

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, SEPTEMBER 8, 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, September 8, 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; Alternate Board Member Cynthia Grove

Absent: Board Member John Miller

Administration: 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# 09-50-15

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

Mr. Jones:

Page 7 - Last line, delete "does" and replace with "states."

Motion by Mr. Lyon

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

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Miller

T# 09-51-15

**407 GREENWOOD
(Appeal 15-21)**

The owners of the property known as 407 Greenwood request the following variance to allow for the construction of a new house with attached front garage more than 50% of linear building width and not set back a minimum of 5.00 ft. behind front façade of house furthest back from front property line:

- A. **Chapter 126, Article 4, Section 4.70** of the Zoning Ordinance requires a maximum of 50% (18.00 ft.) of a linear building width that faces a street, for an attached garage. The applicant is proposing 64.80% (23.33 ft.). Therefore, a variance of 14.80% (5.33 ft.) is requested.
- B. **Chapter 126, Article 4, Section 4.70** of the Zoning Ordinance requires front garages must be set back a minimum of 5.00 ft. from the portion of the front façade on the first floor that is furthest set back from the property line. The applicant is proposing 44.33 ft. in front of furthest back front façade. Therefore, a variance of 49.33 ft. is requested.

This property is zoned R-2.

Seven pieces of correspondence have been received that do not object to the side entry garage. One piece of correspondence opposes front facing garages.

Mr. Lenhart said there was a change in the Ordinance that was approved by the City Commission on April 27, 2015 and that went into effect on May 11, 2015. Numerous public meetings starting in January, 2014 were held on the proposed change. These applicants have not yet made application to the City for a Building Permit. Normally the Ordinance in effect on the date of the Building Permit Application is what prevails. Responding to Mr. Lyon, Mr. Lenhart explained the front of the garage must be 5 ft. behind the front facade that is furthest from the street.

Ms. Grove asked what prompted the 1998 Ordinance change that limited the effect of garages on the fronts of houses. Mr. Johnson replied some creative designs were

coming out that technically met the letter of the Ordinance, but there was concern they were not in line with the original intent of the 1998 Ordinance.

Mr. Jeffrey Leib, Attorney, spoke on behalf of Michael and Carolina Furnari, the homeowners. Mr. Alex Fritz of AZD Architects was present also. Mr. Leib noted the only letter in opposition to the applicants' request opposes front-facing garages. This garage faces the side yard. The Furnaris propose a footprint which is almost identical to neighbors two doors down. The garage they are proposing is 34.26% of the width of the house. The applicants' proposed footprint and building envelope comply with the former Section 4.70 of the Ordinance. They were ambushed by the fact they were never told there was an ordinance being considered by the City that would amend that ordinance. Had his clients known the Ordinance was being changed they would have proceeded more timely in submitting their plans to the City. Unless the requested variances are granted his clients will be relegated to a home design with a detached rear garage that eliminates rear yard recreational use. They will be denied the rights enjoyed by others, including an immediate neighbor.

Chairman Lillie noted the other houses on the street that have similar plans to the ones proposed by the Furnaris were built when the Ordinance was different. Mr. Leib's client has some responsibility to make sure that whatever is done complies with the Ordinance. It is nice that all of the neighbors are in favor of the variances, but that doesn't establish practical difficulty. Mr. Leib explained that the adoption of the new ordinance came as a big surprise to the Furnaris and to the architect as well.

Mr. Leib agreed with Mr. Judd who established that the City complied with all of the requirements set forth by the State.

Mr. Leib also agreed with Mr. Lyon that the intent of the prior ordinance was to prevent front yard garages. However Mr. Kevin Ache, the architect, came up with a creative design for a side entry garage that complied with what was written in the prior ordinance.

In response to Chairman Lillie's suggestion to put the garage in back and move the house forward, Mr. Fritz said that moving the detached garage around to the back of the home would limit the amount of outdoor space.

The chairman took comments from the audience at 8:07 p.m.

Mr. Irving Tobocman, 439 Greenwood, said he has a front garage which allows for a nice amount of green space along the street and a minimum amount of asphalt. People along the street with garages in the back must back out onto the road. To him a garage in the front allows for a certain nicety that happens in our walkable community.

It also allows the children to be in the back of the house and not playing in the front yard and into the street.

Motion by Mr. Judd

Seconded by Mr. Lyon with respect to Appeal 15-21, 407 Greenwood. The petitioner seeks two variances from Chapter 126, Article 4, Section 4.70. The real issue before us is whether or not there is a practical difficulty that has been somehow forced upon the petitioner in this case due to an adoption of a new ordinance. By the same number, the house presented to us in the plans is based upon a prior version of Section 4.70 and it does not comply with the new requirements of Section 4.70; specifically that front garages must be set back a minimum of 5.00 ft. from the portion of the front facade on the first floor that is furthest set back from the property line. In this case the applicant is proposing 44.3 ft. in front of the furthest back front facade. Therefore, a variance of 49.33 ft. is required.

We have had extensive discussion about what was known, and what could have been known. The legal representative for the petitioner, Mr. Leib, has conceded that the City, in advertising and preparing an amendment to Section 4.70, devoted a year's worth of effort for public hearings, along with numerous other hearings with study groups, and the amendment was finally enacted on April 27, 2015.

There are four requirements for a practical difficulty. One is whether strict compliance with the Ordinance would unnecessarily prevent the owner from using the property for a permitted purpose and it would render the conformity with such restrictions unnecessarily burdensome. Mr. Judd does not feel that it does so in this case, based primarily upon the fact that the City followed all requirements of notice required under State statute.

The second is that granting the variance would do substantial justice to the applicant as well as other property owners in the district and the relaxation that applies would give substantial relief to the owners of the property and be consistent with the justice for other property owners. Mr. Judd does not feel that applies in this case.

We deal with lines; in this case a time line. A year's notice was provided. The architectural firm representing the petitioner, AZD, does work within the City. It was well within their abilities to be aware of the changes and amendments taking place to Section 4.70.

The third requirement is whether the plight of the owner is due to the unique circumstance of the property and not general conditions in the area. This is a common problem in this area, which is a long, thin, ribbon like piece of property. There have been several attempts over the years to address that, none of which

have been satisfactory to the City and to its planning boards, Building Dept., and planners. So, the latest Section 4.70 was adopted. There is no unique circumstance with this property and there are alternatives that have been discussed here on rearranging the property and different placement of where the garage would sit.

The last requirement is whether the problem is self-created and Mr. Judd feels in this case that it is due to a lack of attention on the part of either the petitioner or their representative. He would once again stress that this process for the amendment took over a year; that there were public hearings; that the architect in question does work within the City; and he feels that the term of an "ambush" is unfair and not applicable in this particular situation.

For those reasons Mr. Judd would move to deny the variances requested by the petitioner.

Mr. Lyon indicated he would support the motion. He feels the Ordinance went from something that had some loopholes and allowed some creativity to something that does not. This solution goes a long way and looks like a house with a side-facing garage. However, the Ordinance is what it is and we have to live by the ordinances when they go into effect.

Chairman Lillie said he will also support the motion. He doesn't think there has been any showing that it is unduly burdensome to comply with the Ordinance. There is nothing unique about this property and he would agree with Mr. Judd's conclusion on the self-creation.

ROLLCALL VOTE

Yeas: Judd, Lyon, Grove, Hart, Hughes, [Lillie](#)

Nays: None

Recused: Jones

Absent: Miller

T# 09-52-15

381 PLEASANT Appeal 15-22

The owners of the property known as 381 Pleasant request the following variance to allow for the construction of a home addition less than the required minimum front setback for this lot:

- A. **Chapter 126, Article 2, Section 2.10** of the Zoning Ordinance requires a minimum front setback of 61.08 ft. for this lot. The applicant is proposing 48.49 ft. Therefore, a variance of 12.59 ft. is requested.
- B. **Chapter 126, Article 4, Section 4.30 (C)** of the Zoning Ordinance allows front porches to project into a front open space for a maximum of 10.00 ft. The applicant is proposing 13.28 ft. Therefore, a variance of 3.28 ft. is requested.

This property is zoned R-3.

Mr. Lenhart advised the applicant is proposing to build an addition to an existing non-conforming house. This lot and the adjoining lots are over 400 ft. deep. The three houses to the south were built in 2006, 2013, and 2012. They were built further back, creating a 200 ft. average that is non-conforming for this lot. The house to the north is in line with the subject house.

Ms. Patricia Keller, Sr. Designer for Kevin Hart Associates, spoke on behalf of the homeowners, Brad and Leah Cellars. She requested an addition built over the current footprint of the home to expand living space on the second floor and also to come out with a front porch that would enhance curb appeal. Their hardship is that the homes to the south have been pushed quite far back from the street and this home. If the setback were somewhere between 48 and 50 ft., a variance would not be needed.

No one in the audience wished to comment on this appeal at 8:20 p.m.

Motion by Mr. Lyon

Seconded by Mr. Jones in regard to Appeal 15-22, 381 Pleasant, to grant the variance as advertised and as demonstrated in the plans that were submitted. The appellant seeks a variance under Chapter 126, Article 2, Section 2.10 for a minimum front setback and under Article 4, Section 4.30 (C) for the projection into the front open space for a front porch.

Mr. Lyon believes that strict compliance with the Ordinance would be unduly burdensome because of the unique nature of this parcel with this building on it. These are very deep lots and the three neighbors to the south have elected, upon demolition and reconstruction of new homes, to site their houses much further back than was originally there and much further back than this house and the houses to the north; and actually some of the houses further south.

Mr. Lyon doesn't believe this is self-created. He thinks the granting of the variance does substantial justice to both the homeowner and the surrounding neighborhood, in that they are not seeking to move the main body of the house

further forward; only add a second-story addition on top of the existing first floor, as mentioned. He would tie the motion to the plans as submitted.

Mr. Lyon added that the petitioners became non-conforming because of the actions of their neighbors. While one can keep their building as existing non-conforming, if they want to expand they must come to the BZA.

Motion carried, 6-0.

ROLLCALL VOTE

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

Nays: None

Recused: Hart

Absent: Miller

T# 09-53-15

**779 W. SOUTHLAWN
(Appeal 15-23)**

The owners of the property known as 779 W. Southlawn request the following variance to allow for the construction of an addition less than the minimum required rear yard setback distance and the combined front and rear yard setback total for principal buildings standard:

- A. **Chapter 126, Article 2, Section 2.08** of the Zoning Ordinance requires a minimum rear yard setback of 30.00 ft. for this lot. The applicant is proposing 5.16 ft. Therefore, a variance of 24.84 ft. is requested.
- B. **Chapter 126, Article 2, Section 2.08** of the Zoning Ordinance requires a combined minimum front and rear setback of 55.00 ft. for this lot. The applicant is proposing 43.48 ft. Therefore, a variance of 11.52 ft. is requested.

This property is zoned R-2.

Mr. Lenhart explained the applicant is proposing to demolish an existing, non-conforming attached garage and build a new attached garage with a second-story addition. Mr. Johnson confirmed there was a variance granted in 2012 for a similar request by prior owners but the project was not pursued. Chairman Lillie noticed the house basically has no rear yard at 5.16 ft. setback. The problem is the house doesn't conform to the rear setback requirement or the combined front and rear setbacks.

Mr. David Lubin, the architect for Mr. Michael Ilitch III said the existing garage was built in the 1920s, is falling down, is way below the road, and it floods. Further it is not big enough for a full sized vehicle. The second floor is held back to minimize the scale and conform to the proportions of the existing home. The new garage will be 21 ft. and will face the side street. He produced a letter signed by two adjacent neighbors who are most affected by the renovation stating they have no problems with the design of the garage or the second story.

There were no comments from members of the audience at 8:40 p.m.

Motion by Mr. Jones

Seconded by Mr. Hart concerning Appeal 15-22, 779 W. Southlawn. The petitioner appeals and seeks a variance for two various sections of Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance. Mr. Jones would move to grant the variance. He feels that without the variance the petitioner would be unreasonably prevented from using this unique property for a permitted purpose, or such action would be unduly burdensome.

He thinks the granting of the variance would do substantial justice to the applicant as well as to the other property owners in this regard. He believes the plight of the circumstance here is, in fact, due to the unique circumstances of the property and not the general conditions in the area. He doesn't believe it is self-created. He thinks both the spirit of the Ordinance and substantial justice would be in favor of granting this variance; and accordingly he so moves.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Miller

T# 09-54-15

119 S. ADAMS

Appeal 15-24

The owners of the property known as 119 S. Adams request the following variance to allow for the construction of a detached garage over the maximum allowed size for this lot:

A. **Chapter 126, Article 4, Section 4.03** of the Zoning Ordinance allows a maximum of 675 sq. ft. detached garage with an interior staircase for this lot. The applicant is proposing 724 sq. ft. Therefore, a variance of 49 sq. ft. is requested.

This property is zoned R-1.

Mr. Johnson explained the petitioners are planning to attach a covered porch of 80 sq. ft. onto the proposed garage. The original house on the property was constructed in 1835. At that time there was a detached garage with a covered front porch that was about 130 sq. ft. larger than what is being proposed. The proposed garage is 49 sq. ft. over the maximum for a detached accessory building. Chairman Lillie received confirmation that the garage size would be 600 sq. ft. without the interior staircase, but the covered porch would push the garage over the limit anyway. In response to Mr. Judd, Mr. Johnson thought the covered porch is designed to match the house in the back.

Mr. Johnson confirmed for Mr. Hart that if the garage and covered porch were attached to the house it would be conforming. Mr. Hart noted that would totally be in opposition to the historical nature of this house. Mr. Johnson agreed with him that this is a very important historical home. He stated all other proposed setbacks and distance requirements for this lot are conforming.

Mr. William Wozniak, co-owner of the property, noted they have a very large lot and the square footage for garages in Birmingham was established for smaller lots. The covered porch adds to the curb appeal of the garage and the structure. It also fits in with the historical nature of the home and keeps the homeowners dry. It will be 18 to 20 ft. from the house. They are trying to respect the historical nature of the property so they moved things to the back of the lot. It was noted that the garage would be seen driving along Maple Rd.

There were no public comments on this appeal at 9 p.m.

Motion by Mr. Hart

Seconded by Mr. Jones to approve Appeal 15-24. Mr. Hart thinks that the unique circumstances of this particular home require a little higher degree of design attention and he feels the homeowner has demonstrated a commitment to stewardship of this home to try to keep the integrity of the historic nature of the home. He thinks the proposed structure is substantially smaller than the original structure when one accounts for some of the other appendages that are not shown on the survey.

Also Mr. Hart feels substantial justice to neighboring properties and to the homeowner are being adhered to. He doesn't think there is any adverse action to

any of the other neighboring properties. That is the reason he would move to approve Appeal 15-24, tied to the plans as presented.

Mr. Jones noted that the unique nature of the property is the depth and size of the lot. He thinks that substantial justice to the community is enhanced by the porch itself. For those reasons as well as those expressed by Mr. Hart he will support the motion.

Mr. Lyon said he will support the motion also. He believes the covered, unenclosed porch is a little nebulous but does add architectural detail and a minimal variance for this historic lot and historic home.

Chairman Lillie announced he would like to support the motion but is concerned there really has been no showing of a practical difficulty. It is strictly aesthetics here and the board would be setting a bad precedent by approving this request.

Motion carried, 5-2.

ROLLCALL VOTE

Yeas: Hart, Grove, Jones, Hughes, Lyon

Nays: Judd, Lillie

Absent: Miller

T# 09-55-15

**355 HANNA
Appeal 15-25**

Postponed.

T# 09-56-15

**656 RUFFNER
Appeal 15-27**

The owners of the property known as 656 Ruffner request the following variance to allow for the construction of a new house less than the minimum distance between principal buildings standard:

- A. **Article 4, Section 4.69, (C)** of the Zoning Ordinance requires the distance between principal buildings be 14.00 ft. for this lot. The applicant is proposing 13.10 ft. on the east side. Therefore, a variance of .90 ft. is requested.

This property is zoned R-3.

Mr. Lenhart explained the applicant is proposing to demolish the existing house and build a new house on a 40.00 ft. wide interior lot. All other proposed setbacks and distance requirements for this lot are conforming. This case was heard and approved by the BZA on July 8, 2014. However, the applicant failed to start construction within one year and the variance expired.

Lillie noted if the house to the east was 5.00 ft. off the lot line, the applicant would not have to ask for a variance.

Mr. Joe Traficante, Torino Quality Homes, LLC, said his hardship is that the older home to the east is only 3.10 ft. off of the property line. That would now be non-conforming. If it weren't for that, they would be able to build a 26 ft. wide structure and meet all of the zoning requirements. However, due to this situation they shrunk the house down to 25 ft. in the hope of getting a variance. In demolishing the existing structure and building new, they are improving the setbacks in three different ways.

He noted they were granted a variance a year ago, but several circumstances prevented them from getting the Building Permit until he got the Demolition Permit and he could not get the Demolition Permit in a timely manner from when the variance was granted. This design has not changed from what was originally approved.

At 9:10 p.m. no one in the audience wanted to speak to this appeal.

Motion by Mr. Lyon

Seconded by Mr. Jones in regards to 656 Ruffner, Appeal 15-27, to grant the variance as advertised and tie the motion to the plans as submitted which are by testimony the same plans that were submitted some time ago.

The appellant seeks relief under Article 4, Section 4.69 (C), distance between residential structures. In this case it was required to be 14 ft.; the appellant requests 13.10 ft. Therefore variance of .90 ft. is requested. This is entirely due to the unique circumstance of this with the adjacent house that is existing non-conforming being 3.10 ft. from their corner side yard setback instead of the required 5.00 ft. by today's Ordinance. Therefore he believes that strict compliance would be unduly burdensome. This is not self-created, provides substantial justice to the appellant and the surrounding folks, and preserves harmony, peace and health. He ties the motion to the plans as submitted.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None
Absent: Miller

T# 09-57-15

**1951 COLE
Appeal 15-28**

The owners of the property known as 1951 Cole request the following variance to allow for the construction of a new house less than the required minimum distance between principal buildings standard:

- A. **Chapter 126, Article 4, Section 4.69 (C)** of the Zoning Ordinance requires a minimum of 14.00 ft. between principal structures for this lot. The applicant is proposing 12.80 ft. Therefore, a variance of 1.20 ft. is requested.

This property is zoned R-3.

Mr. Lenhart pointed out that the house to the east is 1.80 ft. off the property line. The applicant proposes to build a 24.00 wide house on a 40.00 wide interior lot. All other proposed setbacks and distance requirements for this lot are conforming.

Mr. Ryan Andrews, Project Manager for the property owner, Home Renewal Systems, LLC said the variance request is due to the adjacent property that is only 1.80 ft. from the property line. Granting the variance would improve the current conditions that the existing house sits on. The existing house is 2.1 ft. from the property line and it is wider than the proposed house.

The chairman took public comments at 9:15 p.m.

Mr. Steve Wilson, who resides just down the street, received clarification that the new house will be deeper than the existing house but it is also going to be narrower than the existing.

Motion by Mr. Hart

Seconded by Mr. Lyon to approve Appeal 15-28, 1951 Cole. The owner of the property has effectively demonstrated that it has been affected adversely by the adjacent property. He has demonstrated that trying to conform to the Ordinance would prevent the owner from using his property and it would also be unnecessarily burdensome.

The unique circumstances are that it has been demonstrated that the existing non-conformance of the adjacent house makes it very difficult. He thinks the proposed structure is very much in keeping with the neighborhood and it is an

austere solution to the problem. It has minimum dimensions. As can be seen on the plans that have been submitted, the 24 ft. dimension is the largest dimension width of the house, which Mr. Hart thinks is a minimum size for a house in this City. Therefore he moves to approve Appeal 15-28 and tie the motion to the drawing.

Mr. Jones was appreciative that the petitioner worked very well with the City and has attempted to mitigate whatever variance was necessary.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Miller

T# 09-58-15

CORRESPONDENCE (none)

T# 09-59-15

GENERAL BUSINESS (not discussed)

T# 09-60-15

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 9:20 p.m.

Bruce R. Johnson, Building Official