

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, MAY 12, 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, May 12, 2015. Chairman Charles Lillie convened the meeting at 7:30 p.m.

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

Absent: Board Member Peter Lyon; 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 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# 05-28-15

APPROVAL OF THE MINUTES OF THE BZA MEETING OF APRIL 14, 2015

Mr. Jones:

Page 4 - Third paragraph, first sentence, insert "not" in front of "likely,"

Chairman Lillie:

Page 4 - Second and third lines, delete "not only."

Motion by Mr. Jones

Seconded by Mr. Miller to approve the Minutes of the BZA meeting of April 14, 2015 as corrected.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Lyon

T# 05-29-15

**250 N. OLD WOODWARD AVE.
(Appeal 15-10)**

The owners of the property known as 250 N. Old Woodward and the tenant Emagine Theater are requesting a variance from the sign ordinance to allow signage on the first floor sign band for a business located on the fourth floor.

- A. Article 3, Section 3.04 (F)(d), of the Zoning Ordinance; and Article 1, Section 1.10 (B)(4)(d), of the Sign Ordinance** allows businesses that have their principal square footage on the first floor to have an entry sign on the sign band. The applicant's principal square footage is on the fourth floor of the building. Therefore, the applicant is requesting a variance to allow signage on the existing building sign band.

This property is zoned B-4 Business Residential/D-4 Downtown Overlay.

Mr. Baka advised the applicant is requesting to use the previous occupants marquee in order to provide signage for their business. The building was originally developed under a consent judgment; therefore it wasn't subject to the Zoning Ordinance or the Sign Ordinance when it was approved by a judge. Since that time the property was purchased and it has been redeveloped under the Downtown Overlay Ordinance. They have brought the signage into compliance for the most part, by reducing it to 18 in. and only one sign. However, there was nothing they could do about their principal square footage being on the fourth floor. Their dedicated lobby, ticketing, and elevator bank are all that is located on the first floor.

Mr. Patrick Howe, Counsel for the applicant, CH Birmingham, LLC, was present with Mr. Paul Glantz, CEO of Emagine Entertainment; Mr. Dean Downing, Sign Contractor; and Mr. Mike Southern, Development Consultant. Their client, is proposing to operate a theater on the fourth floor, along with a full service restaurant. The Planning Board has unanimously approved the location of the signage subject to the granting of a variance

for the usage of the marquee sign. The applicant feels it is important to keep the marquee as it is an integral part of the theater.

They think that they meet the elements for the granting of a variance given this building was developed under a consent judgment and not under the purview of the various ordinances in the City of Birmingham. There is a practical difficulty in that this is a unique property in the City. They do not think granting the variance would be detrimental to any other property owners as it is continuing use of the marquee in a manner that is less intense than the prior user. Granting the variance will not be contrary to the general objectives of the Ordinance, as the marquee is there and in the same location as the sign band. Further, the lettering and graphics are fully compliant with the Sign Ordinance. Lastly, the granting of the variance will result in substantial justice to the applicant because without the variance they cannot have a sign. The sign is integral to the operation of this business and the marquee is the right place to put the sign.

Discussion brought out that the applicant has exclusive rights to the marquee under the terms of their lease.

At 7:43 p.m. no one in the audience wished to comment on the appeal.

Motion by Mr. Judd

Seconded by Mr. Jones in regard to Appeal 15-10, 250 N. Old Woodward Ave., the petitioner seeks a variance on an existing structure which has been used as a theater for a number of years. The subject building comes with a history in that it was created and designed by a consent judgment which arose out of litigation a number of years ago. Part and parcel to the theater is an existing marquee and it is the desire of the petitioner to make some changes to it and they are seeking a dimensional variance.

There are four standards which need to be addressed. The first is that strict compliance would unreasonably prevent the owner from using the property for a permitted purpose and be unnecessarily burdensome. In this case we have an existing theater that requires a marquee in order to be a viable and successful business. To deny that, Mr. Judd thinks, would be unnecessarily burdensome to the petitioner.

Second is whether granting the variance would do substantial justice to the applicant as well as other property owners. Mr. Judd doesn't necessarily follow the petitioner's argument in this case, but he does feel it would be a substantial justice to the City of Birmingham and the surrounding area, in that this is a large piece of property and he feels the vitality of that building is important for the City and for that area.

The third is whether the plight of the owner is due to unique circumstances. The applicant's counsel very ably described the circumstances under which this was created. The fact is that it is a theater which now will undergo a serious reconstruction. It also is unique in the sense that it will have an entry on the fourth floor of the building to the actual business of five theaters and one restaurant. This is a very unique configuration. Mr. Judd feels that the petitioner has met this requirement.

The fourth standard is whether the problem is self-created. He supposes everything that comes before this board is self-created. In this case if it is self-created he feels there has been a courageous mitigation of factors here to permit this. For those reasons Mr. Judd would move to grant the variance requested by the petitioner and tie it to the plans.

Mr. Miller noted that supporting this motion maintains the essential character of the neighborhood.

Mr. Jones added that everything Mr. Judd aptly and ably announced has also been redone, reviewed, and restated through the Planning Board as well as through the Special Land Use Permit ("SLUP") process.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Lyon

T# 05-30-15

**390 S. ADAMS
(Appeal 15-11)**

The owners of the property known as 390 S. Adams request the following variance to allow for the construction of open covered porches in a required street side yard open space:

Article 4, Section 4.30 (3) of the Zoning Ordinance does not allow porches to project into a required side yard open space. The applicant is proposing two covered porches projecting a maximum of 8.00 ft. into a street side open space on a corner lot. The required street side open space for this lot is 30.00 ft. Therefore, a variance is requested to allow the covered porches to project 8.00 ft. into the side open space.

This property is zoned R-2.

Mr. Johnson explained the applicant is proposing to demolish an existing home on a corner lot and construct a new house. The corner lot has an interior lot immediately abutting it behind, facing the street. Therefore, the required streetside setback would need to meet the 200 ft. average on Chestnut. However, according to the Ordinance it cannot reduce the buildable width of the lot to less than 25 ft. The proposed home will conform to all zoning requirements including setbacks, except for the side porches. The proposed covered porches would project into the required side open space facing Chestnut.

Chairman Lillie summarized that the driving force is that the petitioner would rather have the front face on Chestnut as opposed to Adams but they can't do it because of the shape of the lot. Mr. Johnson said on corner lots the most utilized entries end up being off the side street.

Mr. Judd noted the large porch seems to be the engine driving this. It was pointed out that if they built an uncovered slab on grade it would not be a problem. Mr. Johnson advised if a couple of steps come up to it, it is a structure and per the Ordinance it is not allowed to project into a side open space, Mr. Judd concluded if they were not discussing the deck in its current configuration it would eliminate a lot of the problems.

Mr. Miller observed that by making the porch extension 8 ft. into the proposed front open space the petitioner has held back from the typical 10 ft. allowance for extension of a front porch if they were facing on Adams. Mr. Johnson added the applicant's initial request was for much more than this and it went through three different redesigns.

Mr. Hart pointed out the proposed porch addition will not come out further than the current house as it exists today. Chairman Lillie followed up by saying that looking down Chestnut it would be more open than it is today.

Mr. Ryan Ross, Contractor, said the house sits on a corner lot and has two front yards, one on Adams and one on Chestnut. The Ordinance requires them to conform with the front yard setbacks of their neighbors on both streets. The proposed position of their house complies with all Zoning Ordinance requirements. It is their desire that the house and porches face Chestnut and not Adams, which is a busy street with no parking. Chestnut is a quiet, friendly neighborhood street. The problem is that the porches are not allowed in the side yard on Chestnut.

Their proposal meets the spirit and intent of the Zoning Ordinance by breaking up a large uninterrupted 74 ft. expanse of the house. The unique condition is that Adams with its high traffic volume is not really a residential street. What they propose actually improves the neighborhood over what could be built in the side yard by right. They feel it would be unnecessarily burdensome to not allow the variance request. In conclusion, what they propose makes sense for them and will be beneficial to the neighborhood.

Not granting the variance goes against the spirit and intent of the Ordinance to break up the boring mass of the house front, add architectural detail, and promote neighborhood interaction.

He passed around a petition from the neighbors supporting the variance request.

There were no members of the audience who wanted to comment on this appeal at 8:07 p.m.

Motion by Mr. Miller

Seconded by Mr. Hart to support the petition for 390 S. Adams, Appeal 15-11. He believes that conformity is burdensome in this case due to the orientation of the house on the corner of a major busy street and a longer, more appropriate residential street on the other side. Certainly the house as designed, he believes, will be a really welcome addition, especially to Chestnut.

The point that if this was dealt with as strictly a side yard you could put a 6 ft. high fence right along the sidewalk for most of the length of Chestnut really reinforces the value and the substantial justice that is offered to the residential Chestnut Street in this regard.

The problem is due to certainly the unique aspects of this particular parcel and Mr. Miller believes it was not self-created in that the parcel has been there with the current zoning requirements. He thinks this solution kind of mitigates a possible problem if the house was designed differently. So, he would again move to support, and tie the support to the plans as submitted.

Chairman Lillie indicated he would support the motion for the reasons stated by Mr. Miller.

Mr. Jones could not imagine anyone wanting to have a front on Adams if they have the option to utilize the side street instead.

Mr. Judd stated he will not support the motion. His concern is with the porch which he thinks is an extremely large structure. He supposes it is nice to have one, but thinks there are alternatives to that which he stated earlier.

Motion carried, 6-1.

ROLLCALL VOTE

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

Nays: Judd

Absent: Lyon

T# 05-31-15

CORRESPONDENCE (none)

T# 05-32-15

GENERAL BUSINESS

Chairman Lillie initiated discussion of a treatise on zoning, strictly dealing with use variances, that was taken off the Institute of Continuing Education web site. He and Mr. Judd discussed the criteria for use variances along with certain ethics issues. The BZA is a quasi judicial board that is supposed to look at the facts, make a decision, and not make the law. A use variance involves a much tougher criteria than a dimensional variance. The Ordinance reads in Article 1, that if a use is not specifically listed as permitted, it is not. Discussion of cases must only take place at board meetings, on the record, and in front of everybody.

If someone doesn't like a BZA conclusion, their recourse is to the Circuit Court. Therefore, great care must be taken by the board members in handling each case.

T# 05-33-15

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:45 p.m.

Bruce R. Johnson, Building Official