

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, FEBRUARY 14, 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, February 14, 2017. Vice-Chairman Randolph Judd convened the meeting at 7:30 p.m. He introduced the newest member of the BZA who was in the audience, Kristen Bairdi. Vice-Chairman Judd appointed Peter Lyon as Temporary Chairman for this evening.

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

Absent: Chairman Charles Lillie

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

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 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# 02-08-17

APPROVAL OF THE MINUTES OF THE BZA MEETING OF JANUARY 10, 2017

Motion by Mr. Jones

Seconded by Mr. Morganroth to approve the Minutes of the BZA meeting of January 10, 2017 as amended.

Mr. Judd made the following correction:

Page 1 - Vice-Chairman Randolph Judd convened the meeting.
Move the second paragraph above the first paragraph and then the new second paragraph should read: "The Temporary Chairman welcomed. . ."

Mr. Jones corrected the following:

Page 6 - Last paragraph, last sentence should say "Mr. Jones moves to deny . . ."

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Lillie

T# 02-09-17

**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. **The applicant has revised the sign plan to propose a total of 422.99 sq. ft. of signage. Therefore a variance of 157.416 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. **The applicant has revised the sign plan to propose a total of 231.09 sq. ft. of signage on secondary elevations. Therefore a variance of 131.09 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. **The applicant has revised the sign plan to propose two signs at 8 ft. 3 in. in height and one sign at 4 ft. 5 1/2 in. in height. Therefore a variance of 6 ft.**

3 in. in height for the two signs and 2 ft. 5 1/2 in. in height for the smaller sign 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.**

This property is zoned B-2 General Business.

Mr. Baka recalled that on January 10, 2017 the applicant appeared before the BZA. At that time the BZA requested that the applicant appear in front of the Design Review Board ("DRB") in order to obtain their input on the proposed signage. The DRB recognized that this location was unique and suggested that the applicant revise the sign plan in accordance with the sign regulations that govern properties on Woodward Ave. The signage standards along Woodward Ave. allow 1.5 sq. ft. for each foot of linear width of the building. Also, signs along Woodward Ave. are allowed to be 3 ft. tall. The applicant is now returning to the BZA with a revised plan. However, the overall height of the new proposal still would not comply with the height limitations on Woodward Ave.

It was noted that the Woodward Ave. standards apply to variance requests A and C. Further, neither Papa Joe's nor Kroger's (competitors of Whole Foods) was granted variances for their signage. Mr. Baka explained that the applicant has eliminated the sign on the west side of the building and instead a two-sided ground sign is proposed. The ground sign meets all of the Ordinance requirements except for the fact they are exceeding their cumulative square footage.

Vice-Chairman Judd suggested the applicant could benefit by reducing or eliminating the sign at the rear of the building that faces the parking lot. He finds it to be unnecessary. Mr. Baka stated that Staff does its best to be honest and realistic with potential applicants, but also makes them aware that it is their right to apply for variances.

Mr. John Streetz with Doyle Signs, Inc. appeared for this request on behalf of Whole Foods. Mr. Streetz passed out four attachments illustrating the sequence of events of Doyle Signs' communications with the City and how they came to revise their drawings and bring their signage closer to the recommendations of the DRB. Tonight they hope

to get approval from the BZA for what they feel is appropriate identification of the property. He went on to describe why the property is unique and noted they have accommodated many of the recommendations of the DRB. Further, he summarized changes they have made since their last submittal and asked the BZA to apply the Woodward Ave. guidelines to this location. The appearance of the proposed signs is consistent with Whole Foods Market's world-wide branding in regard to font and style, but is still in keeping with the fundamental architectural character of the building. Granting the variances will result in substantial justice being done and the rights of other property owners will not be impaired. If the variances are not granted, serious hardships will be suffered.

Mr. Streetz advised Vice-Chairman Judd that the sign in the back facing the parking lot is intended for the main entrance as well as to allow visibility from the railroad tracks. Mr. Judd noted that if the word "Market" was eliminated it would help their situation. Mr. Streetz replied that "Market" is an important aspect of their branding and Whole Foods did not want to remove it. Vice-Chairman Judd concluded the sign at the rear and the word "Market" are unnecessary and urged Whole Foods to reconsider their position.

Mr. Miller commented that the materials the applicant has provided do not allow him to make a logical determination.

Mr. Canvasser asked why at a minimum the Woodward Ave. zoning requirements cannot be complied with. Mr. Streetz answered if they complied with every aspect of that Code they would not be able to accommodate the architecture of the building with signs, or achieve proper identification for the property.

Mr. Jones observed it is good that the applicant tried to comply with the Ordinance, but they are still asking for relatively substantial variances.

Mr. Morganroth wanted to see how the DRB recommendations would impact the overall look of the signage and he could not see that from the materials provided.

No one from the audience wished to comment on this matter.

Motion by Vice-Chairman Judd

And seconded in regard to Appeal 17-01, 2100 E. Maple Rd., Whole Foods. The petitioner seeks a dimensional variance pursuant to the Sign Ordinance, Article 02 (a) (1-4). The petitioner has appeared before numerous boards: the Planning Board, the Board of Zoning Appeals twice, and upon the BZA's request appeared before the Design Review Board ("DRB"). As a result of the appearance before the DRB their Minutes reflect specific recommendations including the shrinkage of the signs, also the elimination of certain symbols, such as a leaf; but more specifically, the elimination of the term "Market," so that "Whole Foods Market" would become "Whole Foods."

The petitioner has responded with his presentation tonight accepting some of the recommendations of the DRB, but specifically declining to change the branding portion of the signs that include "Market" and also refusing to shrink sign A-2 even though he has expressed the belief that sign is somewhat superfluous and does not require that much square footage since it faces a parking lot.

The Signage Ordinance dealing with variances requires that there are four elements. Vice-Chairman Judd does not feel in this case the petitioner has proven the alleged practical difficulties which are peculiar to this piece of property. He can understand certain aspects dealing with this location near Maple Rd., but he does not feel that meets the requirements of this Section.

Vice-Chairman Judd does not think denying this would be materially detrimental to the adjacent property owners dealing with the increase in signage. Further he thinks that the granting of the variance would be contrary to the general objectives of this Chapter in keeping with the spirit and intent of the Ordinance. Additionally he thinks that denying this variance would result in substantial justice being done considering the public benefits intended by this Chapter.

He also notes in referring back to the variance section dealing with the BZA that direct references are made to mitigation. He does not feel that the petitioner in this case has sufficiently shown any mitigation that would permit him to make a motion to grant the variances. Based on those reasons, Vice-Chairman Judd would move to deny.

Mr. Hart observed that several prior businesses at this location have failed. One of the reasons was the proximity to the railroad tracks which cuts off the entire view from the west side of the site. Heading east on Maple Rd. there are probably three seconds to respond to any kind of signage. Therefore he thinks it is very important to take into consideration the encumbrances on this site and the practical difficulties of trying to run a successful business there. He can't emphasize enough how this site is a totally unique piece of property in the City of Birmingham. Therefore he will not support the motion.

Mr. Miller said it is hard for him to support the applicant's appeal if he really does not know the magnitude of what he is supporting. He will support the motion to deny.

Vice-Chairman Judd noted that if ever there was a destination site it would be Whole Foods. Most people who are going there are doing so quite deliberately.

Mr. Jones said the criteria for this board's actions are to find within the Ordinances the parameters of that which allows them to grant any variance. No one on this board doesn't want that business to succeed, but that is not the board's job. Their job is to

review the Ordinances. So he will reluctantly support the motion because the criteria has not been met for the board to grant the variances.

Acting Chairman Lyon indicated he will support the motion. Removing the south sign at the rear of the property would go a long way to mitigate the size of the variance needed. Because of the aforementioned reasons he supports the motion as presented.

Motion to deny carried, 6-1.

ROLLCALL VOTE

Yeas: Judd, Canvasser, Jones, Lyon, Miller, Morganroth

Nays: Hart

Absent: Lillie

There was no support for a lesser variance that the board could potentially give the appellant tonight. Mr. Miller indicated that when the appellant comes back the board would like to graphically see the extent of their hardship.

T# 02-09-17

**630 HENRIETTA
(Appeal 17-02)**

The owners of the property known as 630 Henrietta are requesting the following variances to construct a second-story addition:

A. **Chapter 126, Article 02, section 2.10** allows a maximum of 30% lot coverage. The existing lot coverage is 30.9% (1636 sq. ft.) and the proposed lot coverage is 33.1% (1749 sq. ft.); therefore, a variance of 3.1% (163 sq. ft.) is requested.

B. **Chapter 126, Article 04, section 4.74** requires a minimum of 14 ft. between principal structures. The existing and proposed distance to the adjacent house is 10.16 ft.; therefore, a variance of 3.84 ft. is requested.

This property is zoned R-3.

Mr. Worthington noted the house was constructed in 1987 and a variance of 0.35 ft was obtained for construction of 600 & 630 Henrietta for distance between principal structures.

Mr. Ben Heller, Morgan-Heller Associates, represented Bruce and Lee Sack, the homeowners. Mr. Heller explained the distance between houses where they are asking

for the variance is a pre-existing, non-conforming situation. The Ordinance has changed since the house was built and now requires a greater distance between the buildings.

The recessed space at the entry door is not covered and tends to collect snow and ice. They propose to extend the covered arch space and create coverage at the entry. The neighbor on the right supports the design and feels it will be an enhancement.

Mr. Miller indicated he is searching for the hardship that the applicant has to overcome in order to get an extra 163 sq. ft. of lot coverage. Mr. Heller replied that extending the covered arch space back to the front door counts as lot coverage. The home as it exists is almost 1% over allowable lot coverage. So the request is about 2/3 of that 163 sq. ft. Not allowing the coverage leaves the applicants with a safety hazard. Because the extension sits tightly between the already extended part of the house they really are not hurting anyone.

Mr. Hart pointed out that the open space will not change by covering the already existing concrete. It will not add to the impervious drainage situation. Mr. Heller explained that any coverage short of what they propose would not achieve the desired effect. Mr. Morganroth said if a room was not being added on the second floor and they wanted to extend the roof, there would still be the same concern for lot coverage.

No one in the audience wished to comment.

Motion by Mr. Miller

Seconded by Mr. Hart to approve the variances for 630 Henrietta, Appeal 17-02. The problem of Variance B was not self-created. It is how these unusual homes are set: Siamese twins right next to each other. So, that was a pre-existing circumstance.

Mr. Miller thinks the unusual condition of walking up to the house being under cover; then as you approach the door suddenly you are wide open and the roof is pitching right down over that front door would be a concern for anyone. So he thinks that it is reasonable to have cover over the front door. And in doing so, it causes you to go for this variance.

Even though the houses are rather close together, Mr. Miller thinks that it is not a negative since the houses are that close together further back in the lot. It would just be extending the closeness somewhat. So Mr. Miller would say that it is reasonable substantial justice. Conformity would be burdensome in that it is a difficult situation over the front door.

Just as an aside, when he first read this he penciled in "no." Then he walked past a few times and saw the condition, and it is a surprisingly difficult condition to visualize if you don't actually see what is going on there. Then when he saw what was there he began to change his mind. He didn't even consider the fact that the roof sloped in; but when it was mentioned that also adds to the argument.

Therefore, Mr. Miller would submit to approve the drawings as submitted.

Temporary Chairman Lyon said he is struggling to support this motion. He understands the need to cover the porch for safety; however, he does not understand the need for the all-season room on the second-floor balcony. He supposes that is a different way to do a roof. From the street a lot more front facade has been added. It goes against the size of the building and that is where lot coverage comes into effect. There are issues that need to be rectified but he doesn't think they need to be rectified with the addition of more living space above the area they are trying to cover.

Vice- Chairman Judd advised he will not support the motion for those same reasons. Safety is somewhat enticing in this case, but there are other ways to handle safety. He thinks the variances are being driven by the desire for more living space on the second story.

Mr. Hart thought that part of the design of the house has to give substantial justice to the neighboring properties. By adding the second-story living space, the way the roof and gutters will work and the way they will push the rain water away from the house in a seamless fashion will allow for the house to present itself well to the neighbors. It is important not to come up with some kind of haphazard idea for them. This is an existing non-conforming house and he thinks the request is reasonable. Therefore he supports the motion.

Motion carried, ~~45~~-2.

ROLLCALL VOTE

Yeas: Miller, Hart, Canvasser, Jones, Morganroth

Nays: Judd, Lyon

Absent: Lillie

T# 02-10-17

**239 SUFFIELD
(Appeal 17-03)**

The owners of the property known as 239 Suffield are requesting the following variance to construct a one-story rear addition:

A. **Chapter 126, Article 04, section 4.74** requires a minimum of 30 ft. between principal structures. The existing house is 21.6 ft. from the adjacent house and the proposed addition is 27 ft. from the adjacent house; therefore, a variance of 3 ft. is requested.

This property is zoned R-1.

Mr. Worthington advised the house was built in 1929. The rear bump-out of the house will be torn down and the new footprint will be further from the adjacent house, thereby improving the existing non-conformity. The new addition will be single-story, similar to what is presently there. The adjacent lot at 215 Suffield is 80 ft. wide and is only required to have 20 ft. between principal structures.

Ms. Glenda Meads, Glenda Meads Architects, was present to represent Mr. and Mrs. K. Albertie, the property owners. She explained that looking down the driveway, the existing addition cannot be seen, and certainly the addition that is proposed to be 5 ft. further back won't be seen. There have been no complaints by the neighbors and as was said, they are asking for something that is less than what exists.

No one from the audience wished to speak on this appeal.

Motion by Mr. Morganroth

Seconded by Mr. Jones regarding Appeal 17-03, 239 Suffield, to approve the request for a variance with respect to Chapter 126, Article 04, section 4.74 requiring a minimum of 30 ft. between principal structures. The existing house is 21 ft. from the adjacent house and the proposed addition is 27 ft.; therefore a 3 ft. variance is requested.

The current non-conforming sunroom actually is closer to the adjacent house and so this change is actually decreasing the proximity between the two structures. He is in support of that for the reason that he sees mitigation with this new structure being further from the other house. For that reason he would support the variance and tie the motion to the plans submitted.

Mr. Jones said he supports the motion for the reason that it will do substantial justice to the neighborhood. The difficulty relates to the different size of the lots that are adjoining. The immediate neighbor is required to be 20 ft. from the lot line, whereas the appellant is required to be 30 ft. The requested variance improves the nonconformity. He does not believe this problem is self-created.

Mr. Hart stated that all of the issues have been covered in the presentation and it has been done very well. He will support the motion. Temporary Chairman Lyon said he

also will support the motion. The adjacent 80 ft. and 120 ft. lots require a different distance between buildings and the proposal lessens the condition.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Lillie

T# 02-11-17

**952 RIDGEDALE
(Appeal 17-04)**

The owners of the property known as 952 Ridgedale are requesting the following variance to construct a rear addition:

A. **Chapter 126, Article 04, section 4.03 D.** requires a minimum of 10 ft. between the principal structure and detached garage. The existing house is 11 ft. from the detached garage and the addition will be 9.25 ft. away; therefore, a variance of .75 ft. is requested.

This property is zoned R-2.

Mr. Worthington explained the house was built in 1922 and the detached garage was built prior to 1983. The applicants propose to expand the back of the house. They will conform with all of the setbacks on their property and will not adversely affect any of the neighboring properties.

Ms. Glenda Meads, Glenda Meads Architects, represented Bruce and Martha Jeshurun, the homeowners. The proposed very modest addition flushes out the back of the house to have the east match with the west. They are cantilevering the addition to afford as much space as possible. They looked at other options to knock a piece off the corner of the garage but none of them would work without compromising the size of the garage door. None of the neighbors have any complaints. She submitted three letters in support.

It was discussed the addition would not cause a problem with the Fire Code. Mr. Hart explained the whole intention of the 10 ft. restriction is to keep people from putting garages in that don't function. Mr. Johnson advised that fire ratings are addressed now with fire protection on the interior garage walls and garages can be attached.

Members of the audience were invited to speak to this matter.

Mr. Curt Stagner, 932 Ridgedale, the property closest to the garage and the addition, voiced his support the requested variance.

Motion by Mr. Canvasser

Seconded by Mr. Jones in regard to 952 Ridgedale, Appeal 17-04, request for a variance pursuant to Chapter 126, Article 04, section 4.03 D. The requested variance is for 1.75 ft. He would move to grant the variance. He thinks that this is not a self-created issue. It is due to the unique circumstances of the property. This is, in terms of requested variances, as minimal as they come. It would do substantial justice to the petitioner as well as to the property owners in the area. Also he thinks strict compliance in this case would render conformity unnecessarily burdensome. Therefore he moves to approve the variance, tied to the plans submitted.

Mr. Miller expressed his support of the motion. It is the location of the existing garage far forward on the lot that is causing the hardship. The need for a variance is based on the pre-existing condition of the garage location.

Motion carried, 7/0.

ROLLCALL VOTE

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

Nays: None

Absent: Lillie

T# 02-12-17

**1331 W. MAPLE RD.
(Appeal 17-05)**

The owners of the property known as 1331 W. Maple Rd. are requesting the following variance to construct a 6 ft. high fence in the front yard:

A. Chapter 126, Article 04, section 4.11 limits the fence height to 3 ft. in the required front yard. The existing 6 ft. fence will be replaced with a 6 ft. fence in the same location; therefore a variance of 3 ft. is requested.

This property is zoned R-1.

Mr. Worthington advised the 6 ft. high fence along the side lot lines is allowed per the exception 4.11 A. 2. b. The fence that is parallel to the front lot line will be replaced in the same location with the same height. The City has very few instances where a single lot is located between two corner lots. The interior lot is getting squeezed.

Mr. Stuart Moutrie, the applicant, spoke on behalf of his appeal. They want to replace the existing fence that has been up for close to thirty years and is coming apart. The proposed replacement which is wood grained and taupe in color looks very nice. Their current 6 ft. high fence on Maple Rd. is flanked by a 6 ft. fence on both the east and west side of their property, and there are both brick and vinyl 6 ft. fences directly across Maple Rd. to the north. He has letters in support from his adjacent neighbors who have 6 ft. fences. Living near a main road, the privacy and security of a 6 ft. fence is paramount.

Mr. Hart pointed out that Maple Rd. is actually the applicant's side yard.

The Temporary Chairman asked for comments from the audience.

Mr. Lou Baukman, 117 Arlington, said he is familiar with the fence because he helped to install it in 1983. This property is unusual because both the front and back end are against backyards. The main reason the fence was constructed was to block the headlights on Maple Rd. The other reason for the fence is to match the height of the adjacent fences rather than going down 3 ft. as the Ordinance states.

Motion by Mr. Miller

Seconded by Mr. Morganroth regarding 1331 W. Maple Rd., Appeal 17-05. This situation certainly wasn't self-created; it is a very unique circumstance of a side yard being designated as a front yard. But it is actually the side yard of the house; it is along Maple Rd. and very unique in that regard.

The variance would certainly do substantial justice to the property as well as to the adjacent properties which have 6 ft. high fences to the east and to the west. Strict compliance with the Ordinance would cause the existing 6 ft. high fence to be re-built at a 3 ft. height. For that area along Maple Rd., Mr. Miller believes that would be relatively unreasonable for the property owner.

So for those reasons, Mr. Miller would move to approve this appeal, based on the drawings as submitted.

Mr. Jones believed that keeping the fence at that height will do substantial justice to the neighborhood from the standpoint of the uniqueness of the property and to carry the line between the two streets. This unique circumstance justifies the variance.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Lillie

CORRESPONDENCE (none)

T# 02-13-17

GENERAL BUSINESS (none)

T# 02-14-17

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

T# 02-15-17

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 10 p.m.

Bruce R. Johnson, Building Official