

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, OCTOBER 13, 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 Thursday, October 13, 2016. Chairman Charles Lillie convened the meeting at 7:34 p.m.

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

Absent: Board Member Peter Lyon; 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# 10-77-16

APPROVAL OF THE MINUTES OF THE BZA MEETING OF SEPTEMBER 13, 2016

Mr. Canvasser clarified what he meant to say in the last paragraph of his motion:
Page 10 - He does not think the "petitioner," rather than the "board" has many mitigating circumstances or a substantial showing . . ."

Motion by Mr. Morganroth

Seconded by Mr. Jones to approve the Minutes of the BZA meeting of September 13, 2016 as corrected.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Lyon

T# 10-78-16

988 GORDON LN.

(Appeal 16-32)

Withdrawn.

T# 10-79-16

938 LAKESIDE

(Appeal 16-33)

The owners of the property known as 938 Lakeside request the following variance to construct a detached garage.

A. Chapter 126, Article 4, Section 4.03 AS-02 H of the Zoning Ordinance allows a detached garage to be a maximum of 625 sq. ft. in an R-2 Zoning District. The proposed garage is 673 sq. ft., therefore a variance of 48 sq. ft. is requested.

This property is zoned R-2.

Mr. Worthington explained that the house is currently under construction. The applicant wants to expand the detached garage to meet the size limitation for R-1 Zoning which is 675 sq. ft. The majority of the lots on Lakeside have an R-1 Zoning designation. However, four lots on Lakeside north of Oak are zoned R-2. Mr. Jones indicated he feels this is an obvious anomaly.

Mr. Johnson informed everyone that the City is planning to do a comprehensive review of its Master Plan which will involve the neighborhoods.

Mr. Morganroth observed that if the applicant were to attach the garage they could build as large a garage as they want.

Mr. Phil Vincenti, Georgetown Building Co., LLC, explained his issue with attaching the garage is that it prevents the backyard from being utilized for a kids play area. The lot slopes from low to high at the back and that presents challenges for placing the garage on the backside of the house. Also, the turning radius for pulling in and out of the

garage would be very tight. Responding to Mr. Miller, he said that size garage is typically seen with a 6,000 sq. ft. home such as he is building.

Mr. Hart noted this is not a big garage.

There was no one in the audience who wished to comment at 7:53 p.m.

Motion by Mr. Hart

Seconded by Mr. Jones to approve Appeal 16-33, 938 Lakeside. He thinks that the applicant has demonstrated a practical difficulty with the zoning of his property. The zoning of this property is a unique circumstance because this type of property at this square footage would normally be in an R-1 District.

Mr. Hart thinks the applicant has done a good job of trying to minimize the impact of this large encroachment. It looks like a good section of the house is buried within the grade as it goes back towards the cemetery, which also shows a substantial justice to the neighbors. He doesn't think anybody is going to be complaining in the cemetery. Again, the property slopes up substantially and he doesn't think that either neighbor would be affected by it, so he doesn't feel there is any injustice to the neighboring properties.

He thinks the garage, even with the 48 sq. ft. variance, the enlargement is still a very austere structure that probably should be encouraged in the neighborhood. He feels it is a responsible use of the property and he thinks it is a responsible use of the structure to try to minimize its size. The motion is tied to the plans submitted.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Lyon

T# 10-80-16

**607, 619, 635 W. FRANK
(Appeal 16-34)**

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

A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires a total side yard of 37.5 ft. The proposed house will have a total side yard setback of 32.5 ft., therefore a variance of 5.0 ft. is requested.

B. Chapter 126, Article 4, Section 4.74 C. requires a minimum distance of 37.5 ft. between principal structures. The proposed house is 31.5 ft. from the adjacent house, therefore a variance of 6.0 ft. is requested.

C. Chapter 126, Article 2, Section 2.08 allows a maximum eave height of 24 ft. The proposed "butterfly roof" has an eave height of 31.5 ft., therefore a variance of 7.5 ft. is requested.

This property is zoned R-2.

Mr. Worthington noted the lot is a combination of three platted lots. The applicant appeared before the BZA last August requesting variances from the Ordinance sections listed in A and B above, which were not granted. The applicant has revised the plans and reduced the amount of variances by over 50% and requests the variances listed above.

Chairman Lillie observed the applicant could easily build within the buildable envelope. He received clarification that the adjoining property to the west is 9 ft. off the lot line. If the applicant builds within the building envelope he would still require a 1 ft. variance for the distance between houses.

Mr. Mark Alhermizi, the property owner, was present with his architect, Mr. Kevin Biddison, and his attorney, Mr. Richard Rattner. Mr. Alhermizi said they have worked to reduce the overall mass and scale of the house by over 50%. The original flat roof has been redesigned into a sloped roof that comes in below what the Ordinance allows. He produced letters of support from 20 of his surrounding neighbors including from the Weisbergs to the west who are the most affected. The only neighbor who was in opposition to his appeal last time is now in full support.

He showed a PowerPoint that illustrated how their new design meets the spirit and intent of the Ordinance as to height, bulk, area, and positioning. It mitigates massing from the previous plan, as well as coming in way below the standard massing that is allowed by the Ordinance. The change from last time has resulted in 700 sq. ft. of mass reduction along the front and sides of the house.

Mr. Biddison explained they feel the sloped roof meets the spirit of the Ordinance and offers less mass than they really could have in many directions. Mr. Hart commented this appears to be an eaveless system. The Ordinance does not encompass this type of description.

Mr. Alhermizi addressed the side yard setback and distance between structures. He used the larger variance, distance between structures for his discussion, but it implies both. The strict application of the Ordinance creates a practical difficulty for him because it becomes punitive in this circumstance. He can't build a house on the three lots without giving up 65% of one of the lots or 37.5 ft. Application of the Ordinance creates a gap that is inconsistent with the neighborhood and punishes him because of the third lot. He doesn't believe the intent of the Ordinance was to penalize large lots, which he feels is an unintended consequence. They have cut their prior variance request from 12.5 ft. down to 6 ft., a 52% mitigation.

He went on to touch on how his requests meet the four requirements for receiving a variance. Chairman Lillie stated the fact that the applicant bought three lots and now is turning them into one big lot is in his opinion self creation. Further, he pointed out that letters of support or opposition to a variance request is not a criteria for the BZA to grant or deny a variance.

In response to a question from Mr. Jones, Mr. Alhermizi said he is very close to finishing the lot combination. Consumers Energy is taking a long time to complete its disconnect.

Answering Mr. Morganroth, Mr. Biddison explained how they mitigated their request by taking small slices out of each area of the house. In order to make sense from a design standpoint and to leave reasonable room sizes they were unable to mitigate further.

Mr. Canvasser asked about the reason for a butterfly roof. Mr. Biddison explained that by raising the roof they are gaining light from the south on the back side of the house. Mr. Alhermizi added that it compensates for their variance requests by making the house look smaller and less imposing on the corner.

No one from the audience wished to add to the discussion at 8:58 p.m.

Motion by Mr. Miller

Seconded by Mr. Judd with regard to Appeal 16-34, 607, 619, 635 W. Frank, to approve all three variance requests. Items A and B are kind of attached.

He started with item C with respect to the roof. He believes the roof variance is really incidental due to the inverted design of the roof. It is well within the general intent and described dimensions of the Ordinance. So he believes that item C should be approved.

Items A and B, the setbacks, relate to the intent of the Ordinance and the intent of the Ordinance really describes the distance between houses and the size of houses. Mr. Miller believes due to this triple lot we have this merging of lots, so the size of the house changes as related to the rest of the neighborhood but it

also affects the distance and the space between houses. He believes that it creates a real empty lot look between the houses. So here he believes that strict compliance is kind of a detriment to the neighborhood. Therefore he believes the application of the Ordinance would in a very literal sense render conformity unnecessarily burdensome. If we are trying to get the conformity of the neighborhood along the street, the Ordinance in this case is kind of working against that.

Also, Mr. Miller believes this would certainly create substantial justice to the neighborhood by maintaining the cadence of the neighborhood in terms of the distance between the houses. It is due to, he believes, a very unique circumstance which is combining of these lots that created kind of this mathematical quirk because these lots are adjoined and it is not necessarily self-created due to the actual design. But the design is trying to mitigate that problem that occurred which he believes wasn't foreseen when the Ordinance was written.

So for those reasons, again he would move to approve Items A, B, and C, contingent upon combination of the lots, and tie the motion to the plans as submitted.

Mr. Morganroth spoke in support of the motion. With regard to item C, the roofline achieves the intent of the Ordinance. He believes there has been reasonable mitigation for items A and B.

Mr. Jones said he appreciates the efforts of the applicant to mitigate the size of his requested variances. This is between a 13 and 14% variance on the side lot lines. Percentage wise this board has granted those in the past. The roof is an anomaly. He will support the motion and believes the variance requests have changed dramatically. Further, he will want the motion to be tied to the combination of the lots and the legal aspects thereof. He added that this is a corner lot and the adjoining neighbors to the west are in support.

Mr. Hart voiced his support for the motion. He feels this offers substantial justice to the neighborhood. Having a wide gap between two structures is a detriment to the neighborhood.

Mr. Judd noted this neighborhood has gone through great transition. The Ordinance does not take into consideration this unique situation. He does not feel this large home is particularly out of place in that neighborhood and he will therefore support the motion.

Mr. Canvasser said he is struggling in terms of the side yard setback which he believes is entirely self-created. He has no problem with the butterfly roof. He appreciates the efforts to mitigate and will somewhat reluctantly support the motion.

Chairman Lillie indicated his support for the motion. He does not have a problem with the butterfly roof. It is unique and the Ordinance really doesn't cover it. He does have a problem with items A and B. He doesn't think the petitioner has really shown a practical difficulty in that he could have complied with the Ordinance, so that is self-created. The major thing that sways him to vote in favor of the motion is for the benefit of the neighbors because of what could be built there if this request is turned down.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Lyon

The board took a brief recess at 9:12 p.m.

T# 10-81-16

**1315 COLE
(Appeal 16-36)**

The owner of the property known as 1315 Cole requests the following variance to construct a new house.

A. Chapter 126, Article 4, Section 4.74 C of the Zoning Ordinance requires a minimum of 14 ft. between principal structures. The proposed house is 12.8 ft. away from the adjacent house, therefore a variance of 1.2 ft. is requested.

This property is zoned R-3.

Mr. Worthington advised the applicant is seeking a variance to build a new house 12.8 ft. from the new home being constructed to the east at 1327 Cole. On August 9, 2016 the house at 1327 Cole was granted a variance of 2.2 ft. between structures. That is what the existing house would have required. With the construction of the new house it moved over a foot so the variance for the house at 1327 Cole has been reduced by 1 ft. if the requested variance is granted tonight.

Chairman Lillie explained that on the east side the applicant could have 5 ft. but they have 5.5 ft. On the west side they have 9.5 ft. but they probably could get away with 9 ft. There is a mitigation of the distance between structures because they are giving up a foot.

Mr. Divyesh Sharma, the property owner, said they need a variance mainly because of the driveway situation. There is no driveway on the west side of the lot adjacent to them. They have taken the house down 1 ft. to 25 ft. in width to mitigate their variance.

The chairman observed that whole area has this 5 ft. 9 ft., 5 ft. 9 ft., 9 ft. 5 ft. driveway problem.

No one in the audience wished to speak at 9:20 p.m.

Motion by Mr. Jones

Seconded by Mr. Morganroth in regard to Appeal 16-36, 1315 Cole, to grant the variance. The petitioner seeks a 1.2 ft. variance from Chapter 126, Article 4, Section 4.74 C of the Zoning Ordinance requiring a minimum of 14 ft. between principal structures. It appears obvious to all of us knowing the area that this is a unique circumstance based upon that which we have had a hand in doing, and the circumstance there and that the petitioner has in fact mitigated to the extent possible. This is a diminimous requested variance and Mr. Jones would move to do so as it would do substantial justice to the community, to the neighborhood, and to not grant the variance would be an undue burden upon the petitioner.

He would tie his motion to the plans submitted.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Lyon

T# 10-82-16

CORRESPONDENCE (none)

T# 10-83-16

GENERAL BUSINESS (not discussed)

T# 10-84-16

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

T# 10-85-16

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 9:23 p.m.

Bruce R. Johnson, Building Official



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