

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, APRIL 14, 2015
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, April 14, 2015. Chairman Charles Lillie convened the meeting at 7:30 p.m.

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

Absent: Board Member Randolph Judd; Alternate Board Member Cynthia Grove

Administration: Matthew Baka, Sr. Planner
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 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 are no interpretations on this evening's agenda.

T# 04-21-15

APPROVAL OF THE MINUTES OF THE BZA MEETING OF MARCH 10, 2015

Motion by Mr. Jones

Seconded by Mr. Lyon to approve the Minutes of the BZA meeting of March 10, 2015 as presented.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Judd

T# 04-22-15

**645 S. ETON
(Appeal 15-06)**

The owners of the property known as 645 S. Eton request the following variance to allow for the use of the property as a sales agency in the MX District:

- A. Chapter 126, Article 2, Section 2.39, Commercial Permitted Uses of the Zoning Ordinance does not permit the operation of an auto sales agency in the Mixed Use ("MX") District. Therefore, a use variance to permit an auto sales agency in the MX District is requested.

This property is zoned MX.

Six letters have been received in support of the requested variance.

Mr. Baka reported the applicant is requesting a variance to operate a small scale auto sales agency with indoor vehicle storage in the vacant storefront that was formerly Watch Hill Antiques. The proposed site does provide the required off-street parking to comply with the Zoning Ordinance. In this zone district outdoor storage is only permitted with City Commission approval of a Special Land Use Permit. In response to inquiries from board members, Mr. Baka confirmed there is not a definition in the Zoning Ordinance for auto sales agency or for automobile dealership.

Dennis G. Cowan, Attorney from Plunkett Cooney, spoke on behalf of the petitioners, Syed and Erica Ahmed, who were present. The Ahmeds made an effort to reach out to neighbors to see if there were any concerns that could be addressed prior to this meeting. They propose to operate their business, Platinum Motor Cars, which sells high-end, previously enjoyed automobiles, at the site. All vehicles for sale will be displayed inside the building. There will be no outside storage or display. The vehicles will have some minor prep on-site, but no repair, conversion or maintenance will occur on the property. Finally, there will be no delivery of vehicles by semi-trailer.

Mr. Cowan went on to describe how the Ahmed's proposed use complies with the four determinations that need to be made by the BZA in order to grant a variance. The petitioners' proposed use is consistent with the goals and objectives of the District and is not a radical departure from other uses in the District. Currently there are existing and planned automotive related uses in the Eton Road Corridor. The adjacent Auto Europe has been at the location for a number of years. Recently the BZA approved a glazing variance that will allow a Mercedes-Benz dealership to utilize a nearby warehouse in the Corridor for high-end automobile storage.

Since their proposal keeps with the spirit of the Zoning Ordinance, Mr. Cowan requested approval of the petitioner's use variance. The petitioners have a signed lease for the property that is contingent upon their receiving a variance.

In response to Mr. Lyon who questioned how this is not "spot zoning," Mr. Cowan said the comparison of the automotive sales agency with the other automotive uses would take it out of the "spot zoning" category. There has been inability to lease this space for at least the last two years. The intensity of the adjacent uses dissuades other users. The chairman noted that because a property cannot be rented is not grounds for a use variance.

Mr. Cowen noted that uses allowed in the MX District that are automotive related, a rental agency and automotive repair, are far more intense than this sales agency would ever be. Therefore, consideration should be given to allowing that use also. Mr. Hart thought the requested variance is very consistent with the intent of the MX District.

Mr. Hughes received confirmation that the petitioners have operated their business in Troy under the name of Platinum Motors for five years.

The chairman called for discussion from the audience at 8:15 p.m.

Mr. Scott LePage, 575 S. Eton, Griffin Claw Brewing Co., thought this business will be an asset to the District.

Ms. Molly Woodeck Folt, who lives across the street on the corner of Eton and Bowers, said she is firmly in support of the Ahmed's use at this location.

Mr. Eric Frizee, General Manager of Tamaroff Automotive Group in Southfield, MI, knows the Ahmeds and spoke in support of having their business in his neighborhood. Their luxury, high end, retail automotive sales business will fill a void in the community. They base their business on integrity, honesty, and building long-lasting relationships with customers.

Mr. Thomas Shick, one of the owners of Auto Europe, spoke in support of the petitioners moving in next door.

Discussion considered how the business would operate if the vehicles are all inside in a showroom. Mr. Ahmed noted in response to Mr. Hughes that in his business most people do their shopping on line. Generally they don't test drive his cars. They average around twenty to thirty retail sales/month from the store and there are roughly six employees on a daily basis.

Motion by Mr. Miller

Seconded by Mr. Hart to support Appeal 15-06 for 645 S. Eton. He believes that the hardship is due to the unique venue that was really not anticipated by the

Ordinance in convergence with the vagueness or over generalization of the wording of the Ordinance itself. He certainly believes that this use would not alter the central character of the area, but really enhance it. It seems like it is a very reasonable use for this location, and for those reasons he would move to support this appeal per the drawings as submitted.

Mr. Lyon thought the appellant has made a very good case that the MX District does allow the board some discretion, much more so than other districts. He thinks this is a very compatible use that really the Ordinance did not anticipate. In some respects this is an automobile art gallery as opposed to auto sales in Troy Motor Mall. There won't be traffic and everybody coming out on a Saturday to cut a deal and take test drives. For those arguments Mr. Lyon said he will support the motion.

Mr. Jones said he is not likely to support the motion for a number of reasons. The board finds itself getting into discussions relating to the business at hand when what they are considering is the use of the real property in the City. He wondered why the petitioners need this space if everything is done virtually by internet. Relating to the real estate, he appreciates the arguments, but there are far too many other economic reasons as to why things cannot be rented.

Chairman Lillie agreed. He doesn't think that a hardship has been shown just because the property hasn't rented. He appreciates that all the neighbors are in support, but that is not a factor in the board's decision.

Ms. Loughrin did not see how this operation is any different than selling anything out of a store. This business could be called an auto boutique rather than auto sales.

Motion failed, 4-3.

ROLLCALL VOTE

Yeas: Miller, Hart, Lyon, Loughrin

Nays: Lillie, Hughes, Jones

Absent: Judd

T# 04-23-15

**482 PARK
(Appeal 15-08)**

The owners of the property known as 482 Park request the following variances to allow for the construction of a new home and detached garage:

- A Article 4, Section 4.69 of the Zoning Ordinance requires the distance between principal residential buildings be 14.00 ft. (south side) for this lot. The applicant is proposing 11.90 ft; therefore, a variance of 2.10 ft. is requested.

- B. Article 4, Section 4.69 of the Zoning Ordinance requires the distance between principal residential buildings to be 14.00 ft. (north side) for this lot. The applicant is proposing 11.70 ft.; therefore, a variance of 2.30 ft. is requested.

This property is zoned R-2.

Mr. Johnson explained the existing structure is a non-conforming duplex that was constructed in 1915 on a parcel consisting of two 40 ft. wide platted lots (Lots 78 and 79). The applicant is proposing to demolish the duplex and build two new single-family homes. Once the duplex is demolished the property will be reverted back into two individual platted lots. The proposed home on Lot 79 is being constructed first and meets all Zoning Ordinance requirements. The proposed house on Lot 78 will also meet all Ordinance requirements except for the distance between principal residential structures. The existing home to the south of Lot 78 was constructed 2.90 ft. from the shared property line in 1925. That leaves Lot 78 with a 20.80 ft. building envelope width because of the distance between residential structures requirement. The Zoning Ordinance allows a 26.00 ft. wide home on a 40.00 ft. lot.

Chairman Lillie summarized it is the house to the south that is causing the major problem. Mr. Miller noticed the house to the north flipped their driveway to the north instead of to the south, and that pinched the subject property also.

Mr. J.R. Ruthig said he was commissioned by the property owner, Park St. Development, to design the homes for the two lots on Park. The unique situation is that in dealing with 40.00 ft. lot properties, when the cadence of driveways is interrupted to the minimum setback side, it wrecks havoc on following the intent of the Ordinance which is to allow the homeowner to enjoy a 26 ft. wide home. In this case the properties are surrounded by minimum setbacks on both sides. Their practical difficulty is in designing the home in order to meet the Ordinance. They have tried to formulate their variance request as minimal as necessary to make this a viable option. The main bodies of the homes are designed to be about 24.00 ft. wide and in doing that they were able to achieve 13.80 ft. between the structures. The actual 2.30 ft. dimensional request they are asking for is for basically only a fraction of the side of the home. They feel their proposal follows the intent of the Ordinance and how the street was supposed to be done in context with the existing neighborhood.

At 8:45 p.m. there were no comments from members of the audience.

Motion by Mr. Lyon

Seconded by Mr. Jones in regard to Appeal 15-08, 482 Park, the appellant asks for two variances for distance between residential buildings. Mr. Lyon would move to grant the variances as advertised. He believes that strict compliance would be unduly burdensome due to the unique characteristics of this property, in that there is an existing, non-conforming building to the south.

In addition it was pointed out by members of the board that the driveway cadence was interrupted by the property to the north, thereby putting this property in a bit of a predicament.

Mr. Lyon believes this is the least variance necessary to use the property for its intended purpose. This is a 24.00 ft. wide house on a 40.00 ft. lot. They could have made it 26.00 ft. wide. So, the appellant has done some mitigating of the variance. They have also taken into consideration that when the house to the south, if and when it is removed, will be conforming with a 5.00 ft. setback.

He believes this does substantial justice to both the appellant and the surrounding neighborhood, and he would tie the motion to the plans as presented.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Judd

T# 04-24-15

2483 W. Maple Rd. (Appeal 15-06)

The owners of the property known as 2483 W. Maple Rd. request the following variance to allow for the construction of a new financial institution:

- A. Article 4, Section 4.83 WN-01 A (1) of the Zoning Ordinance requires the front facade and any facade facing a street, plaza, park, or parking area to provide no less than 70% of the storefront/ground floor facade as clear glass panels and doorways. The applicant is required to meet this standard on all facades of the proposed building.
- On the north (front) facade the applicant is proposing to provide 39% glass (increased from original proposal of 31%). Therefore, a variance of 31% is requested.
 - On the east (left) facade the applicant is proposing to provide 26% glass (increased from original proposal of 15%).. Therefore, a variance of 44% is requested.
 - On the south (rear) facade the applicant is proposing to provide 4% glass. Therefore, a variance if 66% is requested.

- On the west (right) facade the applicant is proposing to provide 17% glass (increased from original proposal of 9%). Therefore, a variance of 53% is requested.

This property is zoned B-1.

Mr. Baka advised this is the current location of Cranbrook Auto Care. The Planning Board is currently studying the window standards of section 4.83 of the Zoning Ordinance to consider amending the glazing requirements to be consistent with the glazing requirements of the Downtown Overlay District. The Planning Board has recognized this specific part of the Ordinance as it is applied to these buildings has unintended consequences such as creating a glass box. If implemented, this change would significantly reduce the amount of required glazing in Commercial Zones outside of the Downtown.

Chairman Lillie noticed that the applicant has increased the amount of glazing from what they originally proposed. Mr. Baka agreed they have showed a good faith effort to meet the Ordinance in specific areas. They are trying to keep some of the residential character of the building by not going too large, in keeping with the style of the neighborhood. Chairman Lillie added that part of the problem with the Glazing Ordinance is it doesn't take the use of the property into consideration.

Mr. Vince Pangle, Strategic Property Services, was present on behalf of Sam and Mary Karana and DFCU Financial. He showed a plan that gave clarification of the constraints of the property. A corner piece of the property is owned by the City of Birmingham and is presently under a lease agreement with the City. The property owners have entered into a new license agreement which is up for approval by the City Commission upon acceptance of the Final Site Plan and the Special Land Use Permit ("SLUP") approvals. In addition the Karanas have entered into a long-term lease agreement with DFCU Financial. The proposal has received a recommendation from the Planning Board for a SLUP which will provide drive-through access to the premises, and also for Preliminary Site Plan Approval. The glazing component has been increased from what was previously recommended for approval.

The four corners of the W. Maple Rd./Cranbrook intersection are zoned commercial. The subject property is surrounded exclusively by residential. Therefore they have developed a residential type facility. All mechanical is housed inside the building. The practical difficulty is that all of the sensitive and mechanical areas inside the building are required to have 70% glazing.

If the variance is granted, it will increase the property values in the neighborhood and enhance the corner of Maple Rd./Cranbrook. All of the neighbors are unanimously in support of the project.

Mr. Jones thought the applicant has done a good job given the circumstances and the uniqueness of this property.

At 9:02 p.m. here were no comments from the audience.

Motion by Mr. Jones

Seconded by Mr. Miller relating to Appeal 15-09, 2483 W. Maple Rd., he would move to support and grant the variances as requested relating to and advertised with Article 4, Section 4.83, and typically the glazing issues as they relate to here. The petitioner has made a very good case of showing the uniqueness of the property and the coordination of the Glazing Ordinance as we have done in depth, the motivation behind it, and the desires to have additional glazing that primarily relates to a walk around Downtown building situation.

Here, given the uniqueness of the property and the City owned effectively licensing agreements, he knows of no other property that talks about licensing and leasing and property owned by the City wrapping around it completely within the residential area.

As to the uniqueness of the circumstances, Mr. Jones thinks the petitioner has in fact mitigated as much of the variances as needed and has in fact shown willingness to work with the City to accommodate and diminish the requested variances.

He believes it would do substantial justice to the area. He appreciates and understands that times change and he will lose his gas station, but that is life for him. Further, he thinks this is not a self-created issue and he would tie the variances to the plans as presented.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Judd

T# 04-25-15

CORRESPONDENCE (none)

T# 04-26-15

GENERAL BUSINESS (none)

T# 04-27-15

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 9:07 p.m.

Bruce R. Johnson, Building Official