

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS**  
**TUESDAY, DECEMBER 9, 2014**  
City Commission Room  
151 Martin Street, Birmingham, Michigan

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Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, December 9, 2014. Chairman Charles Lillie convened the meeting at 7:30 p.m.

**Present:** Chairman Charles Lillie; Board Members Kevin Hart, Jeffery Jones, Thomas Hughes, Peter Lyon, John Miller; Alternate Board Member Cynthia Grove

**Absent:** Board Member Randolph Judd; Alternate Board Member Rachel Loughrin

**Administration:** Matthew Baka, Sr. Planner  
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 is one land use variance 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 is one interpretation on this evening's agenda.

Chairman Lillie congratulated Mr. Lyon on his re-appointment to the BZA.

**T# 12-65-14**

**APPROVAL OF THE MINUTES OF THE BZA MEETING OF NOVEMBER 11, 2014**

**Motion by Mr. Jones**

**Seconded by Mr. Hughes to approve the Minutes of the BZA meeting of November 11, 2014 as amended.**

Mr. Jones:

Page 9 - Second paragraph, add "Ms. Ecker said there is nothing in the Zoning Ordinance that mandates the width of aisles in a parking lot."

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

Absent: Judd

**T# 12-65-14**

**261 E. MAPLE RD.  
(Appeal 14-29)**

The owner of the property known as 261 E. Maple Rd. requests the following variance to allow a health club/studio on the lower level.

- A. Chapter 128, Zoning, Article 2 Section 2.37 B4, Permitted Uses, does not permit health club/studio as a permitted use. The owner is requesting a variance to use the property as a health club/studio.

This property is zoned B-4 Business-Residential.

Mr. Baka explained the applicant is attempting to lease the space in the basement of 261 E. Maple Rd. for use as an exercise facility. Currently, an exercise facility is only allowed Downtown in the B-3 Zoning District as well as in the MX and Triangle Overlay Zoning Districts. Mr. Johnson noted that since 2006 when the Ordinance was re-formatted, a use that is not specifically listed is not permitted. The current Ordinance specifically defines health club/studio.

Mr. Lyon thought it would be helpful to know the District intent for B-4. Discussion disclosed there are very few occupied basement areas in town. This particular space meets all Code requirements. It has two exits as well as elevator access.

Mr. Bedros Avedian, the petitioner, said that since the furniture store, Upstairs/Downstairs, departed about eight years ago the basement has remained vacant. He has had over fifty interested parties look at the space for retail and office use. Either the lack of windows or street exposure has deterred potential tenants. Exercise does not require windows or street exposure. He and his partner did not create the problem. The building was built with the 4,500 sq. ft. finished lower level that is code compliant.

The chairman asked Mr. Avedian how his property is unique from any other property in the same zoning district. Mr. Avedian replied this is one of the few buildings that has a usable lower level. However, today's generation of retailers does not want to use that space. Chairman Lillie noted the Ordinance needs to be changed. It is a function of the City Commission in this case to resolve the problem rather than the BZA granting a use

variance. The petitioner may not be able to lease his basement, but he can use his property for the way it is zoned. The BZA cannot be doing what would be called "spot zoning."

Mr. Hart observed the spirit of the Ordinance is to protect the community from something people may not want to see in storefronts along the main street. In this case, there is no visibility from the street. In his mind the board has to look at the spirit of why the Ordinance was written. Granting the variance would respect the spirit of the Ordinance.

There was no one left in the audience to speak on this matter at 8:14 p.m.

**Motion by Mr. Lyon**

**Seconded by Mr. Hart in regard to Appeal 14-29, 261 E. Maple Rd., to grant the variance as advertised for the following points:**

**Looking at the Ordinance, he believes the property cannot without difficulty be used for purposes permitted in the zone. In the B-4 there is not a lot allowed there that is going to go in a basement.**

**Mr. Lyon feels for the appellant because by winnowing down the commercial uses he cannot find something that he can conceivably see going in there other than this. He looks at the B-3 District which is not too far away from this and it has fewer uses. However, it has a health club. He finds it a little perplexing that something that has a lot more uses doesn't include a permitted use that is allowed in another area.**

**The requested use for a health club is very low intensity, judging by the parking. There is no exterior visibility. It will create some pedestrian traffic. If they manage to get retail they would probably have a higher intensity.**

**Mr. Lyon believes the plight is due to the unique circumstances of this particular piece of property in that it has a basement that is usable and meets all the codes as otherwise specified, building and otherwise.**

**It does not alter the essential character of the area. There is nothing on the outside that will be seen by pedestrian traffic on the street. Again, it is low intensity for parking. Mr. Lyon does not believe the problem is self-created in that the appellant as far as he knows did not build the building. But the building is there; it does have a usable floor, and it was used before for retail when the grade floor and the lower grade floor could be used together. But in reality with today's environment it is difficult to use by people who are looking for space.**

**So with that, Mr. Lyon would move to grant the variance and tie it to the plans as presented.**

Mr. Jones said he understands the commercial nature of what the appellant is saying. He also wonders if that is not inherent in the risk of being a commercial landlord. He is of a mind this is a legislative function and that it is not one for this board. Because he cannot come around to usurping the legislative power of the Commission in this regard, he will not support the motion.

Mr. Hughes thinks the petitioner's argument is based on the economics of the situation. However, an economic argument is not a hardship. He also supports completely what the chairman has described as the structure of the Ordinance, as well as Mr. Jones's commentary along that line. Therefore he will vote against any variance.

Mr. Lyon thought that getting a reasonable return on the property would factor into this, in that the expectation for a commercial property is that he will get some kind of an economic return on it. A health club is an ideal use for this space and there really isn't another permitted use for it.

Chairman Lillie stated this site is not unique. It is a square piece of property that is no different than the parcel next to it. Two exits from the basement and an elevator don't make the property unique. This is not a case for granting a use variance. It is an Ordinance problem. The applicant can use the property for the way it is zoned. If the board were to grant the use variance they would be setting a very bad precedent.

**Motion failed 3-4.**

**ROLLCALL VOTE**

Yeas: Lyon, Hart, Miller

Nays: Hughes, Grove, Jones, Lillie

Absent: Judd

Chairman Lillie told the applicant that the fact he cannot rent the basement out at this point in time is not prohibiting him from using the property the way it is zoned at this time.

**T# 12-66-14**

**CORRESPONDENCE** (none)

**T# 12-67-14**

**GENERAL BUSINESS** (none)

**T# 12-68-14**

**ADJOURNMENT**

No further business being evident, the board members passed a motion to adjourn at 8:28 p.m.

A handwritten signature in blue ink, appearing to read "Bruce R. Johnson", written in a cursive style.

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Bruce R. Johnson, Building Official