

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, FEBRUARY 9, 2016
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, February 9, 2016. Vice-Chairman Randolph Judd convened the meeting at 7:30 p.m.

Present: Vice-Chairman Randolph Judd; Board Members Kevin Hart, Jeffery Jones, Peter Lyon, John Miller, Erik Morganroth; Alternate Board Members Jason Canvasser, Cynthia Grove

Absent: Chairman Charles Lillie

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 is one interpretation on this evening's agenda.

T# 02-08-16

APPROVAL OF THE MINUTES OF THE BZA MEETING OF JANUARY 12, 2016

Motion by Mr. Jones

Seconded by Mr. Morganroth to approve the Minutes of the BZA meeting of January 12, 2016 as presented.

Motion carried, 7-0.

VOICE VOTE

Yeas: Jones, Morganroth, Canvasser, Grove, Judd, Lyon, Miller

Nays: None

Absent: Lillie, [Hart](#)

T# 02-09-16

**1247 BIRD AVE.
(Appeal 16-03)**

The owners of the property known as 1247 Bird Ave. request the following variance to allow for the construction of a house addition less than the required minimum front and side yard setbacks, distance between principal residential buildings, allowable overhang projection.

A. **Chapter 126, Article 2, Section 2.10** of the Zoning Ordinance requires a minimum front yard setback distance of 21.80 ft. for this lot. The applicant is proposing 20.00 ft. Therefore, a variance of 1.80 ft. is requested.

B. **Chapter 126, Article 2, Section 2.10** of the Zoning Ordinance requires a minimum side yard setback of 5.00 ft. for this lot. The applicant is proposing 3.07 ft. Therefore, a variance of 1.93 ft. is requested.

C. **Chapter 126, Article 4, Section 4.69 (C)** of the Zoning Ordinance requires a minimum of 14.00 ft. between principal buildings for this lot. The applicant is proposing 10.77 ft. Therefore, a variance of 3.23 ft. is requested.

D. **Chapter 126, Article 4, Section 4.30 (C-2)** of the Zoning Ordinance allows overhangs to project 0.84 ft. into the west required side yard setback for this property. Due to the existing home's non-conforming setback, the existing overhang projects 2.07 ft. into the required open space. With 2.57 ft. proposed, a variance of 1.59 ft. is requested.

This property is zoned R-3.

Mr. Lenhart advised the existing house was built in 1928. The applicants had a house fire in July of 2015 and want to renovate house with a new 2nd story and rear addition.

Vice-Chairman Judd questioned the demolition of the house, leaving just one wall and the basement. It seems the west wall of the basement is the engine causing the appeal. In response to Mr. Lyon, Mr. Lenhart noted that according to the Fire Dept. most of the damage was caused by water.

Mr. Johnson advised that once a home is destroyed over 75% it cannot be rebuilt except in conformity with the Zoning Ordinance, unless a variance is received. He agreed that demolition of the proposed project exceeds well over 75% of current cash value of the structure. Mr. Lenhart explained the proposal is to use the existing setbacks and foundation and rebuild. He noted for Mr. Miller that the existing house is already forward of the setback line by 1.80 ft. Therefore because the proposed house is non-conforming with the setback the applicant must come before the board for variances. As far as the structure, the Building Dept. will need a structural engineering

report. He agreed with Vice-Chairman Judd that the board would have liked to have the report before this meeting.

Responding to Mr. Miller, Mr. Lenhart reported that since the house next door to the west is at 7.70 ft. setback there are two existing non-conforming structures next to each other. Therefore if that house does anything along their east side they would need a variance. However, that condition already exists because the applicant is not coming any closer than they are presently.

Mr. Steven Kuza, the petitioner, explained the second floor and roof incurred most of the fire damage. So in rebuilding the house they plan to go up along the lines that they currently have on the first floor. He has spoken to the neighbors to the west and received a letter of support from them. They know that if they ever choose to do something they are non-conforming too. Mr. Kuza noted he has moved in his porch by 2.00 ft. in case the neighbors ever want to add a porch to their home.

Vice-Chairman Judd pointed out there are four points that the applicant needs to address. One is whether strict compliance with the Ordinance would unreasonably prevent the owner from using the property for a permitted purpose and would render conformity with such restrictions unnecessarily burdensome. That is followed by whether granting a variance would do substantial justice to the applicant as well as to the other property owners in the district. He questioned why the applicant cannot take out the basement and make the house completely compliant.

Mr. Kuza explained their whole idea is to put the house together the right way and add to the beauty of Bird Ave. It would not be practical for them to dig up the basement or to keep it and come in 2.00 ft. for the second floor.

Vice-Chairman Judd wondered if the insurance company suggested leaving the basement because it would save them some money. Mr. Lyon commented that most insurance companies will pay to rebuild according to existing ordinances and he didn't understand why the 80 year old basement needs to be kept. Mr. Kuza responded that the insurance company has not declared the property a total loss. Mr. Morganroth noted if they can't re-build non-conforming then the house is a total loss.

Mr. Jones said this appeal is premature based on the issue of the damage. ~~It~~ was discussed that the Building Dept. will need to conduct a determination as to the percentage of loss on the house. Mr. Kuza was agreeable to postponing his appeal 30 days contingent upon the Building Dept. being able to gain access to the property and to conduct an examination and reach a decision as to the extent of the damage.

Motion by Mr. Jones

Seconded by Mr. Lyon to adjourn 1247 Bird Ave. (Appeal 16-03) for 30 days until the next BZA meeting, based upon the willingness as stated by the petitioner.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Jones, Lyon, Canvasser, Grove, Judd, Miller, Morganroth

Nays: None

Absent: Lillie

T# 02-10-16

**555 S. OLD WOODWARD AVE.
(Appeal 16-04)**

Mr. Miller recused himself from this appeal because his firm did early-on consultation work on the property. Mr. Hart came forward to fill in.

The owners of the property known as 555 S. Old Woodward Ave. request the BZA to confirm that their revised plans for a new curtain wall proposed on the office building still meet the intent of an interpretation made by the building official in 2013.

A. Chapter 126, Article 8, Section 8.01 (D) of the Zoning Ordinance allows for an appeal of a decision of the building official. The building official has determined that revised plans submitted are not in agreement with plans submitted and approved in July 2013 for an interpretation that was confirmed by the BZA.

Mr. Johnson confirmed this case is not seeking to reverse or overturn a decision of the building official; rather it is seeking BZA approval that revised plans are still in agreement with the interpretation that was made. The south building is the apartment building and the building to the north is the commercial building. In 2013 he as the building official made an interpretation that the curtain walls proposed at that time could be considered maintenance rather than an expansion of a non-conforming structure that would require a variance. The board confirmed the interpretation as presented and tied it to the plans and specifications from which the interpretation was made.

The owners have recently revised their plans for the new curtain walls and the plan for the north building proposes a different type of curtain wall system than the one originally proposed in 2013 that the BZA tied its confirmation to.

On October 21, 2015 the Design Review Board approved the curtain walls for the north and south buildings with the condition that the issues surrounding the interpretation be resolved prior to the applicant proceeding with the new curtain wall system for the north building.

Mr. Jones noted the need hasn't changed. The necessity to do something still meets with the intent of ~~the~~ maintenance. It is simply that the design on the north commercial building has changed. Mr. Johnson explained specifically how the design is different. The new curtain wall system for the north building projects out further and is 30% more energy efficient than the 2013 system.

Mr. Richard Rattner, Attorney, 380 N. Old Woodward Ave. was present with Messrs. Jack and Jerry Reinhart, representing the building ownership, along with Mr. Bob Ziegelman and Mr. John Gardner, Architects. Mr. Rattner gave a brief PowerPoint presentation affirming that this is a maintenance and repair issue for the north building and not an enlargement issue. The new curtain wall complies with all of the terms, conditions, spirit and intent of the 2013 interpretation, and it is clear that the installation of the curtain wall and its design is intended to maintain the building in good condition and should be considered maintenance. The plan for construction anticipates that the current tenants will be able to remain in place while the work is being completed. The plan eliminates most of the debris that would have to be hauled to landfills. The design represents the most efficient, environmentally responsible, and cost efficient way to repair and maintain the building for the benefit of the citizens of Birmingham.

Mr. Bob Ziegelman graphically went over the design and the concept of the curtain wall. They have chosen to keep the existing curtain wall and encase it. Using this concept will end up providing triple glazing. Per code requirements, the space in between leaves enough room for window washers to get in and wash the windows. He confirmed the old windows will be replaced with new double panes.

Mr. Lyon inquired why they could not just re-skin the outside. Mr. Ziegelman replied the building would have to be closed down and the external wall removed. It would then end up in a landfill.

In response to Mr. Jones, Mr. Ziegelman stated that the first system did not function properly and this one does. Mr. Canvasser asked if there would be reflection off of the building. Mr. Ziegelman said there would not be reflection because that is taken care of in the chemistry of the low E glass that is basically transparent. Mr. Hart received confirmation there will be a significant cut in utility usage.

The vice-chairman took comments from the audience at 8:40 p.m.

Mr. Bitonti, 709 Ann St. indicated he and his clients are looking forward to the change in this building.

Motion by Mr. Lyon

Seconded by Mr. Morganroth regarding 555 S. Old Woodward Ave., Appeal 16-04 to affirm the building official's interpretation in the latest memorandums with respect to renovation and maintenance. Mr. Lyon moved to confirm the

interpretation of the building official that the proposed project to re-skin the exterior of the north building falls under maintenance of existing non-conformance and not expansion of an existing non-conformance. The motion is tied to the prints, plans, pictures, renderings, etc. as presented tonight as far as possible.

Mr. Jones liked the idea that needed maintenance comes back to this board and to the building official with the onset of technology, and policy is once more reviewed according to the Ordinance. He will vote to support the motion.

Mr. Hart thought this is a great example of re-purposing an existing structure. The ability to fix the building 20 years from now is going to be vital and that is taken into consideration with this proposed solution. It is wonderful that Birmingham will be a good example of sustainable design and restoration design for the future. Therefore he will support the motion.

Mr. Lyon called this simple maintenance.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Lyon, Morganroth, Canvasser, Grove, Hart, Judd, Miller

Nays: None

Recused: Miller

Absent: Lillie

T# 02-11-16

CORRESPONDENCE (none)

T# 02-12-16

GENERAL BUSINESS (not discussed)

T# 02-13-16

OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA (no one spoke)

T# 02-14-16

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:56 p.m.

Bruce R. Johnson, Building Official