

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, OCTOBER 13, 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, October 13, 2015. Chairman Charles Lillie convened the meeting at 7:30 p.m.

Present: Chairman Charles Lillie; Board Members Kevin Hart, Jeffrey Jones, Randolph Judd, Peter Lyon, John Miller; Alternate Board Member Cynthia Grove

Absent: None

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# 10-61-15

APPROVAL OF THE MINUTES OF THE BZA MEETING OF SEPTEMBER 8, 2015

Chairman Lillie:

Page 2 Voice vote should remove the second "Lyon" and add "Lillie."

Page 5 Add "Lillie" to the yeas.

Motion by Mr. Jones

Seconded by Mr. Lyon to approve the Minutes of the BZA meeting of September 8, 2015 as corrected.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

T# 10-62-15

**2100 E. MAPLE RD.
(Appeal 15-26)**

The owners of the property known as 2100 E. Maple Rd. request the following variance to allow for the construction of a new grocery store:

- A. **Article 4, Section 4.83 WN-01 A (1)** of the Zoning Ordinance requires the front façade and any façade facing a street, plaza, park, or parking area to provide no less than 70% of the storefront/ground floor façade 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) façade the applicant is proposing to provide 40% glass. Therefore, a variance of 30% is requested.
 - On the east (left) façade the applicant is proposing to provide 65% glass. Therefore, a variance of 5% is requested.
 - On the south (back) façade the applicant is proposing to provide 42% glass. Therefore, a variance of 28% is requested.
 - On the west (right) façade the applicant is proposing to provide 0% glass. Therefore, a variance of 70% is requested.

This property is zoned B-2.

Mr. Baka noted that in this part of the City 70% glass is required on the entire facade; whereas in the Downtown that calculation is measured between 1 and 8 ft. above grade. The applicant has received Preliminary and Final Site Plan Review from the Planning Board. Over a number of meetings they went to great lengths to change the proposal in order to satisfy the Planning Board. Based on comments from the Planning Board, this glazing requirement section of the Ordinance will likely be changed in the next couple of months. The Planning Board's view is the more they implement the glazing concept throughout the different areas of town, the feel of Downtown will spread. Nothing else in the final plans for this site requires a variance.

Mr. Hart received confirmation from Mr. Linden Nelson, the owner, whose address is 5035 Brookdale, that his building has been vacant for about a year.

Mr. Rick Rattner, attorney for the applicant, showed a PowerPoint that depicted four iterations to the building design as they progressed through the review process. Because they have a rectangular building on a triangular lot, the Ordinance triggers parking on all sides with 70% glazing requirement. The triangular shape and size of the property, the requirements of the Master Plan, and the design create an unnecessary hardship that must be dealt with.

Given the special conditions applicable to the property in question, unique location and unusual physical characteristics, the strict application of Article 4.83-WN-01 (A) (1) would unreasonably prevent the property owner from using the property for a permitted purpose.

It becomes functionally impossible to create a grocery store with 70% glazing on all sides. Most of the store that will be seen by the public is substantially all glass. The only part that is not is the back end of the store which contains trucks and receiving, not intended for the public to view. Therefore, literal enforcement of Article 4.83-WN-01 will result in unnecessary hardship by forcing the applicant to show that, while the variance will allow the creation of a beautiful new store.

Granting the variance to Article 8.01 (F) (3) (a) (iii) will not be contrary to the spirit and purpose of the Ordinance nor contrary to the public health, safety and welfare. The spirit of the Ordinance is to create an active, inviting pedestrian environment. The spirit and intent of the Ordinance will be further advanced because the proposed grocery store will provide badly needed redevelopment to a property that has been vacant for a year.

Further, the granting of the variance under Article 8.01 (F) (3) (a) (iv) will result in substantial justice to the property owner and neighboring owners of property and the general public. With the variance, the proposed grocery store can be built.

Lastly, the practical difficulty and hardship experienced by the applicant is not self-created but exists because of the size, shape, location and natural features of the property.

Mr. Rattner then introduced the property owner, Mr. Linden Nelson of Nelson Ventures, LLC. With them was Ms. Thea Hyat from Whole Foods; Mr. Brian Telaski, Manager of Troy Whole Foods; Mr. Mike Fitzgerald with OKW Architects, 600 W. Jackson Blvd., Chicago; and Mr. James Butler, President of PEA.

Mr. Fitzgerald compared for board members the difference between the 70% glazing Ordinance requirement and how much the glazing has been cut back.

At 8 p.m. there was no one in the audience who wished to comment on the project.

Motion by Mr. Lyon

Seconded by Mr. Judd in regard to Appeal 15-26, 2100 E. Maple Rd. Whole Foods. The appellant seeks a variance under Article 4, Section 4.83 WN-01 A (1) of the Zoning Ordinance to reduce the required glazing on a grocery store not located in the Downtown Business District. Mr. Lyon would move to grant the appeal as advertised.

He believes that strict compliance with the Ordinance would be unduly burdensome in this case, in that it is a grocery store and that use is not conducive to 70% glazing on the four sides as required by the Ordinance. The appellant has made a good case that running a grocery store requires quite a bit of area to be opaque walls for the benefit of everybody so the public doesn't have to see all of the mechanicals.

Mr. Lyon believes that the variance provides substantial justice to both the appellant, the surrounding area and the community in general. He does not believe it is self-created, in that this is a permitted usage under the Ordinance. There appears to be a conflict with some of the permitted uses in the Ordinance as has been pointed out by staff, because this is really a Downtown front street retail requirement where 70% glazing is totally appropriate. He tied the motion to the plans as presented.

Mr. Jones complimented the applicant on working so diligently with the Planning Board and minimizing the requested variances. The absolute uniqueness of the property and the circumstances is reason for him to support the motion.

Mr. Miller supported the motion also. ~~A grocery store that~~ Zoning that allows a grocery store, however requires 70% glazing all around is wildly incompatible. This is a very reasonable request.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: None

Chairman Lillie introduced the new board member, Erik Morganroth, who was appointed last night.

T# 10-63-15

**355 HANNA
(Appeal 15-25)**

The owners of the property known as 355 Hanna request the following variance to allow for the construction of a new roof on existing house less than the minimum required side yard setback and distance between principal buildings standard:

A. **Chapter 126, Article 2, Section 2.10** of the Zoning Ordinance requires a minimum side yard setback of 5.00' for this lot. The applicant is proposing 4.40 ft. to the west property line. Therefore, a variance of .60 ft. is requested.

B. **Chapter 126, Article 4, Section 4.69 (C)** of the Zoning Ordinance requires a minimum of 14.00' between principal structures for this lot. The applicant is proposing 12.35 ft. Therefore, a variance of 1.65 ft. is requested.

C. **Chapter 126, Article 4, Section 4.30 (C)** of the Zoning Ordinance allows a maximum overhang of 2.75 in. on the west side for this existing building. The applicant is proposing 24.00 in. Therefore, a variance of 21.25 in. is requested.

This property is zoned R-3.

Mr. Lenhart advised this is a 43.00 ft. wide interior lot. Chairman Lillie noted part of the problem is with the house to the west which is at 7.54 ft. Mr. Lenhart said before a Building Permit will be issued the Engineering Dept. will conduct a full drainage review to show how the water will be handled. In response to Mr. Jones, Mr. Lenhart explained the wall has not become any closer to the property line, but the roof happens to be in a setback area.

Mr. Alex Delvecchio, 355 Hanna, explained the existing wall is out of compliance since the early '50s. The neighboring home has been there since 1919. Therefore it is a condition that neither he nor the neighbor had any control over. The existing overhang currently is 24.00 in. and they are asking for the same amount for the new overhang. The drainage slopes toward their house and they intend to use rain barrels to catch the water.

No one from the audience wished to comment on this appeal at 8:10 p.m.

Motion by Mr. Miller

Seconded by Mr. Lyon to approve the petition for 355 Hanna, Appeal 15-25. He believes it would unreasonably prevent the petitioner from using the property if the zoning was strictly applied. He is looking at replacing the roof in a reasonable manner on an existing house and improvement to this house would certainly do substantial justice to the neighbors and the neighborhood. That is certainly contingent upon water management approval.

The problem is due to the unique circumstances of this house and the house next door and not self-created. He would tie the motion to the drawings as submitted.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: None

T# 10-64-15

**530 FAIRFAX
(Appeal 15-29)**

The owners of the property known as 530 Fairfax request the following variance to allow for the construction of a garage addition less than the required minimum rear setback for this lot:

- A. **Chapter 126, Article 2, Section 2.06** of the Zoning Ordinance requires a minimum rear setback of 30.00 ft. for this lot. The applicant is proposing 29.20 ft. Therefore, a variance of .80 ft. is requested.

This property is zoned R-1.

Six letters of support were received from neighbors.

Mr. Lenhart explained the applicant is proposing to build an attached garage addition to an existing non-conforming attached garage.

Mr. Miller commented it would have been helpful to have more dimensions on the plan, especially around the critical area. Also, the plan isn't exactly to scale.

Ms. Glenda Meads, Architect, was present with the petitioner, Mr. Christopher Pray. Ms. Meads explained the garage expansion lines up with the existing covered porch. If the appeal were granted the garage would only project .80 in. into the rear setback. The practical difficulty is having to make a tight turn to get into the existing 19.00 ft. deep garage. It is very difficult to get a car in, and there is no room for storage. The variance allows them to get an 18.00 ft. garage door in for turning purposes.

There were no comments from the audience at 8:20 p.m.

Motion by Mr. Miller

Seconded by Mr. Jones to approve Appeal 15-29, 530 Fairfax. The board has ~~determined~~ considered in the past that roughly 20 x 20 ft. is the critical minimum dimension for a garage size and that has come up a number of times with this board. Strict compliance with the Ordinance would prevent the petitioner from

having that 20 ft. depth for that edge of the garage. So, he believes that would be burdensome to the owner.

Mr. Miller thinks the variance would do substantial justice to this property and adjacent property owners. It is a very handsome addition. This problem was not self-created. The existing garage sits where it is. The dimension isn't being extended further out, and he would tie the motion to the drawings as submitted.

Mr. Lyon requested that the motion be revised to remove the comment about establishing a minimum garage size. He thinks that a 20 x 20 ft. garage is kind of a minimum size but he doesn't know if the board wants to say it has established that.

Mr. Miller concurred and would withdraw the word "determined" and replace it with "considered."

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: None

T# 10-65-15

CORRESPONDENCE (none)

T# 10-66-15

GENERAL BUSINESS

Mr. Judd commented that at the Ethics Board meeting one of the matters that came up was that agendas ought to have a section indicating Matters not on the Agenda or Open to the Public at the end of the meeting.

Mr. Jones said he has always thought the BZA is not applicable to that because it is a quasi-judicial board. He has never found it inappropriate to not have that on the agenda.

Mr. Lyon noted he would defer to the practice of the Ethics Board and whether they have an open microphone topic at the end of their agenda, because they are also quasi-judicial.

Motion by Mr. Judd

Seconded by Mr. Lyon to add at the end of the BZA agenda a section entitled "Open to the Public for Matters not on the Agenda."

Motion carried, 5-0.

VOICE VOTE

Yeas: Judd, Lyon, Hart, Lillie, Miller

Nays: Grove, Jones

Absent: None

Board members determined that the wording can be discussed at the next meeting.

T# 10-67-15

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:25 p.m.

Bruce R. Johnson, Building Official