

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

Present: Chairman Charles Lillie; Board Members Kevin Hart, Thomas Hughes, Jeffrey Jones, Randolph Judd, Peter Lyon, John Miller

Absent: Alternate Board Members Cynthia Grove, Rachel Loughrin

Administration: Matthew Baka, Sr. Planner
Bruce Johnson, Building Official
Scott Lenhart, Asst. Building Official
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# 07-44-15

APPROVAL OF THE MINUTES OF THE BZA MEETING OF JUNE 9, 2015

Motion by Mr. Judd

Seconded by Mr. Lyon to approve the Minutes of the BZA meeting of June 9, 2015.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

T# 07-45-15

**1193 FLOYD
(Appeal 15-18)**

Withdrawn.

T# 07-46-15

**1124 BIRD
(Appeal 15-19)**

The owners of the property known as 1124 Bird request the following variance to allow for the construction of a new house less than the minimum required distance between principal buildings standard:

A. Chapter 126, Article 4, Section 4.69 (C) of the Zoning Ordinance requires a minimum distance between principal buildings of 14 ft. for this lot. The applicant is proposing 11.10 ft. to the house to the east. Therefore, a variance of 2.90 ft. is requested.

Mr. Lenhart explained this is a 40 ft. wide corner lot. The lot does not have the usual layout, with every house and driveway in uniform sequence down the street. The adjacent property to the east is 5 ft. 1 in. off the property line and the proposed home sits 6 ft. from the line with a minimum of 5 ft. required. Typically a 26 ft. wide house could be constructed on a 40 ft. wide lot. The applicant has downsized the house to 24 ft. in order to have the 6 ft. setback to the east. However they still need a 2.9 ft. variance.

Mr. Jim Vervisch, Builder, said he was commissioned by Mr. Nick Gerasimidis and his wife Autumn, the property owners, to apply for the building permit. The driveways along the street are on the left side of every house. in order to cut down on impervious surface they won't put in a driveway beside the house next door and it will stay green space. He thinks the home fits very nicely into the neighborhood.

No one in the audience wanted to comment on this appeal at 7:40 p.m.

Motion by Mr. Lyon

Seconded by Mr. Jones in regard to 1124 Bird, Appeal 15-19, to grant the variance as advertised. The petitioner seeks a variance under Chapter 126, Article 4, Section 4.69 (C) for the minimum distance between principal buildings. This is a

variation of our 9-5, 9-5, 5-9, but 10 in this case being a corner lot, in that the driveways got out of sync and this seems to be the one house.

He notes that strict compliance with the Ordinance would be unduly burdensome and somewhat prevent the property from being used for residential purposes in that the minimum width of a house is about 24 ft. which the appellant has moved it down to. He notes also that he has mitigated the variance somewhat by reducing the house width to 24 ft. from the normally allowed 26 ft. on a 40 ft. wide lot.

Mr. Lyon thinks it does substantial justice to both the property owner and the surrounding neighborhood and he would tie it to the plans as presented.

Mr. Miller added that the alignment of all the driveways along Bird to the east absolutely dictates that there is going to be a diminished setback restriction for this corner lot. So, the problem certainly was not self-created; it was just a matter of the geometry of the lots as they march down the street. Because of that restriction this lot would not be allowed to be completed the same as any other lot on that street.

Motion carried, 7-0.

ROLLCALL VOTE:

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

Nays: None

Absent: None

07-47-15

**375 S. ETON
(Appeal 15-20)**

The owners of the property known as 375 S. Eton request four dimensional variances to construct a 60 ft. 4 in. high mixed-use building in the MX District:

A. Chapter 126, Article 4, Section 4.19 (A) (1) of the Zoning Ordinance requires that buildings constructed with flat roofs shall be no more than 45 ft. in height. The applicant is proposing to construct an elevator shaft, two stairwells and enclosed room with a flat roof that would extend above the fourth story 15.33 ft. for an overall height of 60.33 ft. Therefore the applicant is requesting a dimensional variance of 15.33 ft. to allow the flat roof to exceed 45 ft.

B. Chapter 126, Article 04 section 4.19 (A) (4) of the Zoning Ordinance requires that the maximum overall height of a building, including mechanical and other equipment shall be no more that 50 ft. The applicant is proposing to construct an elevator shaft,

two stairwells and enclosed room that would extend above the maximum allowable height 10.33 ft. for an overall height of 60.33 ft. Therefore, the applicant is requesting a dimensional variance of 10.33 ft. to allow them to exceed the maximum allowable height.

C. Chapter 126, Article 04 section 4.19 (A) (6) of the Zoning Ordinance states that any other use or occupancy above 40 ft. shall be prohibited. The applicant is proposing to construct an elevator shaft, two stairwells and enclosed room as well as an outdoor terrace that would have an occupied floor height of 45 ft. Therefore, the applicant is requesting a dimensional variance of 5 ft. to allow use and occupancy above 40 ft.

D. Chapter 126, Article 04 section 4.19 (A) (7) of the Zoning Ordinance states that buildings in the MX Zone are permitted a maximum of four stories. The applicant is proposing to construct an elevator shaft and enclosed room as well as an outdoor terrace that would be constructed above the fourth story. Per the definition of story contained in Article 09 of the Zoning Ordinance, the proposed enclosed room and elevator shaft constitute an additional story. Therefore, the applicant is requesting a dimensional variance to permit five stories.

Mr. Baka explained the applicant is proposing to construct this building as Phase 2 of the District Lofts. Phase 1 was previously completed in 2009 and constructed without the stair/elevator access to the roof and they are requesting this variance to provide easier and safer access to the roof.

Mr. Lyon received clarification there is no code requirement for this stairway and elevator in order to have necessary egress from the roof. Mr. Baka explained for Mr. Jones the existing first phase went in without the additional height and it functions under code. In response to Mr. Miller, he noted the Planning Board found the maximum overall height allowance of 50 ft. a little odd. In the rest of the City an additional 10 ft. in height is allowed for mechanical equipment, whereas in the MX District it is only 5 ft. They didn't necessarily show support for the additional uses.

Mr. Judd noted that back in 1999, and before, there were public meetings, committees, and input prior to enactment of the MX District Ordinance. Mr. Jones noticed that one of the Planning Board members had suggested that the idea of the deck could be achieved by taking half of an end unit and turning it into a terrace.

Mr. Baka verified for Mr. Hart there are 30 mechanical units on the roof that will have to be maintained and in the current building access to them is through a hatch.

Mr. Victor Saroki, Architect, said along with him this evening are Norman and Bonnie LePage, the project owners; Rick Rattner, Attorney; John Kelly, General Contractor and Builder; and J.C. Cataldo, Manager of the Phase 1 Building. Mr. Saroki indicated now

that the economy has recovered they plan to build Phase 2. There is a total of 20 residential units in this building and two retail spaces. They believe there is a practical difficulty and hardship caused by strict compliance with the Ordinance that only allows 5 ft. additional height for mechanical screening on the roof. They are asking for 15 ft. to permit the elevator to protrude.

This started because they have learned some lessons from constructing the first building. Servicing a building through a ladder and a roof hatch with this many mechanical units on the roof has become problematic. He pointed out that the core is the furthest point back from the two faces of the building, so the perception from the street is still a four-story building. They believe the central issue is really the health, safety, and welfare of people servicing the equipment. They feel this is a reasonable request for adequate access to the roof and that their request does substantial justice. This project is within the spirit of the Ordinance and the granting of the variances is not at all contrary to that. They feel that literal enforcement of this chapter is an unnecessary hardship. Further, the granting of the variances does substantial justice to the property owners, to all or the residents who would reside in this building, and to the general public.

Mr. Saroki went on to note that in buildings like this it is a very nice amenity to have some open air space and some vegetation on the roof.

Chairman Lillie pointed out the BZA is a quasi-judicial board. The applicants are asking the board to re-write the statute and that is not the board's function. It is up to the City Commission to make changes to Ordinances. He asked Mr. Saroki to explain why his building is unique and different than any other building in the MX District at four stories and a flat roof. He is having a hard time seeing how this building would meet the uniqueness test. Also, the fact they don't have stairs going to the roof doesn't prevent them from using the property as zoned, as evidenced by their first building.

Mr. Saroki pointed out their first building has been successful but they have an opportunity to make this a better and safer building at a very minimal increase in height in one small area. As to the unique characteristics of the property, their feeling is that every building in the MX District is not going to be built like this one.

Mr. Judd noted this is something that could have been addressed during the period from 1999 until construction of this building,. Large compressors can be hoisted to the roof with cranes. He asked Mr. Saroki how they get around the self-created problem. Mr. Saroki said the sun terrace is self-created but he doesn't believe it is a self-created issue to ask for access to the roof in a more reasonable and safe way than through a roof hatch. Because there are more commercial spaces in this building than in their first building, larger and heavier commercial equipment is required. The ideal location is on the roof.

Mr. Lyon asked how this issue is not self-created in that they could go three stories and have all the room they need for the mechanicals. Mr. Saroki replied that is really not reasonable here and not in the spirit of the Ordinance that allows four-story buildings.

Mr. Jones inquired if there is anything in between the elevator and the ladder they could design that would address the safety concerns. Show how they could ameliorate the requested variances. Mr. Saroki said a solution could be to create a stairway within the third floor that gets up to the roof.

Responding to Mr. Miller, Mr. Saroki explained they started with one stairway as a way to get up, then they thought it would be reasonable to get an elevator to go up. After that they decided it just makes sense to extend the whole core up. However, they couldn't have elevator doors just open to the roof so there had to be an enclosure or a vestibule. So then they thought a reasonable amenity for the building would be to allow the residents to enjoy the roof deck.

Mr. Lyon advised the applicant that in order to improve the Ordinance and make their building better the City Commission is the place to go.

There was no one in the audience who wanted to speak to this appeal at 8:35 p.m.

Motion by Mr. Judd

Seconded by Mr. Lyon on Appeal 15-20, 375 S. Eton, the appellant is asking for four variances. Mr. Baka, he felt, did a very complete job in describing the four. They all arise from Chapter 126, Article 04, section 4-19 (A) and four of the subsections of section (A). Variance A deals with a dimensional variance of 15.33 ft. to allow a flat roof to exceed 45 ft. Variance B is requesting a dimensional variance of 10.33 ft. to allow them to exceed the maximum allowable height. Variance C is a dimensional variance of 5 ft. to allow use and occupancy above 40 ft. Variance D is a dimensional variance to permit five stories.

This particular appeal arises from the MX District which is a fairly new creation. He doesn't recall too many or any appeals dealing with this section. In its creation it has been noted that there were hearings called by the City Commission; there were committees appointed; testimony was taken during those periods; drafts were made; and eventually the MX Ordinance was produced and approved.

In this case the appellant is asking for these variances based on the health, safety, and welfare of workers who may be servicing the building. It has been noted in discussions by the members of this board that the prior building (the sister building if you will), really of the same construction and many of the same dimensions, was built without the request for two stairways and an elevator with mechanics on top of the building. It was also noted that the building is extremely

popular. It is well designed pursuant to the description of both the attorney representing the appellant and the architect.

Mr. Judd moved to deny all four variances requested by the appellant. He doesn't feel that a practical difficulty has been effectively argued in this case. He doesn't feel that strict compliance with the height requirements in the MX District would unreasonably prevent the owner from using the property for a permitted purpose and would be unnecessarily burdensome. In support of that he points to Building 1 that was built in 2009 which has been extremely effective.

He feels that pretty well mutes the argument of the petitioner dealing with the second building. He also notes that Building 1 and this particular building at 375 S. Eton meet all the Code requirements dealing with safety, and he feels that pretty well takes care of that point. Secondly, he doesn't feel that granting the variance would do substantial justice to the other property owners in the District in that conducting a spot zoning in this case, and perhaps that is not the proper term, we would certainly be creating a specialized district, which is spot zoning with an individualized height different from all the others. We would be doing this in contravention of all of the hearings and ordinances that were enacted by the City Commission and he thinks we would be placing ourselves in jeopardy if we did such an action.

Mr. Judd does not feel the plight of the owner is due to the unique circumstances of the property, as already amply discussed by other members of this board. He does feel the problem is self-created, in that the elevator to the decks is really the engine that is driving this appeal. He discounts the importance in this case of the indications of health, safety and welfare. For those reasons he would move to deny.

Mr. Miller felt that as urban density increases the use of roof areas is becoming more and more desirable. Access to these areas needs to be made by stairs, elevators; exactly what is being asked here. In this regard he thinks the Zoning Ordinance is kind of behind the curve. However, it is beyond our charge here on the board to redefine the ordinance in such a sweeping manner by carrying occupied space up to another floor.

Mr. Lyon agreed with Mr. Miller and believes that urban density will drive everything up. However, he thinks it is way beyond this board's purview to grant these variances. This is not unique and it is self-created. He doesn't feel the applicant meets the four points to grant the variances.

Mr. Jones concurred. He finds that this appeal is self created. Functionality is borne out by the adjoining building still being very popular both economically and functionally. He concurs as the board always states that their job is not to create the ordinance but to

enforce within the parameters that they have for a variance. For those reasons he will support the motion.

Chairman Lillie indicated he will also support the motion. He doesn't think there is anything unique about this property. Denying the requested variances will not prevent the petitioner from using the property for the permitted purpose. From what has been presented it is pretty obvious there is no problem with Building 1. A further reason for him to support the motion is the petitioner has said there may be an issue with the Ordinance. If that is the case the way to change the Ordinance is through the City Commission.

Mr. Hughes thought that Messrs. Saroki and Rattner have made a rather persuasive case. It is very compelling and would be fine if it were permitted under the restrictions under which this board operates. However, granting the variances is too much of a reach over what the board's authority is. The proper way to have something like this approved would be to modify the Ordinance and this board is not in a position to do that.

Motion to deny carried, 6-1.

ROLLCALL VOTE

Yeas: Judd, Lyon, Hughes, Jones, Lillie, Miller

Nays: Hart

Absent: None

T# 07-47-15

CORRESPONDENCE (none)

T# 07-48-15

GENERAL BUSINESS

The chairman indicated he will not be present for the August meeting.

Motion by Mr. Jones

Seconded by Mr. Hart to elect Mr. Lyon to chair the August meeting.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Mr. Johnson passed out some Ordinance revisions to the board members.

T# 07-49-15

No further business being evident, the board members passed a motion to adjourn at 8:50 p.m.

Bruce R. Johnson, Building Official