

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS**  
**TUESDAY, MARCH 8, 2016**  
City Commission Room  
151 Martin Street, Birmingham, Michigan

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Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, March 8, 2016. Chairman Charles Lillie convened the meeting at 7:30 p.m.

**Present:** Chairman Charles Lillie; Board Members Kevin Hart, Jeffery Jones, Peter Lyon, Erik Morganroth; Alternate Board Member Jason Canvasser

**Absent:** Board Members Vice Chairman Randolph Judd, John Miller; Alternate Board Member Cynthia Grove

**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# 03-15-16**

**APPROVAL OF THE MINUTES OF THE BZA MEETING OF FEBRUARY 9, 2016**

Chairman Lillie:

Page 2 - First line, add Mr. Hart's name under "absent."

Mr. Jones:

Page 3 - Second paragraph from the bottom, first line, insert "based" after "premature."

Start a new sentence with "It."

Page 5 - First paragraph, second line, delete "the" before "maintenance."

**Motion by Mr. Morganroth**

**Seconded by Mr. Jones to approve the Minutes of the BZA meeting of February 9, 2016 as revised.**

**Motion carried, 6-0.**

VOICE VOTE

Yeas: Morganroth, Jones, Canvasser, Hart, Lillie, Lyon

Nays: None

Absent: Judd, Miller

**T# 03-16-16**

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

Postponed.

**T# 03-17-16**

**231 S. GLENHURST  
(Appeal 16-05)**

Mr. Lenhart reported the owners of the property known as 231 S. Glenhurst request the following variances to allow for the construction of a house addition less than the required minimum front setbacks and distance between principal residential buildings.

**A. Chapter 126, Article 2, Section 2.10** of the Zoning Ordinance requires a minimum front yard setback distance of 26.76 ft. for this lot. The applicant is proposing 23.07 ft. Therefore, a variance of 3.69 ft. is requested.

**B. Chapter 126, Article 4, Section 4.69 (C)** of the Zoning Ordinance requires a minimum 17.50 ft. between principal buildings for this lot. The applicant is proposing 15.10 ft. Therefore, a variance of 2.40 ft. is requested.

This property is zoned R-1.

Mr. Lenhart explained the applicant is proposing to put a foundation under existing front bay window cantilever and add gabled facade above. The proposed rear addition variance request is due to the existing non-conforming attached garage to the north. Garage is set off property line 6.10 ft. and 9.00 ft. is the minimum required. The applicant is just extending the existing plane and not going any further into the side setback.

In response to Mr. Jones, Mr. Lenhart clarified the gabled facade is not an issue if the foundation variance is granted because the gable is further in. He went on to explain for Mr. Jones that if this appeal is granted it does not affect the neighbor to the north should he wish to add on. Mr. Lyon added the neighbor will need a variance anyway, whether or not the appeal is granted.

Mr. Joseph Novitsky, JSN Architecture, appeared on behalf of the homeowners, Michael and Mary Flynn. He produced a letter from the neighbor to the north that supports what they are trying to do. The Flynns had to take down their existing garage to allow the new development to occur. The neighbor is in the same boat should he wish to make changes. Mr. Novitsky explained they are not extending the structure beyond the existing wall; in fact, they are taking off the brick thereby saving about 3 in. from the existing dimension. On the second floor they are just changing the siding in order to add more texture. Their intent for the foundation is to pull it back up and support it with some concrete. They took a hard look at the design from many different angles and decided this is the best solution. The entire structure is built around the swimming pool. The pool with its 10 ft. setback from any structure really dictates the lot.

Mr. Lyon thought they walked themselves into a somewhat self-created practical difficulty by adding the pool and the addition around it. However, adding an addition to the rear and staying in the plane of the existing building has some structural features that allow the walls to connect together. That may justify why the plane on the north has to be where it is. Mr. Novitsky agreed and noted they are conforming on their lot. however, the Ordinance made the neighbor non-conforming.

No one in the audience wished to comment on this appeal at 7:58 p.m.

**Motion by Mr. Jones**

**Seconded by Mr. Lyon as regards Appeal 16-05, 231 S. Glenhurst, to grant both variances A and B as presented to us by the City. He believes that strict compliance would unreasonably prevent the owner from using the property for the permitted purpose or would render conformity with such restrictions unnecessarily burdensome.**

**Mr. Jones believes the granting of the variance would do substantial justice to the applicant as well as to the adjoining property owners. He also feels it is due to the unique circumstances of the situation and the change in the Ordinance well as the adjoining property owner. He does not believe this is self-created. He would tie the variances to the plans as presented.**

Mr. Lyon indicated he supports the motion because he believes the overriding factor is that the house to the north is non-conforming which has led to the request for the variance on the side. The front variance is more along the lines of maintenance and underpinning the existing projection.

Mr. Jones added that the applicant has attempted to minimize his request.

**Motion carried, 6-0.**

ROLLCALL VOTE

Yeas: Jones, Lyon, Canvasser, Hart, Lillie, Morganroth

Nays: None

Absent: Judd, Miller

**T# 03-18-16**

**1515 PIERCE  
(Appeal 16-06)**

The owners of the property known as 1515 Pierce request the following variance to allow for the construction of a house addition less than the required minimum side yard setback.

A. **Chapter 126, Article 4, Section 4.59** of the Zoning Ordinance requires a minimum north side yard setback of 29.19 ft. for this lot. The applicant is proposing 16.72 ft. Therefore, a variance of 12.47 ft. is requested.

This property is zoned R-2.

Mr. Lenhart reported the applicant has purchased the house to the south of this lot (1525 Pierce) and is proposing to demolish the existing home, combine the lots and construct a new house addition on the existing house at 1515 Pierce. Although the Catalpa frontage is considered a side, the setback is based on the 200 ft. average setback. All other setbacks and distance requirements are conforming. He confirmed for Chairman Lillie the addition along Catalpa is extending the existing plane. Also it is increasing the setback of the adjoining property because of his plans to demo his existing garage. Further, the addition to the south will add more green space between the subject house and the house to the south.

Mr. Hart received confirmation that the variance section of the proposed addition is in the same plane as the existing garage to the north that will be demoed.

Mr. John Monigold, the property owner, noted he has a unique circumstance in that his house faces Pierce and the houses behind him face Catalpa. He wants to keep everything in the existing line and is not asking for anything more. He is improving the distances between houses on Catalpa and on Pierce.

The chairman called for comments from members of the audience at 8:08 p.m.

Ms. Janelle Whipple-Boyce, 179 Catalpa, said she supports the variance and thinks it will be a positive improvement to the neighborhood. By allowing the variance request residents on Catalpa will gain a lot of green space.

Mr. Scott Tappin, 160 Catalpa, thought the plans are aesthetically pleasing and noted he gets a setback improvement of 25 ft. He fully supports the variance.

**Motion by Mr. Jones**

**Seconded by Mr. Morganroth as it relates to Appeal 16-06, 1515 Pierce, the appellant as advertised is seeking a variance essentially to permit the extension of the existing line along Catalpa. This is not the first time the board has ever run into a circumstance where they have a corner lot that causes them considerations of this nature. As such, Mr. Jones would move to approve the variance as advertised.**

**He feels that to restrict the petitioner would unreasonably prevent the owner from using the property for a permitted purpose, or would render the conformity with such restrictions unnecessarily burdensome.**

**Obviously, thanks to the neighbors who have also said so, he agrees that it does substantial justice to the other property owners; and in fact, improves the circumstances from a green space perspective as well as setbacks.**

**In that vein too, Mr. Jones does not believe that the circumstances are due either to a self-created situation, but are wholly and uniquely a function of the corner lot and the circumstances of this situation. As such he would tie the motion to the plans as presented.**

**Motion carried, 6-0.**

**ROLLCALL VOTE**

Yeas: Jones, Morganroth, Canvasser, Hart, Lillie, Lyon

Nays: None

Absent: Judd, Miller

**T# 03-19-16**

**1375 WEBSTER  
(Appeal 16-07)**

The petitioner was not present for his hearing.

**Motion by Chairman Lillie**

**Seconded by Mr. Lyon to table this matter to the next BZA meeting subject to the City contacting the petitioner to see if they have changed their mind.**

**Motion carried, 6-0.**

VOICE VOTE

Yeas: Morganroth, Jones, Canvasser, Hart, Lillie, Lyon

Nays: None

Absent: Judd, Miller

**T# 03-20-16**

**1792 BANBURY  
(Appeal 16-08)**

The owners of the property known as 1792 Banbury request the following variances to allow for the construction of a house addition less than the required minimum side yard setbacks and distance between principal residential buildings.

- A. **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 4.50 ft. Therefore, a variance of 0.50 ft. is requested.
- B. **Chapter 126, Article 4, Section 4.69 (C)** of the Zoning Ordinance requires a minimum of 14.02 ft. between principal buildings for this lot. The applicant is proposing 12.60 ft. Therefore, a variance of 1.42 ft. is requested.

This property is zoned R-2.

Mr. Johnson stated there is enough detail in the drawings to tie the motion to the plans.

Mr. Lenhart offered background. The applicant is proposing to build a second story rear addition to accommodate space for a bathroom. All other setbacks and distance requirements are conforming. The irregular shape of the lot is a driving force and the house is not parallel to the side lot line. The appellant is staying within the existing plane of the house. The subject house is existing non-conforming. The house to the west is also non-conforming.

Mr. John Graham, the builder, spoke on behalf of the petitioner. The existing house is a bungalow and the owners would like to add a bathroom on the second floor. They are not extending past any existing footprint. This will be a friendly addition in the back of the home. The side lot lines are not parallel because the house is on a curved street and the homes face the street directly rather than being oriented with the lot lines.

There were no comments from members of the public at 8:15 p.m.

**Motion by Mr. Lyon**

**Seconded by Mr. Jones in regard to Appeal 16-08, 1792 Banbury, to grant the variances as advertised. The appellant seeks a variance under Chapter 126, Article 2, Section 2.10 for a minimum side yard setback of 5.00 ft. and under Chapter 126, Article 4, Section 4.69 (C) for a minimum distance between buildings and a requested variance of 1.42 ft.**

**Mr. Lyon believes that strict compliance with the Ordinance would be unduly burdensome. This is due to the unique character and conditions of this lot being pie shaped with an existing non-conforming house next to an existing non-conforming house.**

**He does not believe this was self-created in that the house has been there for some time. He thinks it does substantial justice to the appellant and to the surrounding neighborhood. He would tie the motion to the plans as presented.**

**Motion carried, 6-0.**

Mr. Jones thought this is one of the most extreme circumstances for such a proposal because it is a corner lot and because of the acute narrowing of the lot at one end. Chairman Lillie agreed this is a classic case of a unique lot.

**ROLLCALL VOTE**

Yeas: Lyon, Jones, Canvasser, Hart, Lillie, Morganroth

Nays: None

Absent: Judd, Miller

**T# 03-21-16**

**2200 AVON LANE  
(Appeal 16-09)**

The owners of the property known as 2200 Avon Lane request the following variance to allow for the construction of a house addition less than the required minimum distance between principal residential buildings.

- A. **Chapter 126, Article 4, Section 4-69 (C)** of the Zoning Ordinance requires a minimum of 20.00 ft. between principal buildings for this lot. The applicant is proposing 18.55 ft. Therefore, a variance of 1.45 ft. is requested.

This property is zoned R-1.

Mr. Lenhart advised the applicant is proposing to construct a second-story addition over the garage and a rear two-story addition to an existing non-conforming structure. All other setbacks and distance requirements are conforming.

Mr. Jeff Klatt, Krieger Klatt Architects, Inc., was present with the homeowner, Ms. Kim Hursley. Mr. Klatt passed out additional approval letters from some surrounding neighbors. They propose a modest addition to the first floor as well as the second story. The idea is to create a more modern floor plan and open up the space a bit.

It would be burdensome to push the addition inward and not take advantage of the existing structure. The design compliments the neighborhood.

- They feel the special or unique condition is due to the placement of the existing home which created the non-conforming condition.
- Literal interpretation of the Ordinance would be burdensome due to existing load bearing conditions. A lesser variance would complicate the structure.
- This condition does not result in actions of the applicant because the home was constructed well before they purchased the property.
- The granting of the variance will be in harmony with the general purpose and intent of the Ordinance because they propose not to increase the non-conforming condition.
- The variance will not be injurious to the neighborhood or otherwise detrimental to the general welfare.
- The variance will not be harmful to the surrounding properties and as designed it is complimentary. It will only enhance the streetscape.

They feel the variance meets the spirit of the Ordinance and will it will be constructed in a safe manner.

Ms. Hursley pointed out where the neighbors who wrote the supporting letters are located.

No one from the public commented at 8:25 p.m.

#### **Motion by Mr. Lyon**

**Seconded by Mr. Jones in regard to Appeal 16-09, 2200 Avon Lane, to grant the variance as advertised. The appellant seeks a variance under Chapter 126, Article 4, Section 4.69 (C) of the Zoning Ordinance for the minimum distance between principal buildings. 18.55 ft. is requested for a 1.45 ft. variance. He noted that 18.55 ft. presently exists.**

**Mr. Lyon believes that strict compliance with the Ordinance would be unduly burdensome in this case because of the fact that the existing house is a non-conforming structure as far as distance between buildings goes.**



**He believes the variance does substantial justice to both the appellant and the surrounding neighbors, as has been indicated by letters of support by neighbors.**

**Further, Mr. Lyon believes this is due to the unique circumstances that the house is existing non-conforming. This is not self-created in that the house has been there for a substantial amount of time. He would tie the motion to the plans as presented.**

**Motion carried, 6-0.**

ROLLCALL VOTE

Yeas: Lyon, Jones, Canvasser, Hart, Lillie, Morganroth

Nays: None

Absent: Judd, Miller

**T# 03-22-16**

**CORRESPONDENCE** (none)

**T# 03-23-16**

**GENERAL BUSINESS**

Mr. Johnson passed out brand new copies of the Zoning Ordinance to board members.

**T# 03-24-16**

**OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA** (no one was left in the audience)

**T# 03-25-16**

**ADJOURNMENT**

No further business being evident, the board members passed a motion to adjourn at 8:35 p.m.

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Bruce R. Johnson, Building Official