

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, AUGUST 8, 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, August 8, 2016. Chairman Charles Lillie convened the meeting at 7:30 p.m.

Present: Chairman Charles Lillie; Board Members Jeffery Jones, Randolph Judd, Peter Lyon, John Miller, Erik Morganroth; Alternate Board Member Jason Canvasser

Absent: Board Member Kevin Hart; Alternate Board Member Cynthia Grove

Administration: 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# 08-54-16

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

Chairman Lillie made the following change:

Page 1 - Middle of the page, replace "chairman" with "vice-chairman."

Motion by Mr. Lyon

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

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Hart

T# 08-55-16

**410 E. SOUTHLAWN
(Appeal 16-19)**

The owners of the property known as 410 E. Southlawn request the following variances to build a new house.

A. **Article 4, Section 4.74 C.** of the Zoning Ordinance requires a minimum of 14 ft. between principal structures. The proposed house will be 10.83 ft. from the adjacent principal structure, which will cause a variance of 3.17 ft. on the east side of the property line.

B. **Article 4, Section 4.61 2.** Requires the accessory structure to be a minimum of 15 ft. off the side street setback. The proposed accessory structure is 9.92 ft. from the side street setback which will cause a variance of 5.08 ft.

This property is zoned R-3.

One letter has been received in opposition to the variances.

Mr. Worthington explained that the power lines and irregular shaped lot are causing difficulty with setbacks for the proposed new house. DTE plans on moving the power lines but the applicant needs 7 ft. minimum between the power lines and the edge of the structure. In response to the chairman, Mr. Worthington established the new garage will go into the same space as the existing garage. The size will be somewhat smaller. The footprint of the new house will be a little larger than the existing.

Mr. Rick Merlini, Live Well Custom Homes, the property owner, said this is a corner lot so he must maintain 10 ft. on each of his two side yards. He has been working with DTE to move the power lines 3 ft. Additionally, the lot narrows in width to the rear. This reduction in width restricts him from building a two-car detached garage and maintaining 15 ft. in front of the garage and its side yard.

The chairman took comments from the audience at 7:45 p.m.

Mr. Mike Peg, 432 E. Southlawn, expressed his concern about losing some space. He hoped the variances could be minimized. With regard to where the water will go with

the new construction, Mr. Johnson assured him that catch basins would be required for drainage if needed.

Chairman Lillie asked why the house has to be 30 ft. wide and Mr. Merlini indicated he could take it down a foot.

Mr. Judd observed the board doesn't have assurances of the exact envelope they will be dealing with. Mr. Jones added that the board doesn't have anything to tie a motion to.

Mr. Merlini decided to table his request until he can submit a drawing from DTE showing what they intend to do.

Motion by Mr. Jones

Seconded by Mr. Lyon to table 410 E. Southlawn, Appeal 16-19, until the next regularly scheduled BZA meeting in September.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Hart

T# 08-56-16

**1326 COLE
(Appeal 16-20)**

The owners of the property known as 1326 Cole request the following variance to construct a new house.

A. **Article 4, Section 4.74 C.** of the Zoning Ordinance requires a minimum of 14 ft. between principal structures. The proposed house is 11.8 ft. from the adjacent principal structure, which will cause a variance request of 2.2 ft.

This property is zoned R-1A.

Mr. Worthington noted the adjacent homes are both less than the minimum 5 ft. off the property line and the applicant has reduced the width of the proposed house to 23 ft.

Mr. Martin Dziewit, Hansen Dziewit Development, LLC, indicated the non-conforming house to the west of their lot is for sale as a new-build home and will be built per current setback requirements. That would lessen the variance by a just over 1 ft. If he shrinks

the width of the house it would be difficult to get the stairway in and it would only leave an 11 ft. bedroom.

At 8:07 p.m. the chairman called for discussion from the audience.

Mr. Dimet Sharma said he bought the adjacent property to the west, 1515 Cole St. His builder, Mr. Kevin O'Keefe was present with him. They were trying to understand the parameters of the requested variance and its impact on Mr. Sharma's property. Chairman Lillie clarified if the requested variance was granted tonight they would still need a variance because there is not 14 ft. between the two houses. Mr. Sharma and his builder expressed their support for the variance.

Motion by Mr. Lyon

Seconded by Mr. Jones in regard to Appeal 16-20, 1327 Cole, to grant the variance as advertised. The appellant seeks a variance under Article 4, Section 4.74 C. of the Zoning Ordinance for a minimum of distance between principal structures. The proposed house is 11.8 ft. and the required distance is 14 ft. for a variance of 2.2 ft.

Mr. Lyon believes that strict compliance would be unduly burdensome due to the unique nature of this lot. This is our classic 9-5, 9-5, 5-9 situation where somebody will be less than 14 ft. because of the required 10 ft. setbacks on the corners.

He believes that strict compliance would be unduly burdensome; he believes that granting the variance will do substantial justice to the appellant and the surrounding neighborhood. The appellant has mitigated and reduced the requested variance by moving the structure further than the normal minimum 5 ft. on the westerly lot line.

He does not believe this is self-created and would tie the motion to the plans as presented.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Hart

T# 08-57-16

**550 S. BATES
(Appeal 16-21)**

The owner of the property known as 550 S. Bates requests the following variance to replace the driveway.

A. **Article 4, Section 4.31 1.** of the Zoning Ordinance limits a maximum of 35% of front open space with paved or parking surfaces. The existing driveway covers 76.1%; the homeowner wants to replace exactly as it is, which will cause a variance of 41.1% (671.7 sq. ft.).

This property is zoned R-3.

Mr. Worthington noted the homeowner wants to replace the driveway in the existing location that was approved when the house was built in 1988. The Ordinance changed in 1998.

Mr. Johnson ruled this is a replacement rather than a repair of the existing concrete.

Ms. Sheriban Bardha said their lot is so small, they wanted the front door of the house in the middle. They built two small garages on each side of the door and two small driveways to enter the garages separately. It has been 26 years, and now everything is coming apart. All they are asking is to replace the existing concrete with new.

The chairman took comments from the audience at 8:20 p.m.

Mr. Cezan Bardha, 911 S. Bates, hoped the existing driveway could look beautiful again. He disclosed that Ms. Sherban Bardha is his mother.

Motion by Mr. Miller

Seconded by Mr. Morganroth to approve Appeal 16-21, 550 S. Bates. Compliance with the Ordinance would be unduly burdensome; it is an existing condition and not self-created. In terms of doing substantial justice to the surrounding properties, there is a big circle drive on the houses on either side of this property and it seems that maintaining the existing driveway is very reasonable. He would tie that to the plans as submitted.

Mr. Jones indicated his intention to support the petition. He thinks this is a situation that perhaps the Ordinance didn't take into account. Repairing up to 75% doesn't work in this case because concrete must be taken out in order to repair it.

Motion carried, 6-1.

ROLLCALL VOTE

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

Nays: Judd
Absent: Hart

T# 08-58-16

**111 BALDWIN
(Appeal 16-22)**

The owner of the property known as 111 Baldwin Argyle requests the following variance to construct a new pool.

A. **Article 4, section 4.03 D.** of the Zoning Ordinance requires a minimum distance of 10 ft. clearance from a pool to a principal structure. The proposed pool is 1 ft. away from the house which will cause a 9 ft. variance request.

This property is zoned R-2.

One letter has been received in opposition to the requested variance.

Mr. Worthington advised the pool placement is limited in space because of the floodplain. For safety purposes, a locked pool cover or fence could be installed.

Mr. Tom Shaffou, Orchard Development, was present with Mr. Corry Kimball, Architect; and Mr. John Cecil with HRC, Consulting Engineers. The entire property sits on a 100 year floodplain. It has a floodway that forced the home design to be pushed to the backyard setback line. The house design wraps around the patio on three sides that completely hides the proposed SPA location from adjacent properties. This location is the only area left within the allowable buildable envelope that would allow for a SPA.

In response to Mr. Judd, Mr. Shaffou indicated there are landscape plans for the property. The grade level SPA measures around 12 ft. x 13 ft. which is average size.

No one in the audience wanted to comment on this appeal at 8:35 p.m.

Motion by Mr. Lyon

Seconded by Mr. Judd with respect to 111 Baldwin, Appeal 16-22, to approve the request as advertised. The appellant seeks a variance from Article 4, Section 4.03 D. that requires a minimum distance of 10 ft. clearance from a pool to a principal structure. The proposed pool in this case is 1 ft. away from the house; therefore requiring a 9 ft. variance.

Mr. Lyon believes that strict compliance would be unduly burdensome, primarily due to the very unique conditions of this parcel. It is entirely surrounded by a floodplain. The hardship is not necessarily self-created because the floodplain is

there. Normally they would be able to build in the rear setback where most people put a pool, or SPA. However in this case it is prohibited by the State. There is some history with the 10 ft. requirement for pools, but with today's safety measures and lockable covers, in this case he thinks they will take care of those conditions. He tied the motion to the plans as presented.

Mr. Miller added in support that the location of the SPA is incredibly discrete and approving the variance would not create an eyesore.

Mr. Canvasser supported because the proposal is a better proposal than an above-ground SPA that would not require a variance.

Mr. Lyon agreed that this is a nice solution that does justice to everybody.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Hart

T# 08-59-16

**723 OAKLAND
(Appeal 16-23)**

The owner of the property known as 723 Oakland is requesting the following variance to construct a one-story rear addition.

A. **Article 4, Section 4.74 C.** requires a minimum distance between principal structures of 14 ft. The proposed addition will have 8.7 ft. between houses which will cause a variance of 5.3 ft.

This property is zoned R-2.

Mr. Worthington advised the house was built in 1922 and the existing distance between principal structures is 8.3 ft. Part of the problem is caused by a bumpout on the house to the west. In response to Mr. Miller, Mr. Worthington advised that if the variance was granted it would not cause further hardship to the adjacent neighbor if they wanted to re-build.

Mr. Arthur Lang, Jr., Architect, spoke on behalf of Ms. Kathy Ableson, the property owner. The improvement proposed is a 68 sq. ft. mud room to the northwest, rear corner of the house. Their difficulty is the neighbor to the west is only 2.3 ft. from the

property line and they have to maintain the 14 ft. distance between structures. So they tried to cut back just a hair so there would be room to get equipment through. This seems the best place to put the addition so the owner can still enjoy their backyard without interrupting existing space.

Mr. Morganroth noticed they brought the addition back 4 in. as mitigation because the houses are so close.

No one from the audience wished to discuss this appeal at 8:45 p.m.

Motion by Mr. Judd

Seconded by Mr. Lyon in regard to Appeal 16-23, 723 Oakland, to approve the subject property that is a 1922 home. The petitioner wishes to close the gap in the back of the house with a 68 sq. ft. mud room. Mr. Judd notes that in doing so the petitioner has mitigated by pulling in the addition 4 in.; and that this will cause no problems to any of the adjacent property owners.

He thinks that to prevent them from doing this would unreasonably prevent the owner from using the property for a permitted purpose. He thinks this does substantial justice to the applicant and to the surrounding property owners.

Mr. Judd feels this is due to the unique circumstance of dealing with a 1922 house and he does not feel the problem is self-created. Therefore he would tie the motion to the plans and approve.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Hart

T# 08-60-16

**505 TOWNSEND
(Appeal 16-24)**

The owner of the property known as 505 Townsend is requesting the following variance to construct a front addition.

A **Article 2, Section 2.18** requires a minimum front setback of 25 ft. when an average cannot be established. The proposed front setback is 10.5 ft. which will cause a variance of 14.5 ft.

This property is zoned R-7.

Mr. Worthington noted the house was built in 1872 and the addition is behind the existing front plain of the house which is at 8.3 ft. The proposed addition will not affect the existing site line.

Mr. Richard Cieszkowski, the property owner, explained his plan is to simply bring the front of the house further forward into a space where the front porch currently exists. This will allow for a much grander entrance and a significant facelift focused on utilizing natural light. Bringing the front entrance forward would not protrude any further than the front porch already does.

No one in the audience wanted to comment on this appeal at 8:50 p.m.

Motion by Mr. Judd

Seconded by Mr. Jones in regard to Appeal 16-24, 505 Townsend, that he has finally found a piece of property where something is not self-created. The petitioner is asking to make improvements to the front of the house. It does not change the dimensions or make the house closer to the roadway or front open space.

He would move to approve and thinks that strict compliance would unreasonably prevent the owner from using his property for a permitted purpose. Additionally It would be unnecessarily burdensome and do substantial justice to the property owner and the general population.

The plight of the owner is certainly due to unique circumstances; and as already stated, it is not self-created. Once again Mr. Judd moved to approve and he tied the motion to the plans.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Hart

Board members took a short recess at 8:53 p.m.

T# 08-61-16

**607, 619, 635 W. FRANK
(Appeal 16-25)**

The owner of the property known as 607, 619, 635 W. Frank is requesting the following variances to construct a new house.

A. **Article 2, Section 2.08** requires a total side yard of 37.5 ft.. The proposed house will have a total side yard setback of 26 ft. which will cause a variance of 11.5 ft.

B. **Article 4, Section 4.74 C.** requires a minimum distance of 37.5 ft. between principal structures. The proposed house is 25 ft. from the adjacent house which will cause a variance of 12.5 ft.

This property is zoned R-2.

Eighteen pieces of correspondence have been received in favor, and three against.

Mr. Worthington established that the lot is a combination of three lots. The adjacent home to the west is on a 50 ft. lot and only is required to be 14 ft. away from any adjacent house. Chairman Lillie noticed the lot is almost rectangular, 150 ft. x 127 ft. The buildable site comes to 75 ft. depth x 112.5 ft. length or 8,212.5 sq. ft.

Mr. Richard Rattner, Attorney, appeared on behalf of his clients, Mark and Mary Alhermizi. He presented a PowerPoint that summarized the appeal. The request is required to be made to address two separate sections seeking two separate variances. However, the two requests are effectively one in the same. The dimensional variances are 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 as well as the placement of the house on the property immediately west of and adjacent to the subject property. All they are really asking for is a maximum of 12.5 ft., but they serve different purposes.

Granting the variances is consistent with the neighborhood open spaces and neighborhood density. The variances would provide more air and light than the Ordinance anticipates. The proposed house is less mass and less height than a house that could be built by Ordinance.

The physical size of the lot causes a practical difficulty fitting into the neighborhood. So, the Ordinance as strictly applied unreasonably prevents the property owner from using the property for a permitted purpose.

The literal enforcement of the minimum side yard setback of the R-2 Zoning District and the minimum distance between buildings requirements will result in a practical difficulty and an unnecessary hardship. The hardship is that application of the minimum side yard setback does not dictate or provide the distance a house must be from the side property line; rather a home on a parcel of property adjacent thereto will determine its placement.

The granting of the variance will not be contrary to the spirit and intent of the Ordinance nor contrary to public health, safety and welfare. The siting of the resulting structure will fit into the pattern in the neighborhood. The size and location of the proposed residential structure are in accordance with all other sections of the Zoning Ordinance and importantly, the owners of the adjacent property to the west are in support of the requests.

The practical difficulty and unnecessary hardship is not self-created but exists because of the size and location of the property. As a result of the property owner's work with staff, the amount of the requested variances has been reduced by approximately 25%. The property owner has also shifted the location of the proposed house to the far east side of the property in an attempt to maximize the open space on the west and increase the size of the side yard setback and minimum distance between buildings on the west side.

Chairman Lillie stated the fact that people support or oppose a particular requested variance is not a criteria for this board granting or denying it. Mr. Rattner replied it is evidence that those in support are not being injured and don't believe they will be injured. Chairman Lillie noted the applicant wants to build a house that is bigger than the building envelope and it seems to him that is a self-created problem. Mr. Rattner did not believe it is. The applicant should be able to put the right house on his combined lot with the right design and in coordination with the rest of the neighborhood. Chairman Lillie emphasized that lot size is not considered a criteria for uniqueness. Mr. Rattner answered the lot is unique because the Ordinance will be applied to this lot combination but it will be the last time because new ordinances will only pertain to two-lot combinations.

The chairman noted the applicant's whole argument is they have a huge lot and because they have a huge lot they shouldn't have to comply with the Ordinance. Mr. Rattner explained this lot is among other lots in an area that has a distance rhythm and a density that they have to fit into. So with a larger than normal lot it would be appropriate to allow a person to build on it and fit into the neighborhood.

Mr. Kevin Biddison, Biddison Architecture, 320 Martin, indicated they have adjusted their plan so that it flows with the surrounding structures and setbacks. Overall they are less overall square footage than they could be. He noted this is a very eclectic neighborhood. With a flat roof they have a smaller visual from the street than they would be allowed with a sloped roof. Further, they have a very shallow footprint on the side. Mr. Rattner added that Mr. Biddison designed with the neighborhood in mind. He tried to be as minimal as possible in all areas.

Mr. Jones observed that he doesn't know how the combination of the three lots created the unintended circumstances that were somehow left out of the Ordinance process.

He is hearing more about planning and aesthetics than he is hearing about compliance with the Ordinance.

Mr. Canvasser asked if they still could build an aesthetically pleasing, light and air allowing, green space house within the envelope of what is permitted under the Ordinance. Mr. Biddison replied in the affirmative.

Mr. Lyon thought the applicant's plight is that the Ordinance contemplated similar size lots in a neighborhood.

The chairman asked for comments from members of the audience at 10:10 p.m.

Mr. Alex Stotman, 690 Hanna, stated this house simply doesn't belong on this block. It doesn't fit within the parameters of the regulations because it is not appropriate. There is nothing unintended about the consequences; the practical difficulty and hardship are completely self-created. The proposal is contrary to the public welfare because the neighborhood was not designed for this "monstrosity."

Ms. Shelli Weisberg, neighbor to the west, indicated that she and her husband do not oppose the variance request.

Mr. Mark Small, 656 Frank, said he and his wife do not oppose the variances. Birmingham is changing and the request seems small to make the house sit properly on the lot. He sees a symmetry to it.

Motion by Mr. Miller

Seconded by Mr. Lyon to approve Appeal 16-25, 635 W. Frank. One of the questions is the intent of the Zoning Ordinance. Certainly one of the important items is the distance between houses and the rhythm of the street. He feels if this was granted, regardless of the house it would continue that rhythm of the street and the open spaces between the houses. Following the Ordinance would do a disservice to that.

He also thinks that by combining the three lots there is the unintended consequence that was spoken of before. The size of the required setback becomes unreasonable and that becomes a problem with maintaining the cadence of the neighborhood.

The substantial justice to the petitioner as well as to the surrounding property owners is not creating a discontinuity along the street, but maintaining the continuity of the street. He believes that is kind of the overriding issue here. It is really not the size or square feet of the house; it is the position of the house on the street and it becomes an urban planning kind of issue as to what would seem

to fit best. From the presentation it seems what the petitioner is trying to do would really fit best within the neighborhood.

Again, he believes the problem is due to the unique circumstance of three ganged lots which create this gap along the street that the variance would essentially heal.

So for those reasons and tied to the plans submitted, Mr. Miller would move to approve the appeal.

Motion failed, 2-5.

Mr. Lyon explained the reason he supports the motion is because he doesn't like what they could otherwise do without a variance. They could build a much larger monstrosity and not even come to the board.

Mr. Canvasser indicated he would oppose the motion. Based on the presentation, it is his belief that the problem was entirely self-created and the lot is not unique.

Chairman Lillie said he will oppose the motion. He does not think there has been a showing of practical difficulty. There is no showing that the property owner cannot use the lot for a permitted purpose. He doesn't believe that literal enforcement of the Ordinance causes any unnecessary hardship and there is nothing unique about the lot.

Mr. Judd congratulated Mr. Rattner for a well-written and imaginative brief, but in this case he has to agree it doesn't comply with the Ordinance so he will not support it.

Mr. Morganroth said he will oppose the motion for all the reasons mentioned. He doesn't see size as a practical difficulty. The design could be modified and still built.

Mr. Jones noted he is unable to support the motion. He is not convinced that this is an unintended circumstance of the combination of three lots that causes some type of uniqueness.

ROLLCALL VOTE

Yeas: Miller, Lyon

Nays: Canvasser, Jones, Judd, Lillie, Morganroth

Absent: Hart

T# 08-62-16

CORRESPONDENCE (none)

T# 08-63-16

GENERAL BUSINESS (none)

T# 08-64-16

OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

Mr. Alhermizi further explained his variance request to the group. He was told there needs to be a substantial change in the facts and circumstances for him to come back before the board. The board members assured him that his team did a very good job.

T# 08-65-16

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 10:38 p.m.

Bruce R. Johnson, Building Official