

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, JULY 12, 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, July 12, 2016. Vice-Chairman Randolph Judd convened the meeting at 7:30 p.m.

Present: Vice Chairman Randolph Judd; Board Members Jeffery Jones, Kevin Hart (arrived at 7:53 p.m.), Peter Lyon, John Miller, Erik Morganroth; Alternate Board Member Jason Canvasser

Absent: Chairman Charles Lillie; Alternate Board Member Cynthia Grove

Administration: Bruce Johnson, Building Official
Carole Salutes, Recording Secretary
Scott Worthington, Assistant Building Official

The [vice](#) 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# 07-47-16

APPROVAL OF THE MINUTES OF THE BZA MEETING OF JUNE 14, 2016

Motion by Mr. Jones

Seconded by Mr. Morganroth to approve the Minutes of the BZA meeting of June 14, 2016 as presented.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None
Absent: Hart, Lillie

T# 07-48-16

**1391 HUMPHREY
(Appeal 16-14)**

The owners of the property known as 1391 Humphrey request the following variances to allow for the construction of an addition.

A. **Chapter 126, Article 2 section 2.10** of the Zoning Ordinance requires a minimum front setback of 18.12 ft. The applicant has an existing and proposed front setback of 11.27 ft. which would result in a 6.85 ft. variance.

This property is zoned R-3.

Mr. Hart was recused because his firm prepared the architectural drawings.

Mr. Worthington advised that the home was built in 1929. The applicant is adding a two-story addition to the rear of the home. The rear addition complies with all of the setback requirements as does the detached garage. They are proposing a second-floor addition over the existing first floor at the front of the home which is in the required front setback. The addition at the front is not projecting closer to the front property line than the existing first story.

Mr. Worthington went on to explain that the existing heated front porch is considered part of the house and should be behind the front setback.

Ms. Patraicia Keller from Kevin Hart Associates represented Ms. Karen Crabill, the homeowner. Their proposal is to add a one-story covered porch on the east side of the existing enclosed heated porch and then build straight up above the heated porch. Their proposal provides better flow and circulation and maintains the existing rooflines and footprint of the home. They plan a kitchen and mud room addition in the back and going up from that while maintaining the existing roofline. When completed the house will be about 2,000 sq. ft. while right now it is half of that.

Their practical difficulty is that with a 40 ft. wide lot and restriction on lot coverage, it is difficult to get a three bedroom plan into such a small space. They are at maximum lot coverage and the only way to get extra space is to go up. Their proposal will have minimal effect on the neighbors; and in fact the addition enhances their property values.

No one from the public wished to address this matter at 7:47 p.m.

Motion by Mr. Miller

Seconded by Mr. Jones to support the variance with regard to 1391 Humphrey. He believes the problem was not self-created and it is due to the unique circumstances of the property. The house was built in 1929 and not built within the current zoning envelope, as it was somewhat forward of it. However, Mr. Miller does not believe that should prevent the owner from expanding the house and improving it. If you look at the house to the east or even possibly to the west, the whole neighborhood is being improved and this house hasn't been. So it is really doing substantial justice to the rest of the neighborhood to the rest of the neighborhood to allow this house to be approved in kind, even though back in 1929 it was built slightly outside the envelope.

As mentioned before, the concern is that we are talking about the front yard setback, but again that is not being expanded in terms of the footprint over where it is now. Mr. Miller thinks it would cause the petitioner to have an unreasonable problem with expanding this house. Again, that would not have happened had the house built in 1929 been built within the current envelope instead of slightly forward of it.

For those reasons he would move to approve and tie the motion to the plans as submitted.

Mr. Jones observed the applicant is not going any closer to the property line than exists at this point. He feels the development of the area does substantial justice to the community and complies with the spirit of the Ordinance, and that justifies his support of the requested variance.

Mr. Lyon said he will support the motion for the sole reason that it is no further forward than the existing house. Further it seeks to use existing structure. The porch that is being added is set back a little and does not go all the way across. That helps to mitigate the encroachment into the front yard setback.

Motion carried, 6-0.

ROLLCALL VOTE

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

Nays: None

Recused: Hart

Absent: Lillie

**1510 W. LINCOLN
(Appeal 16-14)**

The owners of the property known as 1510 W. Lincoln request the following variance to allow for the construction of a new home.

A. **Chapter 126, Article 2, section 2.04** of the Zoning Ordinance requires a minimum front setback of 54.7 ft. The applicant is proposing a 49.2 ft. front setback, which would result in a 5.5 ft. variance.

B. **Chapter 126, Article 4, Section 4.30** of the Zoning Ordinance allows the front porch to project into the front setback a maximum of 10 ft.. The applicant is proposing a porch that projects into the required setback 13.3 ft., which would result in a 3.3 ft. variance.

This property is zoned R-1A.

Mr. Worthington noted the lot at this location is currently vacant. The two homes to the East are substantially deeper lots and set back further from the front property lines than the homes to the West. The applicant is meeting the average of the front setbacks of the homes to the West, but that does not include the two homes to the east. With respect to the second variance request (B), if the applicant does get a variance for the front setback they would need a variance of 3.3 ft. into the required front setback.

Vice-Chairman Judd summed up by saying the need for a variance is skewed by the two houses to the East. It was discussed that the Ordinance hasn't changed since the petitioner bought the lot. In response to Mr. Morganroth, Mr. Worthington noted if the house was pushed back it would be difficult to get into the garage.

Mr. Steve Powers spoke to represent the owners of the property, Harold and Natalie Bond. They plan to build a modest 2,300 sq. ft. two-story home with a two-car detached garage that will compliment the surrounding homes.

Unfortunately for the Bonds, their lot is the shallowest of all lots in the area and due to the fact the two properties to the East are significantly larger, the front yard setback requirement is skewed unfairly for them. Their practical difficulty is in trying to meet the required front yard setback, due to the fact they are at the junction of two different areas of Birmingham. The Bonds are asking for a front yard setback variance of 49.2 ft., which is the average of the properties to the West that are more similar in size to theirs. They feel they are keeping with the spirit and intent of the Ordinance by not overbuilding or creating a negative impact on the neighbors. In response to the vice-chairman, Mr. Powers said it would be unreasonably burdensome for them to meet the Ordinance requirements.

Mr. Miller observed the site plan doesn't show the houses to the West that they are trying to emulate in terms of setback and how they align with the proposed house. He asked about the difficulty they would face without getting a variance. Mr. Powers

responded it would be difficult to get into the garage. That is why they came up with the average of what the homes are on the similar size lots to the West.

It was discussed this lot is on the borderline of a subdivision plat. The applicant's issue with strict compliance is the unique nature of their lot being shallower than the lots immediately to the East. Mr. Powers said the garage has been shoehorned into the corner and he doesn't believe it can be fit in any other way.

The vice-chairman recalled that a former board member would have observed this is a vacant lot and the applicant has a blank piece of paper so why are we here. He took comments from the audience at 8:08 p.m.

Mr. Tom Lynch, resident owner of the property four lots to the West, said he and his wife consider the granting of this variance as advantageous to the neighborhood. They don't view the request as self-created.

Motion by Mr. Lyon

Seconded by Mr. Hart in regards to Appeal 16-14, 1610 W. Lincoln, the appellant seeks a variance under Chapter 126, Article 2, section 2.04 for a front yard setback which would result in a 5.5 ft. variance; and Chapter 126 Article 4, section 4.30 to allow the front porch to project into the required front yard setback for a 3.3 ft. variance.

Mr. Lyon moved to approve the variances advertised. There are several points to prove. First of all is whether strict compliance would be unduly burdensome and is it due to the unique circumstances of this particular parcel and not the general surroundings. He believes the unique circumstances are driving the variance request in this case. That is, the fact there are four or five shallow lots in one subdivision plat. Immediately to the East there are several very large deep lots with very large front setbacks which skew the average front setback larger than would seem appropriate for the lot in question.

He thinks the appellant has done much to mitigate this. They have the shallowest lot and are asking for the average of the setbacks of slightly deeper lots. Proportionally you would think they could ask for even less front yard setback.

Mr. Lyon does not believe this is self-created. This plat and these houses all exist. They are driving the average. He would tie the motion to the plans as presented tonight.

Mr. Miller said the most important point that jumped out at him was that this is doing substantial justice to the neighborhood by allowing this house to align with the other houses on the West, given the abrupt change in lot size from that row to the West to the houses to the East. Therefore, he supports the petition.

Mr. Jones indicated he will support the motion because of substantial justice to the community, compliance with the spirit of the Ordinance, and the applicant's mitigation to find an average and comply with that which is there.

Vice-Chairman Judd said happily this board has a concept of equity and it may play out in this circumstance.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Lillie

T# 07-48-16

**570 ASPEN
(Appeal 16-16)**

The owners of the property known as 570 Aspen request the following variances to allow for the construction of a detached garage.

A. **Chapter 126, Article 4, Section 4.03 C** of the Zoning Ordinance requires an accessory to be a minimum of 5 ft. off the rear property line. The applicant is proposing to construct the new accessory structure 3 ft. off the rear property line, which would result in a 2 ft. variance.

B. **Chapter 126, Article 4, Section 4.03 D** of the Zoning Ordinance requires the accessory to be a minimum of 10' from the principal building. The applicant is proposing the accessory structure to be 7.3 ft. from the principal building, which would result in a 2.7 ft. variance.

This property is zoned R-1.

Mr. Worthington noted the home was built in 1940 with the detached garage appearing to be constructed around the same time. The applicant proposes to demolish the existing non-conforming detached garage which is 1 ft. off the property line and build a new detached garage in close proximity to the principal building. Most communities have the 10 ft. requirement between the garage and house. Mr. Johnson added there has been talk that could be because of Fire Code reasons. Also, it could be for setback reasons. Some communities require a detached garage to have 42 in. footings if it is closer than 10 ft. from the principal structure because it may become attached. As far

as the Fire Code, the Residential Code addresses that now by stating that once you are closer than 3 ft. from the house then fire ratings must be put up.

Mr. Jones summarized the requests by saying the situation would be improved by 2 ft. in one instance which requires a variance in the other instance. The existing garage is 1 ft. off the property line. The proposal brings it in 3 ft. off the property line and places it closer to the house for a variance of 2.7 ft.

Mr. Jones announced that when he drove by the site he had a tough time seeing the garage because of a large pine tree. Therefore in terms of substantial justice he doesn't know how this would even affect the community.

Mr. Brian Neeper, Architecture P.C., spoke for the homeowners, John and Alisa Locker. His clients want to replace their old, small garage with a new two-car functioning garage that would be more attractive with the existing house. Theirs is one of the smaller lots in the entire neighborhood. The house is original from the 1940's and his clients have owned the property for almost three years.

At 8:26 p.m. there were no comments from the audience.

Motion by Mr. Jones

Seconded by Mr. Morganroth with regard to Appeal 16-16, 570 Aspen, the petitioner seeks to build a new garage, and as a result requests a variance from Chapter 126, Article 4, section 4.03 C and from Chapter 126, Article 4, section 4.03 D.

For subsection C the petitioner requests a 2 ft. variance as a result of constructing the new garage which now requires a 5 ft. distance from the rear property line. The existing garage sits 1 ft. off the rear property line. The petitioner proposes to place the new garage 3 ft. off the property line, thereby improving the distance between the lot line and the garage by 2 ft., which still then would require a 2 ft. variance.

For subsection D, the second requested variance, as a result of moving the garage in the same area 2 ft. further away, the Ordinance then requires the distance between the house and the garage to be 10 ft. The distance would then be 7.3 ft. and require a variance of 2.7 ft.

Mr. Jones moves to grant both variances because he feels that the petitioner with strict compliance to the Ordinance would have practical difficulty because this is not self-created, does substantial justice to the community, and is within the spirit of the Ordinance. Therefore, he moves to not only approve, but tie the motion to the plans.

Mr. Lyon expressed his support of the motion because he thinks it meets the four required criteria. The lot is unique and shallow. It appears the rear part of the lot was somehow deeded over to the lot to the North. The garage is certainly not overbuilt at 21 ft. in width.

Mr. Hart thought it is a stretch to call this a two-car garage. The design is attractive and it is seamless with the house and in scale with the property. Therefore he was in support.

Mr. Miller observed the roof slopes away on both sides and that minimizes the bulk of the house on the two sides that require the variance. He also supported the motion.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Lillie

T# 07-49-16

**280 ARGYLE
(Appeal 16-17)**

The owners of the property known as 280 Argyle request the following variance to allow for the construction of a rear addition.

A. **Chapter 126, Article 4, section 4.74 C** of the Zoning Ordinance requires 21.9 ft. between principal buildings on adjacent lots. The applicant is proposing 17.8 ft. between principal residential buildings, which requires a 4.1 ft. variance.

This property is zoned R-1.

Mr. Worthington advised the existing home was constructed in 1948. The applicant is proposing an addition to the rear of the home 2.4 ft. from the existing building line. The lot next door is 70 ft. wide and they have met the distance between the adjacent house and the new addition so it doesn't impact the neighbors to the north. However they still need a variance of 4.1 ft. to construct because they don't meet their setback distance. The Ordinance says they need 25% which is 21.9 ft. and they propose 17.8 ft.

Mr. Dan Lynch, Lynch Custom Homes, represented his clients, Scott and Linda Stone. They found the lot to the North is a 70 ft. lot and the original 280 Argyle was also designed to be a 70 ft. lot. That dictated the placement of the original house in the

1940's After it was built it acquired 15 ft. of the lot to the South and split it so the neighbor further to the South gained additional footage as well. So now there was an 85 ft. wide lot which changes the side yard setback to be 25% of the structure and requires 21.9 ft. in lieu of the 25% of a 75 ft. lot which was 14.7 ft. So they redesigned the house, compromising 2.5 ft. off the side to make sure they didn't impede on the neighbor to the north. They also designed it in a way that wouldn't sacrifice any of the things that a normal 75 ft. wide lot would have.

Their special conditions and circumstances are not a result in actions by the applicant. The granting of the variance will be in harmony with the general intent and purpose of the Ordinance. It doesn't impact any of the neighbors. **The rear addition is only one and one-half story and will not shade the neighboring property.**

Mr. Lynch described for Mr. Miller why they moved further in than the Zoning Ordinance dictates. Mr. Worthington added the requested variance would not cause a hardship to the neighbor if they build straight up or straight back.

There were no comments from the audience at 8:45 p.m.

Motion by Mr. Lyon

Seconded by Mr. Jones in regard to Appeal 16-17, 280 Argyle, the appellant seeks a variance under Chapter 126, Article 4, section 4.74 C. The minimum distance between principal structures on adjacent lots requires 21.9 ft. and 17.8 ft. are proposed, for a 4.1 ft. variance.

Mr. Lyon moved to approve the variance as advertised. He believes that strict compliance would be unduly burdensome due to the fact that the lot is wider than the one next door which increases the burden on the homeowner here.

The other thing is they want to go back with a rear addition and up and they have mitigated it somewhat by bringing it in 2.5 ft. and pushing most of the addition over the garage. They have thoughtfully brought it in to the point where the neighbor next door would not have to ask for a variance should they want to do the same thing in the future.

Mr. Lyon believes this does substantial justice to the homeowner and the surrounding neighborhood and is in accordance with the spirit of the Zoning Ordinance. The motion is tied to the plans as presented.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Lillie

T# 07-50-16

CORRESPONDENCE (none)

T# 07-51-16

GENERAL BUSINESS (none)

T# 07-52-16

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

T# 07-53-16

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:47 p.m.

Bruce R. Johnson, Building Official