, structural and safety problems that the applicant must solve.

Mr. Young explained for the chairman why the walkway has to be covered all the way. From a common sense standpoint it keeps rain, snow, and ice off. Further responding to the chairman, Mr. Rattner stated without the variances it might restrict the property from what other property owners might be able to do. They have worked to do the best they can with the existing condition of the site.

Mr. Judd questioned what purpose the tunnel serves. Mr. Rattner said if the property were not historic, they could use it differently. Mr. Hart noticed this solution provides handicap access to the house that does not presently exist. However, there are some sections of the home that will not be handicap accessible. Mr. Young replied the State Barrier Free Exception Rule was that the north end of the building would be completely barrier free accessible from the north entrance via the ramp into the home. There are no restroom facilities that are ADA compliant.

No one from the audience wished to comment on this appeal at 8:10 p.m.

Motion by Mr. Judd

Seconded by Mr. Jones in regard to Appeal 14-25, 460 W. Maple Rd. The subject property contains two historic structures. It is the intent of the petitioner to improve the historic structures by connecting the main house with the existing barn by way of a tunnel and placed on top of that tunnel would be a covered walkway.

To accomplish this the appellant requires two variances, the first dealing with Article 2, Section 2.16. The rear yard setback which is normally required to be 30

ft. is in this case 0.70 ft., requiring a 29.30 ft. variance. The second variance dealing with the same Article and Section requires the side yard setback to be 5 ft. with the existing and proposed being 2.75 ft., with a variance of 2.25 ft.

Since this is a historic property it bends the rules in this case and a dimensional variance is required. In this circumstance Mr. Judd feels that strict compliance with the ordinances and restrictions dealing with rear yard setback and side yard setback would unreasonably prevent the owner from using the property for a permitted purpose. In this case, a previously granted variance to use it as a non-commercial design center would render the conformity with such restrictions unnecessarily burdensome.

Further, he feels that to grant the variances would do substantial justice to the applicant and to the other property owners in the district. He feels the plight of the owner is due to the unique circumstances of the property which have been exhaustively discussed at this hearing, prior hearings, and also in a memorandum prepared by Richard Rattner, the counsel for the petitioner.

Is the problem self-created? He supposes every variance the board looks at is self-created. However, the magic word in this case is mitigation. He feels that dealing with a unique piece of property and the ambitious intent of the petitioner to take a piece of property which has been previously described as being condemned by neglect more than offsets what might be the one caveat problem of self-creation.

Mr. Judd would move to approve the variance and tie the motion to the plans.

Motion carried, 6-0.

Mr. Jones emphasized that he feels the circumstances are most compelling. To the extent that this is a desire, he concurs with Mr. Judd in this instance. As Mr. Rattner said, nothing is being moved or changed. Mr. Jones said he doesn't believe the variances will do any harm to the neighbors who are still in the same circumstances as they were before, and in fact it will only help.

VOICE VOTE

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

Nays: None

Absent: Miller

T# 10-54-14

CORRESPONDENCE (none)

T# 10-55-14

GENERAL BUSINESS (none)

T# 10-56-14

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:16 p.m.

Bruce R. Johnson, Building Official