

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, FEBRUARY 10, 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, February 10, 2015. Vice-Chairman Randolph Judd convened the meeting at 7:30 p.m.

Present: Vice-Chairman Randolph Judd; Board Members Kevin Hart, Jeffery Jones, Thomas Hughes, Peter Lyon, John Miller; Alternate Board Member Cynthia Grove

Absent: Chairman Charles Lillie; Alternate Board Member Rachel Loughrin

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

T# 02-08-15

APPROVAL OF THE MINUTES OF THE BZA MEETING OF JANUARY 13, 2015

Mr. Lyon:

Page 3 - Third line of his motion, drop the "s" on Ordinances and change request to requires.

Motion by Mr. Jones

Seconded by Mr. Miller to approve the Minutes of the BZA meeting of January 13, 2015 as corrected.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Lillie

T# 02-09-15

1241 WESTWOOD (postponed from January 13, 2015)
(Appeal 15-03)

The owners of the property known as 1241 Westwood request the following variance to allow for the expansion of the first and second levels of the existing residential structure:

A. Article 2, Section 2.06 of the Zoning Ordinance requires the sum of the side yard setbacks be 36.25 ft. for this lot; with 51.88 ft. existing and 30.59 ft. proposed. Therefore, a variance of 5.66 ft. is requested.

This property is zoned R-1.

One communication has been received from a neighbor who supports the requested variance.

Mr. Cooper explained the existing two-story home was built in 1948 and the owner is proposing to construct an addition to the south side. The existing north side setback is non-conforming at 4.34 ft. and the sum of the side yard setbacks does not meet the Zoning Ordinance. The proposal meets all other Ordinance requirements.

Vice-Chairman Judd received confirmation that the wider a lot is, the greater the sum of side yard setbacks is required.

In response to Mr. Miller, Mr. Johnson said if the neighbor to the south were to demolish his house and build another, the requested variance would not affect him because his lot is not as wide, and therefore it has a lesser side yard requirement.

Mr. Glen DeSimone, Architect with Prime Design Systems, said their practical difficulty is they are the second largest lot in the neighborhood and because of that they are required to have a larger combined side yard setback than any of the other 23 lots nearby. That impacts their ability to enlarge a screened porch on the first floor.

Mr. Lyon thought the fact they have a wide lot is a tough argument for practical difficulty. The ordinances are set up to require bigger setbacks on wider lots. Mr. DeSimone replied there would be no impact on the neighborhood by granting this request because

the setbacks would be the same as all the other houses. However, if they comply with the wider Ordinance requirement their house would stand far away from the rest. They have an oversized lot in a typically smaller size lot subdivision and they are burdened by more setback requirement than their neighbors.

Responding to the vice-chairman, Mr. DeSimone explained the existing porch space is not functional. Mr. Lyon did not understand the practical difficulty of why when they have the second or third largest lot width in the subdivision this applicant needs an extra 40 ft. of house width than everyone else in the neighborhood.

Mr. Johnson noted there can be a struggle with larger lots in a neighborhood of various sized lots. Mr. Jones asked if an abnormally large lot may be punitively penalized. Mr. DeSimone said that is the basis of their appeal tonight.

There were no comments from the audience at 7:57 p.m.

Motion by Mr. Miller

Seconded by Mr. Hart regarding 1241 Westwood, Appeal 15-03, to support the appeal. He believes that the problem is due to the unique circumstance of this property, the existing house being located much further to the north than it would have been if it was built at a later time. It caused a lot of land to be left between the existing house and the house to the south.

He believes that what happens here is by allowing this variance, it really allows the building to kind of fall more within the conformity of the zoning of the street in terms of distance between the existing houses on the street. So, Mr. Miller thinks that strict compliance with the Ordinance would actually cause a gap between this house and the house to the south, which would be kind of odd looking.

And, in a very unique way to this neighborhood and to this house, he thinks that allowing the petitioner this appeal really does substantial justice to the house, the neighbors, and the neighborhood. For those reasons, Mr. Miller would again support this appeal and tie the motion to the plans as submitted.

Mr. Jones observed this is one of the larger lots in that area of Birmingham, and he believes it is unique. He will support the motion because of the combination of otherwise meeting all other setbacks, and the uniqueness of this lot causing the combined issue. Then, he looks at the 5 ft. and the petitioner made the point that it may be imperceptible and in conformity with the subdivision. For those reasons, he will support the motion.

Mr. Lyon said he doesn't see an issue just because this is a large lot. Therefore, he is leaning toward not supporting the motion.

Motion carried, 5-2.

ROLLCALL VOTE

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

Nays: Judd, Lyon

Absent: Lillie

T# 02-10-15

**334 BRYN MAWR
(Appeal 15-04)**

The owners of the property known as 334 Bryn Mawr request the following variances to allow for the construction of a second level addition:

A. Article 2, Section 2.06 of the Zoning Ordinance requires a side yard setback of 16.50 ft. (north side) for this lot; with 7.40 ft. existing and 7.40 ft. proposed. Therefore, a variance of 9.10 ft. is requested.

B. Article 2, Section 2.06 of the Zoning Ordinance requires the sum of the side yard setbacks be 22.00 ft. for this lot; with 12.90 ft. existing and 12.90 ft. proposed. Therefore, a variance of 9.10 ft. is requested.

C. Article 4, Section 4.69 C of the Zoning Ordinance requires the distance between principal residential buildings be 22.00 ft. (south side) for this lot; with 19.50 ft. existing and 19.50 ft. proposed. Therefore, a variance of 2.50 ft. is requested.

D. Article 4, Section 4.69 C of the Zoning Ordinance requires the distance between principal residential buildings be 22.00 ft. (north side) for this lot; with 12.40 ft. existing and 12.40 ft. proposed. Therefore, a variance of 9.60 ft. is requested.

This property is zoned R-1.

Mr. Cooper noted this is an existing one-story, two-bedroom home built in 1953. The petitioner is building up and not increasing the footprint. The existing setbacks are all legal, non-conforming. In response to Mr. Miller, Mr. Cooper verified the proposal isn't causing any encroachment or future problems with the neighbors on either side.

Vice-Chairman Judd indicated he was worried about the massing to the south that would be caused by adding a second story. He asked if there was discussion with the petitioner about stepping back the second story. Mr. Cooper explained the roof configuration on the north makes the second story seem as though it stepped back a bit. For better construction they wanted to keep the walls stacked on the existing foundation.

Mr. James P. Riley, the petitioner, said his elderly mother owns the house and has tried to sell it. However, a two-bedroom house is difficult to sell in today's market. Therefore they plan to construct an addition and then turn around and sell the property. The lot does not accommodate any other type of addition that would sufficiently make the house large enough by today's standards.

They are challenged by the fact their lot is the third smallest on the street. They tried to minimize the massing of the house by the roof pitch and the addition of a dormer window that breaks up the mass of looking at a 22 ft. roof. Stacking the second story will provide more structurally sound construction than stepping it back. The house was built 50 years ago when the City must not have been adhering the 25% overall setback requirement. The new 12/12 roof pitch on the two gables and the main house pitch of 8/12 will incorporate the house and make it look more consistent with the architecture in the neighborhood. They capped the height at 26 ft. to the midpoint of the roof. By percentage, the requests they are making are relatively small.

Vice-Chairman Judd took comments from members of the public at 8:20 p.m.

Mr. David Stone, the neighbor to the north, fully supported the variance requests.

Motion by Mr. Lyon

Seconded by Mr. Miller in regard to Appeal 15-03, 334 Bryn Mawr, to approve the four requested variances advertised. He believes the appellant has shown there exists a practical difficulty that strict compliance would be unduly burdensome. This is an existing non-conforming house on the lot and the appellant wishes to basically extend upwards a large percentage of the footprint.

Mr. Lyon thinks the appellant has done a remarkable job of mitigating the massing of the house by pitching the roof strategically, and not going too steep on the main house by keeping the height down so as to not impose mass on the neighbor.

He believes this is unique in that this house is existing non-conforming on the lot. It is reportedly the sixth oldest house in the subdivision and was obviously put there before the existing zoning ordinances were in effect.

Further, he believes it does substantial justice to the appellant and the surrounding neighbors. He would tie the motion to the plans as presented.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Lillie

T# 02-11-15

CORRESPONDENCE (none)

T# 02-12-15

GENERAL BUSINESS

Mr. Johnson announced the March meeting might be held at DPS.

T# 02-13-15

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:26 p.m.



Bruce R. Johnson, Building Official