

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS  
TUESDAY, JANUARY 14, 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, December 14, 2014. Vice- Chairman Randolph Judd convened the meeting at 7:53 p.m.

**Present:** Vice-Chairman Randolph Judd; Board Members David Conlin, Thomas Hughes, Jeffery Jones, John Miller; Alternate Board Members Cynthia Grove, Kevin Hart

**Absent:** Chairman Charles Lillie; Board Member Peter Lyon

**Administration:** Matthew Baka, Senior Planner  
Ken Cooper, Asst. Building Official  
Bruce Johnson, Building Official  
Carole Salutes, Recording Secretary

The vice-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# 01-01-14**

**APPROVAL OF THE MINUTES OF THE BZA MEETING OF DECEMBER 10, 2013**

Mr. Hughes:

Page 3 - Page 3, fourth line from the top, replace "400 ft." with "91 ft."

**Motion by Mr. Jones**

**Seconded by Mr. Miller to approve the Minutes of the BZA meeting of December 10, 2013 as amended.**

**Motion carried, 7-0.**

VOICE VOTE

Yeas: Jones, Miller, Conlin, Judd, Groves, Hart, Hughes

Nays: None

Absent: Lillie, Lyon

**T# 01-02-14**

**185 N. OLD WOODWARD AVE.**

**Mad Hatter**

**(Appeal 13-32)**

The owners of the property known as 185 N. Old Woodward Ave. request the following variances to allow for the construction of a new bistro with an outdoor dining deck:

- A. Article 03, Section 3.04 C (10) (f) of the Zoning Ordinance requires 70% glazing between 1 ft. and 8 ft. above grade on the facade facing the street; with 40% proposed. Therefore, a variance of 30% is requested
- B. Article 04, Section 4.44 A of the Zoning Ordinance permits outdoor dining immediately next to the principal use; with the proposed outdoor dining deck extending 10 ft. 1 in. in front of the neighboring storefront. Therefore, a variance of 10 ft. 1 in. is requested.

Staff Notes: The owner is proposing to construct a new storefront facade with bi-fold doors to replace the existing window system. The existing window system does not meet the glazing requirement but is considered legal non-conforming.

The owner is requesting to construct a dining deck that extends into the neighboring storefront, which is part of the same building. The deck cannot be placed in front of the 185 N. Old Woodward Ave. storefront due to the existing 10 ft. crosswalk.

This property is zoned B-4 Business Residential.

Mr. Baka advised that the applicant is in the process of going through the approvals for a Bistro License. In December they appeared before the Historic District Commission and the Planning Board and were recommended for approval to the City Commission on the condition they come to this board for two variances.

In response to Mr. Jones, Mr. Baka said the applicant has submitted consents from both the building owner and the adjacent business owner. Answering Mr. Conlin, Mr. Baka went on to confirm that the intent of the glazing requirement is to create interaction between pedestrians and the interior space of the storefronts. The structure of the

operable door impinges upon the percentage of glazing. However, the door opens up the storefront to the outside.

Vice-Chairman Judd received clarification that the dining platform falls under the purview of the Engineering Department. The city engineer was very much in favor of this plan as it does not extend more than 8 ft. out from the curb and does not take up a parking space.

Mr. Roman Bonislowski from Ron and Roman Architects spoke for the applicants, who were present. He described how the operable doors are a critical component in the small cafes. They are requesting to construct the deck beyond their southern-most tenant line in the same 10 ft. width as their storefront. Mr. Bonislowski passed around the consents that were signed by the landlord, Richard Slater, and the adjacent business owner. He explained that the Thai Restaurant is not interested in pursuing an outdoor cafe. If the Thai Restaurant goes away, the landlord would lease the property with the understanding that existing conditions will remain.

Mr. Conlin noted the landlord does not have to extend to his tenant the right to have space for outdoor dining.

There were no comments from the audience at 8:25 p.m.

**Motion by Mr. Jones**

**Seconded by Mr. Conlin with respect to Appeal 13-32, 185 N. Old Woodward Ave., Mad Hatter, regarding the requested variance (A), Article 03, Section 3.04, C (10) (f) of the Zoning Ordinance where the applicant is requesting a 30% variance as to the glazing requirements. He would move to approve noting there is a practical difficulty based on both the plans and circumstances shown therein.**

**He believes that granting the easement would do substantial justice both to the commercial area and to the rest of the commercial entities thereby. He believes that the circumstances are unique to the situation and they would in fact, without granting this variance, unreasonably prevent the owner from using the property for the permitted purpose; and therefore not to grant the variance would make the Ordinance unreasonably burdensome.**

**He does not find that it is self-created; and therefore in that regard he would not only move to approve, but would tie the motion to the plans as presented coupled with the exhibits that have also been presented.**

Mr. Miller commented that the variance for 30 percent is mitigated by the fact that the opening is much larger when exterior doors are open and the framing completely goes away. So, he thinks that the amount of variance required is very reasonable in this case.

Mr. Jones asked staff to give some thought to considering an amendment to the Ordinance that would take this into account, since the board is dealing with it on a seemingly regular basis.

**Motion carried, 7-0.**

ROLLCALL VOTE:

Yeas: Jones, Conlin, Groves, Judd, Hart, Hughes, Miller

Nays: None

Absent: Lillie, Lyon

**Motion by Mr. Jones**

**Seconded by Mr. Hughes as it relates to Appeal 13-32, 185 N. Old Woodward Ave., Mad Hatter, referencing the requested variance (B), Article 04, Section 4.44 A of the Zoning Ordinance which permits outdoor dining immediately next to the principal use; with the proposed outdoor dining deck extending 10.1 ft. into the front of the neighboring storefront. He would move therefore to approve the requested variance of 10.1 ft. as requested in front of the southerly business adjoining the applicant's request.**

**He would tie it to the plans as presented; he would tie it to the exhibits as additionally presented today, and would request that staff obtain the clarified name of the business owner consenting and leave it to staff's discretion to verify same so that our file would be complete.**

**Motion carried, 7-0.**

ROLLCALL VOTE:

Yeas: Jones, Hughes, Conlin, Groves, Judd, Hart, Miller

Nays: None

Absent: Lillie, Lyon

**T# 01-03-14**

**909 PIERCE St.  
(Appeal 14-02)**

The owners of the property known as 909 Pierce request the following variances to allow the construction of a new basement egress window well:

- A. Article 4, Section 4.30 C, 4 of the Zoning Ordinance allows a basement window well to project into the required side open space a maximum of 3 ft. A projection of 6 ft. is being proposed; therefore, a variance of 3 ft. is requested.

B. Article 4, Section 4.30, C, 4 of the Zoning Ordinance allows a basement window well not to exceed 6 ft. in width. A width of 17 ft. is being proposed; therefore a variance of 11 ft. is being requested.

Staff Notes: The owner is proposing to construct two new egress window wells on this lot, one within the south side yard open space and the other within the north side yard open space. The proposed new window well within the south side yard open space meets all Zoning Ordinance requirements. The side open space on the north side was determined when this was constructed in 1993, based on the front average setbacks to the east of this lot on George St.

Mr. Cooper explained the petitioner plans some renovations to the existing home and is proposing two window wells. They are constructing two bedrooms in the lower level which require egress window wells per the Michigan Residential Code. One complies with the Ordinance and the other requires two variances. This is a corner lot on Pierce St. and George St. and Barnum Park is directly across the street.

Mr. Johnson said that the building code requires an egress window well in every lower level bedroom, and it is reasonable to have one in every living area down there. Mr. Miller noted the option would have been to construct two window wells in order to still allow light into the living area and the bedroom.

Mr. Roger Young, Young & Young Architects, spoke to represent the new homeowners, Chelsea and Todd Tischler, who were present in the audience. Their goal is to do something in keeping with the architecture of the house that is an attractive feature to the site. It seemed rather foolish to have two egress wells next to each other, so they opted for one contiguous egress well for the living space and the bedroom at the northwest corner of the residence. If the window wells were side-by-side the variance request would reduce to 5 ft. versus the current 11 ft. request. The depth of the proposed window well is to allow more natural light into the living area. It being the north side of the property, they are limited in the amount of daylight coming in.

The entire parcel is screened by dense arborvitae evergreens so there are no visible site lines into the front yard from the park or the sidewalk unless one enters onto the owner's property. The egress wells are located far away from the entrance to the house.

To his knowledge there haven't been any letters of objection from the neighbors.

Their hardship is that if they were an interior lot, different from their corner lot condition, they would be allowed to project 11.5 ft. into the side yard. Also, with adjacent window wells, building structures could be compromised. This is self-created, but it is created also by the fact they are finishing out the lower level and they do need this egress well for both bedrooms, and the addition of a third window well would be the limit of what the Building Dept. would allow.

For the most part, Mr. Young does not feel their request is detrimental to the neighbors and it doesn't detract or alter the neighborhood in a harmful way. The owners are doing many things to enhance and improve the home.

Responding to Mr. Miller's request for further clarification of their hardship, Mr. Young explained they feel this is a unique condition in that with the corner lot they have two front yards. If this were any other property they would be able to go another 5.5 ft. beyond what they are currently asking for.

Mr. Hughes said that "self-created" is a term of art that describes the unique way of dealing with the improvement of this dwelling.

Mr. Young thought if the spirit of the Ordinance is to only allow egress and not create a more conducive environment for sub-terrain living spaces there is hardship on the homeowner because of those spaces are usually finished out to some extent.

**Motion by Mr. Hughes**

**Seconded by Mr. Jones in the matter involving the property located at 909 Pierce St., Appeal 14-2, this January 14, 2014. Motion that pursuant to the plans and specifications that have been submitted by the appellant in this case, to approve both variance requests nominated (A) and (B) in the Notice of Hearing.**

**Variance (A) is Article 4, Section 4.30, C, 4 of the Zoning Ordinance allows a basement window well to project into the required side open space a maximum of 3 ft. A projection of 6 ft. is being proposed; therefore, a variance of 3 ft. is requested.**

**Variance (B) recites Article 4, Section 4.30, C, 4 of the Zoning Ordinance allows a basement window well not to exceed 6 ft. in width. A width of 17 ft. is being proposed; therefore a variance of 11 ft. is being requested.**

**The petitioner has presented a compelling case of evidence to the effect that these variance requests are reasonable and well suited to the architectural style and design of this building as sited on this particular lot.**

**The variances if granted will not be visible to the public along the sidewalks or the street because of a 6 or 7 ft. hedge of arborvitae that are well grown and shield the property from view. In addition the variances are compatible with the layout of the building, which is somewhat unusual and contemporary in design, and are fitting architecturally to the style of the building and they enhance the building and improve its appearance in the neighborhood.**

**Mr. Hughes thinks that practical difficulty here is simply the size of the lot and its location on this particular site at the corner of Pierce St. and George St. For all those reasons he thinks the two variances requested should be granted.**

There was no audience left to comment at 9:20 p.m.

**Motion carried, 7-0.**

VOICE VOTE

Yeas: Hughes, Jones, Conlin, Judd, Groves, Hart, Miller

Nays: None

Absent: Lillie, Lyon

**T# 01-04-14**

**CORRESPONDENCE** (none)

**T# 01-05-94**

**GENERAL BUSINESS** (none)

**T# 01-06-14**

**ADJOURNMENT**

No further business being evident, the board members passed a motion to adjourn at 9:22 p.m.

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Bruce R. Johnson, Building Official