

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS  
TUESDAY, DECEMBER 13, 2016  
City Commission Room  
151 Martin Street, Birmingham, Michigan**

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Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, December 13, 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

**Absent:** Alternate Board Members Jason Canvasser, Cynthia Grove

**Administration:** Matthew Baka, Sr. 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# 12-93-16**

**APPROVAL OF THE MINUTES OF THE BZA MEETING OF NOVEMBER 8, 2016**

**Motion by Mr. Jones**

**Seconded by Mr. Morganroth to approve the Minutes of the BZA meeting of November 8, 2016 as presented.**

**Motion carried, 7-0.**

**VOICE VOTE**

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

Nays: None  
Absent: None

**T# 12-94-16**

**555 S. OLD WOODWARD AVE.  
(Appeal 16-39)**

The owner of the property known as **555 S. Old Woodward Ave.** are requesting the following variance to illuminate an existing building identification sign above the first floor sign band at the Triple Nickel restaurant:

**A. Chapter 86, Article 01, Section 1.10 B (5) d of the Sign Ordinance** states that non-illuminated signs which identify the entire structure may be permitted above the first floor. The applicant is requesting a variance to allow illumination of the existing building identification sign.

This property is zoned B-3.

Mr. Baka noted the applicant appeared before the Design Review Board on November 2, 2016 for a review of the proposed illumination. The Board did not approve the sign, as it does not comply with the Sign Ordinance. However they did express that they had no objection to the proposal.

Chairman Lillie pointed out that the applicant already has two small illuminated signs. Mr. Baka added that they are not maxed out on their signage. In response to Mr. Jones, Mr. Baka explained if an illuminated sign of the same size was placed below the line between the first and second floor it would be compliant with the Ordinance. Discussion brought out that the mechanical screening at the top of the building is illuminated and allowable because it is architectural lighting. Further, lighting that washes the side of the building, including the sign, would be allowed.

Mr. Judd received confirmation that the protruding sign on the east side of the same elevation could be larger. He noted that traveling south on Woodward Ave. trees pretty well block the view of the building until practically to the side streets. Coming northbound, illumination could be beneficial.

Mr. Miller noted that there are a number of illuminated signs along Woodward Ave. between Oak and Lincoln that are at least as high or higher. Mr. Baka explained that is because they are on one-story buildings. Mr. Hart added that mezzanines are not included as a story.

Mr. Jack Reinhart, one of the partners of Triple Nickel, was present with Mr. Paul Deters with Metro Detroit Signs. Mr. Reinhart explained that people cannot find Triple Nickel

because it is in darkness and tucked into the parking structure. This section of Woodward Ave. is dark and unlit. At 55 mph this building signage cannot be seen from Woodward Ave. without being lit up. He believes their proposed lighting is undersized and subtle. It has to do with aesthetics and the artistic presentation to the community. They could comply with the Ordinance and do a three times larger sign at street level, but he does not think that helps them or the City.

Responding to Mr. Jones, Mr. Reinhart said the Sign Ordinance has not changed since he built his building. Mr. Judd stated that the City has an Ordinance and whether the board agrees with it or not, they are not supposed to care. The BZA is there to interpret the law. Mr. Reinhart answered that the board has the ability to superimpose practicality over a statute.

The chairman took public comment at 8 p.m.

Mr. Paul Deters asked the board to consider that the restaurant business is an impulse business. A lot of people driving down the road make their decision about where to eat when they identify a sign.

**Motion by Mr. Miller**

**Seconded by Mr. Hart to approve Appeal 16-39, 555 S. Old Woodward Ave., Triple Nickel, He believes the appeal is really about the incredibly unique location of this building, and really nothing else. This location is so unique to the City that Mr. Miller thinks approval here would certainly not set a precedent for any other building, or any other type of sign. The building is located in an ugly, dead zone. A block to the north is a raw parking deck with transformers lined in front of it, completely dark and unlit. To the south there are dumpsters and more parking deck.**

**So there is this entrepreneur that is attempting to vitalize this one part of Woodward Ave. that is the darkest, most unappealing part of the stretch of Woodward Ave. between Lincoln and Oak. And, between Lincoln and Oak there are a number of signs that are taller than this, such as The Madney Group; 390 Park; 300 Park; Holiday Inn Express; Kroger right on the corner, the word "Pharmacy;" AAA; Papa Joe's; Wells Fargo; PNC Bank; The Private Group; not to mention anything on N. Old Woodward Ave. on the other side with the Birmingham Theater; Merrillwood; The Plaza.**

**Therefore he doesn't believe the board is doing anything that would be negative in terms of the neighborhood, and he thinks it would be enhancing, if you want to call that the neighborhood - that stretch of Woodward Ave. The board would really be enhancing that neighborhood and livening it up by adding some lighting and some identity to that dead zone.**

**Mr. Miller thinks this problem has not been self-created. Again, it is due to the unique quality of the site and the unique circumstances of the property. For those reasons he thinks because of this unique piece the board should approve the appeal. Further, he feels that would be an asset to that stretch of Woodward Ave. where the building is located. The motion is tied to the plans as submitted.**

Mr. Judd thought the argument presented by the petitioner was very good. However in this case, once again, this board is not here to make the law. They have the unenviable task of interpreting the ordinances. He doesn't see anything that sways him In this and therefore won't support the motion.

Mr. Morganroth spoke in support of the motion. He lives in this area and appreciates the activity the restaurant has created at this end of Birmingham. He sees the value in what the applicant is trying to accomplish.

Mr. Jones said he would not be able to support the motion. Discretion in the board's instance is limited by the statute. Appeals from this board go to Circuit Court. So, there is a consideration as to whether the board wishes to have the City engage in certain expenses it might not otherwise incur. He feels a design conforming to the Ordinance could have achieved what the applicant desires. The applicant could have constructed a one-story building and put the sign at the top if that was a major concern. Mr. Jones does not think this application has met any one of the four criteria for a variance because he doesn't believe there is an unnecessary hardship. They can put up signage, so he will not be supporting the motion.

Chairman Lillie announced he will not be supporting the motion either. He does not believe the petitioner has established a practical difficulty. In fact he has indicated that he can comply with the Ordinance. The board would be setting a very bad example by approving a variance for somebody who says they can comply with the Ordinance.

Mr. Hart thought this is a perfect example of the appellant demonstrating that he does have a practical difficulty. This is a wonderful building that does substantial justice to the surrounding neighborhood. It is a unique circumstance, and a challenging building. He feels the board should look very closely at what can help this business and what can help the community. There is no injustice to any neighboring properties and he thinks the appellant has demonstrated difficulty and that is why he supports the motion.

Chairman Lillie clarified that the BZA's function is to determine whether or not there is a practical difficulty; not to help businesses.

Mr. Lyon said in this case the board is dealing with the name of a building, which is a little more than just the name of a business within a building, such as the Powerhouse Gym's appeal which this board did not pass. He is swayed by the fact this is a small building standing next to the largest buildings in the City. He went on to note that the

granting of this variance would not be detrimental to the surrounding property owners; that the granting of the variance would not be contrary to the general intent of the Chapter; the granting of the variance will result in substantial justice being done concerning public benefits; and that other property owners will not be adversely affected by the variance. So, for those slim margins, Mr. Lyon indicated his support for the motion.

**Motion carried, 4-3.**

ROLLCALL VOTE

Yeas: Miller, Hart, Lyon, Morganroth

Nays: Jones, Judd, Lillie

Absent: None

**T# 12-95-16**

**1982 BOWERS**

**(Appeal 16-40)**

The owner of the property known as **1982 Bowers** requests the following variance to construct a new house.

**A. Chapter 126, Article 4, Section 4.74 of the Zoning Ordinance** requires a minimum of 14 ft. between principal structures. The proposed house is 12.2 ft. away from the adjacent house to the east; therefore a variance of 1.8 ft. is requested.

This property is zoned R-2.

Mr. Worthington noted the existing house sits 5 ft. off the property line and the proposed house is 5.7 ft. off the property line. Therefore the amount of encroachment for the new house is reduced by .7 ft.

Chairman Lillie noted this is a 9-5, 9-5, 5-9 situation.

Mr. Jason Kriger, Architect, observed they are improving the existing condition by building further away from the house to the east. They cannot build a narrower house in order to comply completely because it would be extremely long. Also it would not be a very practical floor plan and nothing like that exists in the neighborhood.

No one in the audience wished to comment on this appeal at 8:20 p.m.

**Motion by Mr. Miller**

**Seconded by Mr. Morganroth with regard to Appeal 16-40, 1982 Bowers. Mr. Miller proposes to support the appeal. He believes it is due to the existing**

**conditions of the adjacent properties. The board has seen similar situations like this before. Granting of the appeal will allow the property to be fully developed in a similar fashion to the rest of the neighborhood. The board will be enhancing and reinforcing the neighborhood by supporting this appeal. The house will conform to the other houses on the same street.**

**Mr. Miller believes this is not a self-created. Again, it is due to the houses located on either side and he would tie the approval to the plans as submitted.**

**Motion carried, 7-0.**

ROLLCALL VOTE

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

Nays: None

Absent: None

**T# 12-96-16**

**538 PLEASANT  
(Appeal 16-41)**

The owner of the property known as **538 Pleasant** is requesting variances to replace the existing attached garage roof.

**A. Chapter 126, Article 2, Section 2.04 of the Zoning Ordinance** requires a minimum setback of 5 ft. The existing attached garage is 3.8 ft. off the property line; therefore a variance of 1.2 ft. is requested.

**B. Chapter 126, Article 2, Section 2.04 of the Zoning Ordinance** requires a total side yard setback of 17.5 ft. The existing attached garage has a total side yard setback of 13.8 ft.; therefore a variance of 3.7 ft. is requested.

**C. Chapter 126, Article 4, Section 4.74 of the Zoning Ordinance** requires a minimum 17.5 ft. between principal structures. The attached garage is 10.8 ft. away from the adjacent house to the south; therefore a variance of 6.7 ft. is requested.

This property is zoned R-1A.

Mr. Worthington advised the existing home was built in 1941. The owner wants to replace the existing flat roof with a new pitched roof over the existing attached garage, staying within the existing plane. The 6 in. overhang will match what they have now.

Mr. Benjamin Fisher, the homeowner, passed around copies of a cut-away of the roof. He believes the variances may be partially due to the neighbor's house because it sits

closer to his lot line than to theirs in the front part of the home. This work would be done as part of a second-floor addition to the rest of the home. The addition will go over the existing flat roof. There will be no living space over the garage; he will maintain the same exact structure.

There was no one in the audience to offer comment at 8:28 p.m.

**Motion by Mr. Lyon**

**Seconded by Mr. Jones in regard to Appeal 16-41, 538 Pleasant, to approve the three variances advertised. The appellant seeks a variance under Chapter 126, Article 2, Section 2.04 requiring a minimum side setback of 5 ft. The existing garage is 3,8 ft., requiring the new roof of the existing garage to have a variance of 1.2 ft. Chapter 126, Article 2, Section 2.04 requires a total side yard setback of 17.5 ft. However, the existing attached garage has a total side yard setback of 13.8 ft. There a variance of 3.7 ft. is needed to build a new roof. Chapter 126, Article 4, Section 4.74 requires a minimum of 17.5 ft. between principal structures. The attached garage is 10.8 ft. away from the adjacent house to the south, therefore a variance of 6.7 ft. is requested to build a roof on the existing garage.**

**Mr. Lyon believes that strict compliance is unduly burdensome. In this case the appellant seeks replace a flat roof and put a pitch on it. Recognizing the rain and snow and other things we get in this section of the country he believes this does substantial justice to the appellant as well as the homeowner. He is not expanding the footprint and it is a minimal sloped roof. Mr. Lyon thinks this is the minimum variance that would be necessitated for a pitched roof in this area. He tied the motion to the plans presented tonight.**

**Motion carried, 7-0.**

Mr. Miller said he will support the motion. He added that with the design of the existing home the flat roof on the garage is kind of a surprise. So he believes these variances will allow the garage to be more compatible with the existing home and also to have a more reasonable design within the context of the rest of the neighborhood.

**ROLLCALL VOTE**

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

Nays: None

Absent: None

**T# 12-97-16**

**CORRESPONDENCE (none)**

**T# 12-98-16**

## **GENERAL BUSINESS**

Chairman Lillie thought someone should look into the issue on glazing. The whole first floor of the Triple Nickel is kitchen on the Woodward Ave. side. It is all exposed to the public and looks terrible. There is the same thing on the Townsend. Also, it is terrible to look at Save-On Drugs. Mr. Johnson stated planning is aware of these concerns and has been working to address them.

**T# 12-99-16**

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

**T# 12-100-16**

## **ADJOURNMENT**

No further business being evident, the board members passed a motion to adjourn at 8:32 p.m.

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Bruce R. Johnson, Building Official