

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, MAY 10, 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, May 10, 2016. Chairman Charles Lillie convened the meeting at 7:30 p.m.

Present: Chairman Charles Lillie; Board Members Kevin Hart, Jeffery Jones, Randolph Judd, Vice-Chairman Peter Lyon, John Miller, Erik Morganroth

Absent: Alternate Board Members Jason Canvasser, Cynthia Grove

Administration: Matthew Baka, Senior Planner
Bruce Johnson, Building Official
Carole Salutes, Recording Secretary
Scott Worthington, Assistant Building Official

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# 05-33-16

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

Motion by Mr. Lyon

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

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

T# 05-34-16

**369 N. OLD WOODWARD AVE.
(Appeal 16-10)**

The owners of the property known as 369 N. Old Woodward Ave. request the following variance to allow the construction of a five-story mixed-use building in the R-6/D-4 Zone that exceeds the minimum lot area per unit.

- A. **Chapter 126, Article 02, section 2.16, Minimum Lot Area/Unit**, of the Zoning Ordinance requires that buildings with residential units provide a minimum lot area of 1,375 sq. ft. per one (1) bedroom unit and 1,750 sq. ft. per two (2) bedroom unit. The applicant is proposing twenty-six (26) two bedroom units and three (3) one bedroom units requiring 49,625 sq. ft. of land area with 34,328 sq. ft. provided. Therefore, a variance of 15,297 sq. ft. of lot area is requested.

This property is zoned R-6/D-4.

Mr. Baka advised the property was rezoned by the City Commission on October 12, 2015 to be included in the Downtown Overlay Zone with the express intent of developing a mixed use building comprised of predominately residential uses. The Downtown Overlay Zone was drafted to encourage additional residential uses by permitting additional building height for residential uses as recommended by the DB 2016 plan. The proposal meets all other ordinance requirements in regards to height, setback and bulk regulations.

In response to the chairman, Mr. Baka indicated there is only one other parcel that is zoned R-6 that is in the Overlay District and it is designated historic so it can never be torn down. The shape or topography of the lot does not make any difference; it is just the square footage of the property based on the number of units. The parcel is bordered on three sides by public property and the east side by N. Old Woodward Ave. The applicant has provided a survey showing what is left after the 1,112 sq. ft. is deeded over to the City.

Answering Mr. Lyon, Mr. Baka explained that for the last meeting staff used City records for their calculations. The parcel used to include a small triangle on the other side of the Rouge River. However the original legal description which they did not have last time illustrates that when the condominiums were created the developer deeded that piece of property over to the City. But for some reason, the City map didn't reflect that. So, going back and looking through the applicant's surveys and the original legal description, staff realized that triangle is not part of their parcel. Now, the new numbers do not include it.

Mr. Baka explained for Mr. Morganroth that having a specific land square footage reflective of the number of units is intended to control density but only for the underlying R-6 zoning. However, when the Overlay was created the goal was to increase residential density.

For Mr. Miller, Mr. Baka noted the Planning Board was happy to see a significant number of residential units being proposed for the Downtown. Further, they were okay with the amount of commercial being proposed. Mr. Judd noted even if the BZA denies the requested variance the same building will be constructed. It is just a matter of what goes on inside the building.

Mr. Richard Rattner, 380 N. Old Woodward Ave., represented the petitioner. Mr. Christopher Longe and the property owners were in the audience. Mr. Rattner presented a PowerPoint. Last month they addressed all of the Ordinance requirements for the granting of a dimensional variance. Now the legal description has been corrected. Also the Master Deed and attachments have been included for the existing condominium. As noted by Mr. Judd, the building does not change in size. They are governed by the overlying D-4 zoning but would like to have the flexibility to go forward and construct the building as designed and approved by the Planning Board. He emphasized the uniqueness of this piece of property. Calculations were presented showing how the square foot variance was reached.

The dimensional variance is requested as a result of the unique size, shape, physical characteristics and location of this property as it relates to other neighboring and nearby properties, coupled with the requirements in the Downtown Birmingham 2016 Plan and the Downtown Birmingham Overlay District principles of design.

In reply to Mr. Jones, Mr. Rattner explained their deed agreement with the City is an obligation.

Motion by Mr. Lyon

Seconded by Mr. Miller in regard to Appeal 16-10, 369 N. Old Woodward Ave., the appellant seeks a variance under Chapter 126, Article 02, section 2.16 for minimum lot area/unit of the Zoning Ordinance. The requested variance is for 15,297 sq. ft. That will be against a remaining parcel of 34,328 sq. ft.

Mr. Lyon moves to approve the variance as advertised. He believes that strict compliance with the Zoning Ordinance would be unduly burdensome. This is not self-created. It is a very unique parcel given it is about the only R-6 in the D-4 Overlay that is not a historical lot. It is surrounded by public lands on just about every side. He believes this does substantial justice to both the appellant and the community at large.

He would attach the following conditions to this variance approval:

- **The appellant will remove the existing condominium agreement from the parcel;**
- **Subsequently deed the 1,114 sq. ft. for the roadway to the City per the agreement;**
- **Put into place a new condominium agreement on the remaining parcel. This is a variance of 15,297 sq. ft. on that remaining parcel;**
- **Limit it to twenty-nine (29) residential units on the parcel of any combination that the appellant seeks during the development phase.**

The motion is tied to the presentation and letters submitted tonight.

Mr. Morganroth suggested an amendment not to say a maximum of twenty-nine (29) residential units, but simply the number of combinations that work within the same variance of 15, 297 sq. ft. Mr. Lyon stated the appellant's plan is for twenty-nine (29) units. The motion is normally tied to the plans.

Mr. Judd thought the board is getting overly concerned about control and enforcement in this case. If the applicant does not meet their obligations, there is recourse. Mr. Johnson noted if more units are added by the applicant, a limiting factor would be the number of required parking spaces.

Mr. Lyon agreed to withdraw his limit of twenty-nine (29) residential units.

Mr. Miller commented this is indeed a very unique lot and zoning and the board is not setting any kind of precedent. Additionally the variance does not affect the proposed building envelope.

Mr. Jones suggested this parcel is a good example for the City having a condominium ordinance and also a planned unit development ordinance down the road. There is no ordinance that says a condominium a unit can equate to a lot.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: None

T# 05-35-16

CORRESPONDENCE (none)

T# 05-36-16

GENERAL BUSINESS (none)

T# 05-37-16

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

T# 05-38-16

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:05 p.m.

Bruce R. Johnson, Building Official