

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS  
TUESDAY, MARCH 10, 2015**

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, March 10, 2015. Chairman Charles Lillie convened the meeting at 7:30 p.m.

**Present:** Chairman Charles Lillie; Board Members Kevin Hart, Jeffery Jones, Peter Lyon, Alternate Board Members Cynthia Grove, Rachel Loughrin

**Absent:** Board Members Randolph Judd, Thomas Hughes, John Miller

**Administration:** Ken Cooper, Asst. Building Official  
Bruce Johnson, Building Official  
Scott Lenhart, Building Dept.  
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.

**T# 03-14-15**

**APPROVAL OF THE MINUTES OF THE BZA MEETING OF FEBRUARY 10, 2015**

**Motion by Mr. Jones**

**Seconded by Mr. Lyon to approve the Minutes of the BZA meeting of February 10, 2015 as written.**

**Motion carried, 6-0.**

VOICE VOTE

Yeas: Jones, Lyon, Grove, Hart, Lillie, Loughrin

Nays: None

Absent: Hughes, Judd, Miller

**T# 03-15-15**

**370 PLEASANT  
(Appeal 15-05)**

The owners of the property known as 370 Pleasant request the following variance two variances to allow for the construction of a new home with a detached garage:

- A. Article 2, Section 2.04 of the Zoning Ordinance requires a front yard setback of 60.64 ft. for this lot; with 41.58 ft. proposed. Therefore, a variance of 19.06 ft. is requested.
- B. Article 4, Section 4.30 C 1 of the Zoning Ordinance allows a front porch and steps to project 10.00 ft. into the required front open space for this lot; with 28.06 ft. proposed. Therefore, a variance of 18.06 ft. is requested.

This property is zoned R-1A Single-Family Residential.

Mr. Cooper explained the two lots immediately to the south of the subject property are roughly 400 ft. deep. Other lots in that area of Pleasant are about 150 ft. deep. The owners of the two lots to the south chose to set their houses back 90.70 ft. and 87.80 ft. respectively. Therefore, the applicant is proposing to take the average setback of the three homes within 200 ft. (41.58 ft.) less the two houses that were built much further back than the required setback.

The applicant is proposing a 9.00 ft. covered front porch and steps from the proposed 41.58 ft. front setback.

Mr. Hart established that the current house is existing non-conforming on both the front and side setbacks. This application actually decreases the non-conformity to the front and eliminates the north side non-conformity.

Mr. Justin Friedman, HM Homes, LLC, said the average lot depth along the street is 130 to 160 ft. going towards Maple Rd. Their proposed setback will be cohesive with the street. They are not maxing out the variance for the front setback, as it is pulled back about 1.50 to 2.00 ft. The granting of the variance will have a positive impact on the street. There will be no harm caused to the area and they will observe all Ordinances on the site.

No one from the audience wanted to comment on this petition at 7:45 p.m.

**Motion by Mr. Lyon**

**Seconded by Mr. Jones in regard to Appeal 15-05, 370 Pleasant, to approve the variances as advertised. He believes that strict compliance with the Ordinance would be unduly burdensome in this case. The appellant is proposing to build a new house on an existing lot. The uniqueness of this situation is that there are two lots immediately to the south that are substantially set further back.**

**Mr. Lyon believes this is the least variance required, given that the appellant has averaged it with the existing houses that are similarly situated on similar lots in this location.**

**He believes it does substantial justice to both the appellant and the neighbors and he would tie the motion to the plans as presented and given to the City tonight.**

Mr. Jones noted it is a unique circumstance driving down Pleasant, given the size of the lots and what people have done. Also, the applicant is improving the setback requirement. Therefore, he supports the motion.

**Motion carried, 6-0.**

ROLLCALL VOTE

Yeas: Lyon, Jones, Grove, Hart, Lillie, Loughrin

Nays: None

Absent: Hughes, Judd, Miller

**T# 03-16-15**

**645 S. ETON**

**(Appeal 15-06)** (Postponed by the petitioner to the meeting of April 14, 2015)

**T# 03-17-15**

**1389 PILGRIM**

**(Appeal 15-07)**

The owners of the property known as 1389 Pilgrim request the following variance to allow an existing second story deck to the rear of their home to remain as constructed.

A. Article 4, Section 4.30 C (5) of the Zoning Ordinance requires that the first floor of a deck projecting into a rear open space not be higher than the floor of the first

story. The floor of the deck as constructed in this case is 11 ft. above the first floor. Therefore, a variance of 11 ft. is requested to allow the existing deck to remain.

This property is zoned R-1 Single-Family Residential.

Mr. Johnson advised the applicant is nearing completion of a new home on the site with a two-story deck that is already constructed and was reviewed and approved two times by the City. While the Zoning Ordinance allows the deck to be in its current location, the deck should not have been approved to be higher than the first floor of the home. This came to the attention of the Building Dept. a month and a half ago when a resident came in inquiring if they could build a second-story deck just like their neighbor's deck, and were informed by staff that it is not permitted by the Zoning Ordinance. Mr. Johnson said he does not believe it was the intent of the applicant to circumvent the Ordinance.

Mr. Peter Arvant, Attorney for Mr. Neal Doshi the property owner, was present with Mr. Doshi. The home complies with Birmingham Zoning Ordinances in all other ways. Mr. Doshi did not try to do anything intentional to circumvent the Ordinance. The City Ordinance doesn't prohibit second story decks, but it doesn't allow them in the rear open space. Before the first brick was laid, Mr. Doshi could have made changes to comply with the Ordinance if the City had not approved his plans. In response to Chairman Lillie, Mr. Arvant agreed this lot is pretty similar to other lots in the subdivision; there is nothing unusual about it.

At 8:07 p.m. the chairman opened up the discussion to the audience.

Dr. Mara Geiger, 1363 Pilgrim, directly to the south of the subject property, said their privacy has been somewhat impeded as a result of the deck next door. Therefore, they applied to the City to build a similar deck to their neighbors but were told it is against the Zoning Ordinance. The neighbor's deck has second floor lights that go on every evening and illuminate her whole house and yard along with other properties. The lights go on at 6 p.m. and go off at 6 a.m. and that is certainly irritating. Chairman Lillie expressed the hope that she can work out something with her neighbor to handle the lighting.

Mr. Greg Geiger, 1363 Pilgrim, voiced his displeasure along with that of his neighbors.

**Motion by Chairman Lillie**

**Seconded by Mr. Lyon regarding Appeal 15-07 to grant the variance as advertised. He makes this motion even though in his opinion the petitioner has failed to establish a practical difficulty. The driving force behind this appeal is an omission on the part of the City of Birmingham while reviewing**

the proposed plans to note that the deck did not comply with the Zoning Ordinance.

One of the functions of this board is to act in a quasi-judicial capacity. In order for there to be a practical difficulty, the petitioner must establish four things. The first is that it would be unduly burdensome for the petitioner to comply with the Zoning Ordinance. In this case, had the City noted the issue with the deck at the beginning, the petitioner could have easily modified its plans to comply with the Zoning Ordinance.

Secondly, there is nothing unusual about this lot. The lot is semi-rectangular in shape and is fairly flat.

Third, the problem in part was created by the petitioner in that this is new construction. The petitioner prepared the plans, and the petitioner has an obligation to comply with the Zoning Ordinance unless there are extenuating circumstances. The problem was exacerbated by the City failing to catch the non compliance with the Zoning Ordinance.

The fourth criteria is that the variance does substantial justice to the petitioner as well as to the other property owners in the area.

Notwithstanding the fact that the petitioner has not met all of the criteria to establish a practical difficulty, Chairman Lillie would still grant the variance because he thinks at this point in time it would be unreasonable to require the petitioner to remove the finished deck because of an error by the City and there being no evidence that the petitioner intentionally tried to deceive the City. By granting this variance, we would be doing substantial justice to the petitioner. The motion is tied to the plans as presented.

Mr. Lyon said he would like to tie in some language indicating that the appellant either work with the City and/or neighbor to mitigate the lighting situation as a condition of granting the variance.

Mr. Arvant said they will be mindful of their neighbors and can turn down the lighting. It is reasonable that Mr. Johnson can be the mediator if there is there is a problem.

Mr. Hart said everyone needs to realize this is a full size structure projecting into the rear yard setback. He thought if this becomes a ballroom on the second floor the board should be concerned with life-safety issues such as lighting. If the board is going to allow this protrusion into the rear yard setback they should be careful about how the structure is going to be used. Also, the board is totally within its charge to find a way to make this deck less obtrusive to the neighbors.

Answering a question from Mr. Jones, Mr. Johnson specified the lighting standards are strict in the commercial zoned properties. That is not so in the residential neighborhoods. It is better left to the neighbors to resolve. The Building Dept. in the past has helped to mitigate complaints when they come in.

Mr. Arvant said they have heard the complaint now and they will address it. They have a good safety valve in place if necessary with Mr. Johnson.

Mr. Doshi said regarding the lighting that there have been a few break-ins across the street at a house that is under construction, so he has programmed the lights to be on for safety. He has no problems with turning the light down to an appropriate level.

Mr. Jones informed Mr. Geiger that he is not without recourse. He could have gone to the City with his concerns.

**Amended Chairman Lillie  
And accepted**

**To provide that the variance is contingent upon reasonable efforts being made by the petitioner to solve the lighting problem that was mentioned today, and if that can't be worked out with the neighbors then Mr. Johnson shall be the mediator of the problem.**

**Motion carried, 6-0.**

ROLLCALL VOTE

Yeas: Lillie, Lyon, Grove, Hart, Jones, Loughrin

Nays: None

Absent: Hughes, Judd, Miller

**T# 03-18-15**

**CORRESPONDENCE (none)**

**T# 03-19-15**

**GENERAL BUSINESS**

Mr. Johnson passed out complete copies of the updated Zoning Ordinance along with copies of the Sign Ordinance.

Sadly, Mr. Cooper announced his intention to leave the City on March 26. He has a home in Harbor Springs and will relocate and work for Emmett County.

**T# 03-20-15**

**ADJOURNMENT**

No further business being evident, the board members passed a motion to adjourn at 8:47 p.m.

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Bruce R. Johnson, Building Official