

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

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

Absent: Board Member John Miller; 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# 11-86-16

APPROVAL OF THE MINUTES OF THE BZA MEETING OF OCTOBER 11, 2016

Motion by Mr. Jones

Seconded by Mr. Morganroth to approve the Minutes of the BZA meeting of October 11, 2016 as presented.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Miller

T# 11-87-16

**1981 BRADFORD
(Appeal 16-37)**

The owner of the property known as **1981 Bradford** is requesting the following variance to construct a second floor addition.

A. Chapter 126, Article 4, Section 4.61 A.1 of the Zoning Ordinance requires a minimum of 23.9 ft. off S. Eton based on the average setback. The existing house is 16.77 ft. off the property line and the second floor will go directly above; therefore a variance of 7.13 ft. is requested.

This property is zoned R-3.

Mr. Worthington noted the house was built in 1953. The second-floor addition will follow the existing first floor and not enlarge the footprint. He advised how the average setback is determined.

The chairman explained the idea behind the required setbacks is to have a straight view down the street; however, in this case the street curves preventing a straight view. He also noted the back yard is heavily treed.

In response to Mr. Jones, Mr. Worthington noted the house conforms in every aspect other than the side setback.

Mr. Aaron Olmstead, the home owner, was present along with his family. He explained that because the house is located on a corner lot they are required to have dual frontages. They did not create the need for the variance and believe the request is in the spirit of the Ordinance. They are maintaining the existing footprint, going straight up and not encroaching on any road, sidewalk, or other homes. Also, they are using a hip roof structure to minimize the aerial appearance of the expansion.

There were no comments from the audience at 7:40 p.m.

Motion by Mr. Lyon

Seconded by Mr. Jones in regards to Appeal 16-37, 1981 Bradford, to approve the variance as advertised. He believes that strict compliance with the Zoning Ordinance would be unduly burdensome in this case, due to the unique circumstance of this lot. It is a corner lot with a substantial required side yard setback due to the interior lot behind it on Eton St.

He thinks this is the minimum variance that could be sought. They have minimized it to the existing wall. It does substantial justice to the homeowner and the surrounding residents in that it is not further encroaching into the side yard setback that is already there. The expansion is going straight up over the existing walls. He would tie the motion to the plans as presented.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Miller

T# 11-88-16

**583 MADISON
(Appeal 16-38)**

The owners of the property known as **583 Madison** request the following variances to rebuild an existing room.

A. Chapter 126, Article 4, Section 4.61 A. 2. of the Zoning Ordinance requires a minimum of 10 ft. off the side yard setback. The existing house is 4.8 ft. off the property line; therefore a variance of 5.2 ft. is requested.

B. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires a total for both side yards of 14 ft.. The existing total of side yards is 12.9 ft.; therefore a variance of 1.1 ft. is requested.

This property is zoned R-2.

Two e-mails have been received with regard to the requested variances, one in favor and one against.

Mr. Worthington explained that the applicant has a permit to add onto the rear of the house. During construction it was discovered that an existing room had structural deficiencies and needed repair. The room was rebuilt without consulting the Building Department. The repair was discovered during a building inspection and the applicant found out they were supposed to come in and apply for the changes. The setbacks were encroaching and they needed a variance for what they had done.

In response to the chairman, Mr. Worthington noted the applicant could put on a different roof than what has been constructed, such as a shed roof, and that would relieve the water problem.

With respect to whether the drawings were sufficient in detail to request a variance, Mr. Hart noted it is in the interest of the owners to receive a variance based on drawings. Then it is up to the Building Dept. to make sure the construction documents are in keeping with what the board has approved or disapproved. Mr. Worthington stated the plans show the house is well within the height requirements.

The majority of the board members felt the drawings were sufficient to proceed with the hearing.

Mr. James Vervisch, the homeowner, explained that his hardship is rebuilding the existing sunroom due to rotting. During construction, the existing sunroom structure was found to have severe damage from water. The flat roof had obviously failed multiple times over the years. So he proposed roof construction that would mimic the Gambrel roof design at the back of the original structure. He was unaware of the 10 ft. side yard setback requirement for the roof that was added. He can produce better construction drawings.

Chairman Lillie noted the applicant has vertically increased the mass of the house. Mr. Vervisch explained how he tried to keep the massing down and didn't extend out into the setback. He thought the Building Permit would allow the redesign of the roof.

The chairman called for comments from the public at 8:10 p.m.

Ms Ruth Hartman, 233 Madison, expressed her approval of the variances. The applicant is keeping the original design of the house. The neighbors she has spoken to have all been positive.

Motion by Mr. Lyon

Seconded by Mr. Judd in regards to Appeal 16-38, 583 Madison, to approve as advertised. There has been a procedural process issue with this particular variance and how it got to us. However, he looks at it as if it doesn't matter what they have done or what they have built already; he has to look at it or consider it as what we would have done had they followed the proper process.

He believes that strict compliance would be unduly burdensome due to the unique situation of the property. It is in existing non-conformity on the side yard. There are no interior lots behind this one, so it only requires a 10 ft. setback. But there is an existing sunroom that has been there apparently since the house was

built that has a basement under it, and so is all connected to the rest of the house. Clearly the sunroom is not self-created by the applicant. However, a flat roof in Michigan is not functionally desirable and the applicant seeks to put a pitched roof on that matches the architecture of the rest of the house.

Mr. Lyon believes this is the minimum variance required to the extent that the pitch of the new roof matches that of the house. He thinks it does substantial justice to the homeowner and the surrounding neighbors, as the public has noted. He would tie the motion to the sketches and plans presented tonight. He would also defer to the Building Dept. to insure that the final construction drawings and the final structure comply with what was presented tonight.

Mr. Judd said he doesn't like the "oops" defense; however he thinks the petitioner has certainly explained the situation. Secondly, he has never supported a motion based on a contingency which the board would do in this case. However, he thinks this particular situation especially with the weather the way it is lends itself to that. He depends on Mr. Johnson and his team to follow through and make sure this is done in accordance with our Ordinance.

Mr. Jones commented that he has a problem procedurally because he feels the process under which this board grants variances does matter. Secondly he is always leery of creating a circumstance where it can be viewed that it is a whole lot easier to give forgiveness than to ask permission. He disagrees with Mr. Lyon because he doesn't know how a new design cannot be self-created. For those reasons he will not support the motion.

Chairman Lillie also indicated he would not support the motion. He agrees with Mr. Jones that the second story is self-created and it is not that unduly burdensome for the petitioner to comply with the Ordinance

Mr. Hart agreed this does appear to be self-created and they probably could reduce the magnitude of the new roof. However he thinks in the interest of cohesiveness of the structure the new roof should look like it is an original part of the house. If it is not going to be a banister or balustrade with a flat roof that is bound to fail, it needs to be a matching gable. He will support the motion because he feels this is a unique situation.

Mr. Lyon reiterated that the board should not grant variances just because something has been built. However, if the petitioner had come in and requested the variance first he would have agreed.

Mr. Morganroth said if the petitioner had come in prior to construction and requested the variance he would have supported repairing the non-conforming existing structure and adding a new roof that would take the water away and that would have matched the existing style. Therefore he will approve the motion.

Mr. Canvasser announced he will support the motion as he would have if it had been brought to the board before construction. He feels there are unique circumstances and this is not self-created.

Motion carried, 5-2.

ROLLCALL VOTE

Yeas: Lyon, Judd, Canvasser, Hart, Morganroth

Nays: Jones, Lillie

Absent: Miller

T# 11-89-16

CORRESPONDENCE (none)

T# 11-90-16

GENERAL BUSINESS (not discussed)

T# 11-91-16

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

T# 11-92-16

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:28 p.m.

Bruce R. Johnson, Building Official