

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, SEPTEMBER 12, 2017
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, September 12, 2017. Chairman Charles Lillie convened the meeting at 7:30 p.m.

Present: Chairman Charles Lillie;; Board Members Kevin Hart, Jeffery Jones, Randolph Judd, Vice-Chairman Peter Lyon John Miller, Erik Morganroth

Absent: Alternate Board Members Kristen Baiardi, Jason Canvasser

Administration: Bruce Johnson, Building Official
Mike Morad, Asst. Building Official
Carole Salutes, Recording Secretary
Jeff Zielke, Building Inspector

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 who serve staggered three-year terms. 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# 09-60-17

APPROVAL OF THE MINUTES OF THE BZA MEETING OF AUGUST 8, 2017

Motion by Mr. Judd

Seconded by Mr. Morganroth to approve the Minutes of the BZA meeting of August 8, 2017 as presented.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

T# 09-61-17

1583 RUFFNER

Appeal 17-21

The owners of the property known as 1583 Ruffner request the following variances to construct a two-story addition to the rear of the existing home.

A. Chapter 126, Article 2, section 2.10 of the Zoning Ordinance requires both side yard setbacks for this property total 14.00 ft. The total side yard setbacks proposed is 8.46 ft.; therefore, a 5.54 ft. variance is requested.

B. Chapter 126, Article 4, section 4.61 (2) of the Zoning Ordinance requires a minimum street side yard setback to be 10.00 ft. The proposed setback is 3.46 ft; therefore, a variance of 6.54 ft. is requested.

C. Chapter 126, Article 4, section 4.61 (2) of the Zoning Ordinance requires the attached garage to be setback 15.00 ft. from the street side property line. The proposed setback is 13.10 ft.; therefore, a variance of 1.90 ft. is requested.

D. Chapter 126, Article 4, section 4.74 (C) of the Zoning Ordinance requires a minimum distance between principal residential buildings for this lot to be 14.00 ft. The proposed distance is 10.14 ft., therefore a variance of 3.86 ft. is requested.

E. Chapter 126, Article 4, section 4.61 (2) of the Zoning Ordinance requires a minimum street side yard setback to be 10.00 ft. A proposed covered porch is set back 3.46 ft. with a 1.00 ft. overhang; therefore, variances of 6.54 ft. for the porch and 5.87 ft. for the overhang are requested.

This property is zoned R-3 Single-Family Residential.

Mr. Johnson advised that the existing two-story colonial home was constructed in 1926 and is located on the NW corner of Ruffner and Torry St.. The existing lot dimensions are as originally platted. The applicant is proposing a two-story addition to the rear of the home with an attached garage accessed from the side street. The lot tapers as it goes back. It is 40 ft. wide in the front and 37.03 ft. in the rear which is driving some of the need for request (C). The neighboring home on the abutting lot to the west was constructed in 2012-2013.

Chairman Lillie pointed out a problem with variance (E). One survey shows the NE corner of the porch to be 3.46 ft. off the lot line. However the property line tapers back

and the variance request should be larger. If the lot line was parallel the petitioner would have had 2.5 more ft. to build in. He received clarification from Mr. Johnson that the house to the west did not need variances when it was constructed. Also Mr. Johnson noted that if the petitioner built a detached garage instead of attaching it a variance would still be needed.

Mr. Johnson went on to explain regarding variance (C) that the 15 ft. setback requirement for attached garages is a fairly new ordinance provision. Prior to that, attached garages only needed to maintain the same setback as the house. However, the City was receiving complaints about cars parked over the sidewalk, because 10 ft. was not enough room to park a vehicle without blocking the sidewalk.

Mr. Jones asked what the petitioner has done to mitigate the amount of variances requested. Mr. Johnson verified that after the petitioner spoke with Mr. Worthington the variances were reduced from what was initially proposed.

Mr. Hart noted that if the garage was detached the petitioner would still need a variance for lot coverage. The current proposal to attach the garage seems to be a much lesser evil.

Ms. Janine Sova spoke for her daughter, Victoria Miller, who is the owner of the property. Ms. Sova said the house was purchased before the new 15 ft. setback requirement was in place. She explained the reasons for the variances. They worked on the plans over four months trying to conform to the Ordinance. The inside depth of the garage is only 19 ft. which is quite narrow for a car.

Chairman Lillie explained to her that with variance (E) the problem is that a setback of 3.46 ft. has been advertised to the public and probably a larger variance is needed. Because of that the City will have to re-advertise on that one item. Mr. Johnson noted that when the designer drew the plans he did them in accordance with the Certified Survey, but put the dimension in the wrong location. If the requested variance is granted the porch would have to be moved in about 4 in. The petitioners agreed to that and Mr. Johnson said he would need new drawings that conform to the Survey.

At 8:05 p.m. Mr. Larry Alessi, the designer, commented that part of the width of the living room is the stairway down to the garage. They moved the stairway from inside the garage into the house to decrease the size of the garage. Also the whole structure was pulled back to reduce two variances. They looked at a design that would only require a variance for lot coverage and potentially side yard setback, but that was discouraged because lot coverage would be over by about 80 sq. ft.

Motion by Mr. Miller

Seconded by Mr. Jones to approve variances A, B, C, D, and E for Appeal 17-21 at 1538 Ruffner. He believes this situation was created by three things:

- **One is the diminishing size of the lot;**
- **The second is the fact that it is a corner lot and the BZA has encountered that before;**
- **Thirdly, the position of the existing residence on the lot, which is very close to Torry St., makes connecting up difficult there.**

So, Mr. Miller sees those three difficulties preventing the petitioner from meeting the exact Zoning Ordinance as written and conformity does become burdensome because of that.

He also feels that this addition will do substantial justice to the neighborhood. It is a great improvement on the house. They have tried to mitigate the situation. It is a very narrow garage. Also, the house as it proceeds north does step back and increases the distance from Torry St. and diminishes the mass of the house as it goes north.

For those reasons the problem certainly wasn't self-created and he would move to approve tied to the dimensions as advertised and contingent upon revised drawings depicting the porch being set back approximately 4 in.

Mr. Lyon was concerned about the ordinance for attached garages on 40 ft. lots. Mr. Johnson observed if the lot didn't taper back the way it does he thought they could fit it in. Mr. Lyon indicated his support for the motion because of the unique characteristics of the tapered lot and the existing non-conforming residence. He also noted the petitioner took quite a few steps to mitigate the variances and the impact to the neighbor.

Motion carried, 7-0.

ROLLCALL

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

Nays: None

Absent: None

T# 09-62-17

**767 HARMON
Appeal 17-24**

The owners of the property known as 767 Harmon request a variance from the maximum height of a fence in the front open space:

A. Chapter 126, Article 4, Section 4.11 (2) requires fences located in the front open space not exceed 3.00 ft. in height. The fence panel height is 4.17 ft. and the post

height is 5.17 ft.; therefore, variances of 1.17 ft. for the fence panel and 2.17 ft. for the posts are requested.

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

Two pieces of correspondence have been received from neighbors, one commenting on the variance request and one in favor of it.

Mr. Johnson noted that the Building Dept. received a complaint on or about June 27, 2017 that a new fence in the front open space at this location was too tall. A Code Enforcement Officer investigated and determined the fence was too tall and issued a violation notice. The property owner called the department the next day and stated that the fence was installed approximately five years ago to replace an existing deteriorated fence. The applicant is seeking a variance to allow the existing fence to remain at its current height. Pictures were presented showing how the original fence looked and how it looks today. In response to the Chairman, Mr. Johnson said the Fence Ordinance has been in existence since 1963. He explained for Mr. Judd that installation of a fence requires a permit. There was no permit drawn for this particular fence.

Mr. Ryan Goodman, the homeowner, said he purchased the house over five years ago when it was approaching 100 years in age. It needed a multitude of repairs both interior and exterior, including the fence at the front which was rotting and falling down. It was a complete eyesore for the entire street. The president of the Millpond Neighborhood Association has written a nice letter on their behalf detailing how the fence and other improvements that have been made have enhanced the appeal of the neighborhood.

In response to the Chairman's question Mr. Goodman said he cannot comply with the Ordinance now because the vinyl material cannot be cut down. Also he cannot lower the fence into the ground. Further, it would be a financial hardship to tear out the fence and replace it.

Mr. Jones stated the BZA has parameters they are required to meet in order to grant or deny a variance. Mr. Lyon added there are four points that need to be met in order to convince the board beyond a reasonable doubt that a variance is needed. The most important is that the need for a variance is not self-created. Mr. Miller asked Mr. Goodman why he did not pull a permit. His answer was that he assumed it had been pulled by his landscaper. Chairman Lillie concluded he was relying on his agent and the fact that his agent didn't do it is the petitioner's problem.

Discussion followed that letters from neighbors are worth something, but they are not the deciding factor in granting a variance. Responding to Mr. Jones, Mr. Goodman said it is possible to rip the fence out and have no fence there. Mr. Jones explained that the act of putting in a new fence requires compliance with the zoning then in effect. If the

applicant had applied for a permit it would have been pointed out to him that the fence had to be 3 ft. in height.

At 8:25 p.m. no one in the audience wished to comment on this variance request.

Motion by Mr. Jones

Seconded by Mr. Judd as it relates to appeal 17-24 having the address of 767 Harmon, he would move to deny, as the requirements with which we are all aware and which the applicant signs when he files the appeal are not met.

In fact, the board heard nothing relating to the physical nature of the property as to why there is a practical difficulty. In fact, we heard just the opposite. Mr. Lyon's statement relating to is it not self-created, he thinks is ample reason enough. For those reasons, non-compliance with any of the four criteria that we are to decide upon are why he would move to deny.

Mr. Miller concurred with the motion. He would be afraid of going down a slippery slope if the board approves this. It would set a very difficult precedent.

Mr. Jones added that approval of the motion would not only be a slippery slope, but it would become a totally subjective matter. That is something that would fall outside of this board's parameters. The requirements to grant approval have not been met.

Mr. Lyon said there is no choice but to deny.

Motion to deny carried, 7-0.

ROLLCALL

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

Nays: None

Absent: None

T# 09-63-17

490 LAKESIDE

Appeal 17-25

The owners of the property known as 490 Lakeside request the following variances to replace an existing trellis roof on a rooftop terrace.

A. Chapter 126, Article 2, Section 2.06 of the Zoning Ordinance requires a maximum roof height of 30.00 ft. for this property. The proposed roof height is 32.00 ft.; therefore, a variance of 2.00 ft. is requested.

B. Chapter 126, Article 2, Section 2.06 of the Zoning Ordinance requires a maximum eave height of 24.00 ft. The proposed eave height is 29.00 ft.; therefore, a variance of 5.00 ft. is requested.

This property is zoned R-1 Single-Family Residential.

Mr. Johnson explained that the existing home was constructed in 2001. There is a rooftop terrace area at the front of the home accessed from the habitable attic area. The applicant is proposing to replace the existing trellis roof above the terrace with a sloped roof. In response to the Chairman Mr. Johnson indicated that he is not aware of any variances that were needed when the house was built. Mr. Jones received clarification that the proposed bell shaped roof will not exceed the roofline height.

Mr. Miller observed it would seem that the existing height and the proposed are in proximity to one another.

Mr. Brad Baqua from AZD Architects represented the homeowner, Mr. Arya Afrakhteh. He advised they explored a number of options with the roof configuration. None of them lent themselves aesthetically to the style of the home. The existing trellis height and the eave height are within a few inches of each other. They were very conscious about keeping the new roof lower than the main peak of the house and in balance with the mass of the house. The roofing material will be metal or copper. Aesthetically the roof will have no affect on any of the neighbors in that it will not obstruct their enjoyment of their properties in any way. If the trellis were lowered it would not be usable because of headline issues.

In response to Chairman Lillie, Mr. Baqua said the sloped roof is 5 ft. high in order to balance with the mass of the house. A flat roof did not lend itself to the aesthetics of the home in their opinion. The bell shaped roof improves the look. There is a dropped ceiling on the interior to make that shape work. He indicated for the Chairman that a flat roof would match what the house looks like now.

There were no comments from members of the audience at 8:40 p.m.

Motion by Mr. Miller

Seconded by Mr. Lyon on Appeal 17-25 at 490 Lakeside to approve Variance (B) only, which is Chapter 126, Article 2, section 2.06. That relates to the proposed eave height and to the existing eave height. He thinks there is an existing condition and it is really not changing with the proposed design. So he thinks the petitioner would find conformity unnecessarily burdensome because you can't really lower the eave height and still walk out on the porch. There is only about 7 or 7.5 ft. now. Again, he finds that quite burdensome.

It is a unique circumstance that this is already built. Because that porch is already built he doesn't see that eave height as being self-created. It is something that was inherited and he thinks that would reasonably do justice to the neighborhood, that type of modification but maintaining that implied or the new built eave height, which seems reasonable to him.

So Mr. Miller would move to approve the eave height as dimensioned on the drawings, separate from the concerns for Variance (A) and tie that to an administratively approved modification to support the existing "eave."

Motion carried, 7-0.

ROLLCALL

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

Nays: None

Absent: None

Motion by Mr. Miller

Seconded by Mr. Morganroth on Appeal 17-25 at 490 Lakeside to deny Variance (A). He cannot get around that it is completely self-created and actually relatively frivolous in terms of going past the height restrictions. Certainly a slightly different profile of the roof can be within the zoning envelope and he thinks that can be done pretty easily. There is no real practical difficulty here that he sees so he would move to deny.

Motion carried, 7-0.

ROLLCALL

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

Nays: None

Absent: None

T# 09-64-17

CORRESPONDENCE (none)

T# 09-65-17

GENERAL BUSINESS

Mr. Johnson introduced Jeff Zielke and Mike Morad to the board.

T# 09-66-17

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

T# 09-67-17

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:45 p.m.



Bruce R. Johnson, Building Official