

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, JANUARY 10, 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, January 10, 2016. Chairman Charles Lillie convened the meeting at 7:30 p.m.

Present: Board Members Kevin Hart, Jeffery Jones, Randolph Judd, Peter Lyon, Erik Morganroth; Alternate Board Members Jason Canvasser, Cynthia Grove

Absent: Board Members Chairman Charles Lillie; John Miller

Administration: Matthew Baka, Sr. Planner
Bruce Johnson, Building Official
Carole Salutes, Recording Secretary
Scott Worthington, Assistant Building Official

Vice-Chairman Randolph Judd convened the meeting and appointed Mr. Lyon as Temporary Chair. There were no objections.

The Temporary 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 is one land use variance 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# 01-01-17

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

Motion by Mr. Morganroth

Seconded by Mr. Canvasser to approve the Minutes of the BZA meeting of December 13, 2016 as presented.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Lillie, Miller

T# 01-02-17

**404 PARK
(Appeal 16-35)**

The owners of the property known as 404 Park are requesting the following use and dimensional variances to construct a multiple-family residential building in the R-2 zone.

- A. **Chapter 126, Article 2, Section 2.07 of the Zoning Ordinance** permits the development of the subject property for an R-2 dwelling – one family. The applicant is proposing a four (4) unit multi-family dwelling; therefore, a use variance to allow a multi-family dwelling is requested
- B. **Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance** allows maximum lot coverage of 30% (3,732 sq. ft.). The applicant is proposing 55.9% (6954 sq. ft.) of lot coverage; therefore, a variance of 25.9% (3222 sq. ft.) is requested.
- C. **Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance** requires a minimum open space of 40% (4976 sq. ft.). The applicant is proposing 22.5% (2,799 sq. ft.) open space; therefore, a variance of 17.5% (2,177 sq. ft.) is requested.
- D. **Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance** requires a minimum rear setback of 30 ft. The applicant is proposing a rear setback of 13 ft.; therefore, a variance of 17 ft. is requested.
- E. **Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance** requires combined front and rear setback of 55 ft. The applicant is proposing a combined front and rear setback of 33.5 ft; therefore, a variance of 21.5 ft. is requested.
- F. **Chapter 126, Article 4, Section 4.61 A (2) of the Zoning Ordinance** requires a minimum side yard setback of 10 ft. for homes on a corner lot. The applicant is proposing a 4 ft. side yard setback; therefore, a variance of 6 ft. is requested.
- G. **Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance** requires a minimum lot area per unit of 6,000 sq. ft. The applicant is proposing four (4) units

for a minimum lot area per unit of 3,000 sq. ft.; therefore, a variance of 3,000 sq. ft. per unit is requested.

- H. **Chapter 126, Article 4, Section 4.75 of the Zoning Ordinance** requires an attached garage to be set back 5 ft. from the point of the front facade set furthest back from the front property line. The applicant is proposing to place the garage 3.5 ft. in front of the house; therefore, a variance of 8.5 ft. is requested.

This property is zoned R-2, Single Family Residential.

Mr. Baka noted the property located at 404 Park has been under consideration for rezoning several times in the past four years. Most recently, the applicant requested rezoning to the newly created TZ-1 Transition Zone. This request was denied by the City Commission on June 27, 2016. If a rezoning were to take place they felt that it should be treated consistently between Woodward Ave. all the way to N. Old Woodward Ave. Accordingly, the applicant is now requesting the necessary variances to construct a multiple-family dwelling as would be permitted under the development standards of the TZ-1 Zone.

It was discussed that variance requests A through G would be equivalent to the standards of a TZ-1 Zone. Variance request H does not meet the Ordinance requirements for TZ-1. The issue before the board is to grant a use variance and not to rezone. If the petitioner fails to receive approval for variance request A, the successive six requests fail. Absent granting of the variance, two single-family homes could be built on the two 40 ft. lots. Mr. Baka clarified that the property was vacant when it was purchased by the appellant.

Mr. Richard Rassel, 380 N. Old Woodward Ave., spoke to represent 404 Park, LLC. They envision this as a four-unit townhome project at the corner of Oakland and Woodward Ave. They feel this is a perfect transitional use from a residential zone to the surrounding commercial, office, and downtown uses. They are asking to construct a compliant TZ-1 project on this parcel.

This property, always zoned R-2, has been vacant since 1989. Mr. Rassel stated that is because due to its location it is not reasonable to expect a single-family residence to be constructed there. The property has not been developed for the reason that it is not economically feasible. Further, the City Planning Staff and Planning Board agree that development as a single-family residence is highly improbable and they recommend that it be rezoned to a transitional residential use. Further, the Oakland Parks Sub-Area Study done by LSL Planning suggests that this property due to its location close to high frequency traffic zones be rezoned to transitional multi-family, and that would permit this exact project.

Their unnecessary hardship for the use variance is that it is unreasonable to expect this property to be developed as R-2 considering its history and location. They propose a well designed four-unit residential rental project that will cater to empty nesters.

Mr. Jones stated the board needs substantial evidence that two single-family homes cannot be built on this site. Mr. Rassel responded that 404 Park, LLC as land developers know this property isn't going to present an opportunity to develop two single-family homes in a reasonable manner consistent with existing zoning.

Mr. Morganroth wondered how four empty nesters living in that same proximity is more desirable, except economically, relative to two single-family homes. Mr. Rassel said transition from higher density to lower use allows the project to become appropriate and feasible.

In response to a question from Mr. Canvasser, Mr. Chuck DiMaggio of 404 Park, LLC explained they purchased the property in 2013 and have not marketed it as single-family. The prior broker had listed it as single-family and was unable to sell it. Before that the property had been vacant since 1989.

Mr. Jones asked whether this lot is unique to any other R-2 site in the area. Mr. Rassel responded that the location is unique to the surrounding properties in that it is on the corner of Oakland, Park, and Woodward Ave. In response to Mr. Lyon, Mr. Rassel stated that a multi-family residential development is preferable to two single-family residential homes on the same plot because the pro-forma works. What they are asking for is a reasonable use of the property.

Answering Mr. Jones' query, Mr. Rassel recalled that City Attorney Currier rendered an opinion to the City Commission during their deliberations on the transitional rezoning issue that this is not spot zoning because it is consistent with the surrounding residential uses. Mr. Jones noted the issue of transitional zoning brings up a density question.

Temporary Chairman Lyon took discussion from members of the public at 8:30 p.m.

Mr. Benjamin Gill, 520 Park, wondered why it is a detriment to build a house just across the street from all the nice, well kept homes to the west on Oakland. The developer doesn't need a variance; there is no hardship, and he can still make a profit on the property by building two single-family homes there.

Ms. Catherine Gaines, 343 Ferndale, pointed out one of the two lots is identical to parcels that are being developed today. Further, the rendering is not an accurate representation of what the developer is asking to build as far as how it will fit on this particular property. Also she noted there is no parking along Oakland. Lastly, if two families do not want to live there facing Park, why would four families want to live there facing Oakland. Ms. Gaines indicated her opposition to the variances.

Mr. Michael Schuck 247 Oakland, said he owns the house next door at 267. He recalled the property at 404 Park has never been on the market as two lots for single-family residential. He thought it would be extraordinary for this board to find any evidence of hardship here. The problem for the neighborhood is that four families versus two raises the density. Also, granting the variances creates a lot of pressure to rezone their property on Oakland between Park and Ferndale to transitional. That would make that multiple and drive down their property values.

Ms. Jane McKee, 392 Ferndale, stated she doesn't know why two single-family houses cannot be built on the subject property.

Mr. John Sterrin, Attorney, spoke on behalf Mr. Brad Host and his wife, the owners of 416 Park, which is immediately north of the property in question. He noted that what is being proposed very closely tracks what would be permitted if this property were zoned TZ-1. However the City Commission has twice rejected a request to rezone this property.

Request A, a use variance to allow a multi-family dwelling, requires the unnecessary hardship standard to be met, along with other standards. Ample evidence has been heard that there is nothing that prevents one, possibly two, single-family homes being constructed on this site. It closely resembles many other lots in that subdivision that have residential frontage on Oakland.

The appellant must also show that circumstances giving rise to the variance request are unique to the property and not general conditions of the neighborhood itself. These lots are like all the other lots with nothing unusual about them.

The third standard is that the use authorized by granting the variance will not alter the essential character of the area. This request is to put a multi-family residential use in the midst of this long established, thriving neighborhood along with a package of seven additional dimensional variances.

The last standard is that the problem is not self-created. Already heard is there is nothing that prevents the applicant from constructing a single-family home here. Further, they have made no attempts to market the property as single-family residential. Mr. Sterrin hoped the board would strictly adhere to the zoning standards and if they do the answer is rather obvious that this variance should be denied.

Mr. Paul Gillen, 273 Euclid, said he has not seen evidence that the owner is serious about marketing his property.

Mr. Michael Schuck said he forgot to mention the original argument from the petitioner was they couldn't build any houses that back to Woodward Ave. However, in the first

block from Oakland down to Euclid three brand new, very expensive houses are being constructed. Two of the other houses are being substantially remodeled. So, this is a very valuable block.

Mr. Jonathan Hoffly, 443 Wellesley, said that the issue of hardship seems very vague to him. He noted that today in Birmingham there is not one square foot of property that is undevelopable. People want to live here. He has heard nothing tonight to prove what is or is not marketable about that property.

Motion by Mr. Jones

Seconded by Mr. Morganroth in relationship to Appeal 16-35, 404 Park, he would move to initially deny the use variance, and as a result would not as discussed believe that the other requested variances would be applicable should this motion pass.

Mr. Jones does so because he does not believe initially that this applicant has provided substantial, competent material evidence that the property cannot reasonably be used in a manner consistent with zoning. He understands the evidence the appellant has produced; he just doesn't believe it is substantial relating to his own efforts. Mr. Jones believes that which he has tried to do has not complied with the zoning. Therefore he thinks as it relates to the issue of whether or not we as a board have sufficient evidence to grant the variance we do not, and we are not required to nor compelled to do so unless we, in fact, find such substantial evidence. We have evidence to show what else it could be; we have evidence to show what ideals may be, but with our blinders on looking at this property with the current zoning he does not believe we have substantial evidence to show that it cannot be used in compliance with the current zoning.

Accordingly in that vein and yes, he does wish because he has court reporters typing away, he does wish to be clear that in that vein he does not believe that what we have is a situation that has risen to the level of an unnecessary hardship. We don't have sufficient evidence to prove it; he therefore doesn't see it. As he has said, he doesn't think it cannot be used for proper zoning. In fact, we have a lack of evidence of that.

He doesn't believe that the plight is due to the unique circumstances peculiar to this property and not general to the other neighborhood conditions, because there are lots adjacent. We have had evidence showing that within the area absent the location of Park St. there have been single-family houses built that comply with the zoning. He does think that with the zoning in effect the change from single-family residence to a four unit multi-family does in fact change the character of the existing zoning.

And to the extent that the "problem" as expressed by the applicant is not self-created, it is at least by acceptance of the conditions when the applicant purchased the property. For those reasons, Mr. Jones moves to deny the use variance request and should that pass, would also include in his motion that the remaining requested dimensional variances would be rendered moot by any passage of this motion. Therefore, he Mr. Jones moves to deny all requested variances.

Mr. Morganroth added no clear evidence has been presented that there is a hardship. Beyond that the variances necessary to even achieve what needs to be done are extreme, which is why Transitional Zoning is needed to do that.

Temporary Chairman Lyon indicated he will support the motion. He agrees that the burden of a hardship has not been overcome. He doesn't think the appellant has proven they cannot use the property for an intended purpose, or what is allowed by the zoning. He knows that single-family residences can be built in that neighborhood for what appears to be a reasonable return. The only unique thing about this property is that it abuts three streets. There are many other lots in the City that abut three streets, so it is not that unique. So failing those two things, he has to support the motion.

Motion to deny carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Lillie, Miller

Board members took a short recess at 9:08 p.m.

T# 01-03-17

2100 E. MAPLE RD.

(Appeal 17-01)

The owners of the property known as 2100 E. Maple Rd. are requesting the following variances to allow four (4) signs at the Whole Foods Market:

- A. **Chapter 86, Article 01, Section 1.04 B General Sign Standards** states that for all buildings, including multi-tenant office or retail buildings, the combined area of all types of signs shall not exceed 1 sq. ft. (1.5 sq. ft. for addresses on Woodward Ave.) for each linear foot of principal building frontage. The principal building frontage for this building is 265.5 ft. allowing 265.5 sq. ft. of signage. The applicant is proposing 791.8 sq. ft. of signage; therefore, a variance of 526.3 sq. ft. is requested.

- B. **Chapter 86, Article 01 Table B, Name Letter Signs** states that for buildings with more than 100 linear feet of building frontage, the total area of all signs placed on walls other than the principal frontage shall not exceed 100 sq. ft. The applicant is proposing 556.29 sq. ft. of signage on secondary elevations; therefore, a variance of 456.29 sq. ft. is requested.
- C. **Chapter 86, Article 01 Table B, Name Letter Signs** states that the maximum height of name letter signs is limited to 24 in. The applicant is proposing two signs at 13 ft. 1 in. and two signs at 6 ft. 5 in.; therefore, variances of 11 ft. 1 in. and 4 ft. 5 in. respectively are requested.
- D. **Chapter 86, Article 01 section 1.05 (K) 6, Permanent Business Sign and Broadcast Media Device Standards** states that no wall signs shall project more than 9 in. measured from the wall to which it is attached to the outer surface. The applicant is proposing two signs that will project 11 in.; therefore a variance of 2 in. is requested.
- E. **Chapter 86, Article 01 section 1.05 (K) 6, Permanent Business Sign and Broadcast Media Device Standards** states that no electrical raceway shall have a thickness greater than 4 in. The applicant is proposing electrical raceways that are 6 in. thick therefore a variance of 2 in. is requested.

Mr. Baka recalled the applicant was granted Final Site Plan Approval by the Planning Board on September 30, 2015. At that time the applicant did not provide sufficient detail to determine compliance with the Sign Ordinance. Accordingly, the applicant was informed that they would be required to obtain approval for the signage at a later date. In December the Planning Staff received an application for administrative approval for the sign. At that time the applicant was informed that they did not meet the Ordinance requirements and the application was rejected.

Mr. Baka advised the signs were shown on the plans approved by the Planning Board but they were not dimensioned.

Mr. Judd didn't understand why this application is before the BZA because he didn't see that there has been a hearing by a board that is competent in reviewing signage. This appears to him to be a very large variance request. Acting Chairman Lyon agreed that a case can be made that this request should first go before the Planning Board and/or the Design Review Board ("DRB") in order to help this board formulate its opinions.

Mr. Jones noted this is a 250% variance request. Mr. Johnson explained the City has streamlined its process by allowing administrative approval of proposed signage. He added this case is unique in that it doesn't comply with the Ordinance and requires a variance. If it had complied with the Ordinance a permit could have been issued.

Mr. John Streetz with Doyle Signs, Inc. was present on behalf of Whole Foods. He indicated that he drove from Chicago for this hearing and never knew he had to go before other boards.

Responding to Mr. Morganroth, Mr. Baka stated the signage being requested is similar to that was shown on the approved plans. The applicant chose to have their signs approved separately later.

Mr. Judd said when a sign request doesn't meet the Ordinance the fact that it would come to the BZA strikes him as the wrong way to go. This board would like input from another board. Responding to Acting Chairman Lyon, Mr. Baka said in his opinion this signage does not substantially alter the exterior appearance of the structure. There was consensus that it is reasonable for the BZA to want the opinion of the other boards.

The board adjourned for a short time at 9:48 p.m.

Back on the record, Mr. Streetz thanked the board for allowing him time to confer with staff. Based on information he has received he will make application to the DRB and understands he can get on their February 1st agenda. So he requested adjournment of his appeal until the DRB has weighed in.

Motion by Mr. Morganroth

Seconded by Mr. Jones regarding Appeal 17-01, 2100 E. Maple Rd., Whole Foods, to adjourn to the next regularly scheduled BZA meeting.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Lillie, Miller

T# 01-04-17

CORRESPONDENCE (none)

T# 01-05-17

GENERAL BUSINESS

T# 01-06-17

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

T# 01-07-17

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 9:58 p.m.

Bruce R. Johnson, Building Official