

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, MARCH 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, March 14, 2017. Chairman Charles Lillie convened the meeting at 7:30 p.m.

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

Absent: Alternate Board Members Jason Canvasser, Kristen Bairdi

Administration: Matthew Baka, Senior 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# 03-16-17

APPROVAL OF THE MINUTES OF THE BZA MEETING OF FEBRUARY 14, 2017

Chairman Lillie made the following corrections:

Page 8 - The vote was 5-2.

Page 11 - The vote was 7-0.

Motion by Mr. Lyon

Seconded by Mr. Morganroth to approve the Minutes of the BZA meeting of February 14, 2017 as revised.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

T# 03-17-17

35975 WOODWARD AVE.

Appeal 17-06

The owners of the property known as 35975 Woodward Ave. are requesting the following variance to construct a two-story commercial building:

A. Chapter 126, Article 03, Section 3.04 B (4) requires a minimum of 10 ft. rear yard setback shall be provided from the midpoint of the alley, except that the Planning Board may allow this setback to be reduced or eliminated. In the absence of an alley, the rear setback shall be equal to that of an adjacent, pre-existing building. As no alley is present, the nearest adjacent building, Douglas Cleaners, has a rear setback of 13 ft. The applicant is proposing a 47 ft. rear setback; therefore, a variance of 34 ft. is requested.

Mr. Baka advised the building is proposed to front on Woodward Ave. There are no adjacent buildings that also front on Woodward Ave.; therefore, the nearest pre-existing building, Douglas Cleaners, is used to determine the rear setback. That building is located at 900 N. Old Woodward Ave.

Chairman Lillie received clarification that the proposed building must be built right up to the frontage line along Woodward Ave. Mr. Miller asked whether building as proposed would cause a future hardship for the Douglas Cleaners property if it was torn down and they wanted to build something new. Mr. Baka responded there is an approved building directly to the south of Douglas Cleaners that will soon be constructed.

Board members deliberated about the intent of the Ordinance. Mr. Johnson said the required minimum is there because the Planning Board has the ability to adjust it to match the rear setbacks. Mr. Lyon added the intent of the Ordinance in the Downtown area is to force commercial buildings to be built up to the front property line.

Mr. Judd doubted this type of unusual lot will come up again. Mr. Baka added that to not have an adjacent building that is fronting on the same street is what makes the lot unique.

Mr. Victor Saroki, Architect, was present along with Ms. Yvonne Yaladoo, Project Architect, and Ms. Jamie Rae Turnbull representing the owner, Mr. Art Van. Mr. Van recently sold his company and this will be a Foundation building for him. Mr. Underdown, the owner of Douglas Cleaners, was also present. Mr. Saroki advised this will be a two-story building and each floor is be 5,500 sq. ft. The first floor is planned for commercial use and the second floor will be Mr. Van's Foundation office. The basement will contain storage and mechanical. Thirty-three parking spaces are required and provided on-site. On January 25th the applicant received Preliminary Site Plan Approval from the Planning Board. With the exception of the rear yard setback this development meets and exceeds all of the requirements in the D-2 Zoning District.

However, the application of the 13 ft. rear yard setback creates a practical difficulty because if they meet the 13 ft. requirement the building would have to span almost the entire site which would leave insufficient room for traffic circulation within the site. There are many complications that make this a very unique situation. Meeting the required setback would also mean they would need a larger building footprint and require underground parking. There is significant contamination on this former gas station site, which would make excavation costs for underground parking prohibitive for anyone developing this site. The unique characteristics create significant hardships for the property owner that are not self-created. Strict compliance with the Zoning Ordinance would be burdensome to the property owner, and a lesser variance would not provide substantial relief. The proposed improvements would substantially enhance the appearance and function of the property, and neighboring properties.

Chairman Lillie called for comments from members of the audience at 7:53 p.m.

Mr. Dave Underdown spoke in favor of the variance.

Motion by Mr. Miller

Seconded by Mr. Morganroth to approve Appeal 17-06, 35975 Woodward Ave. It seems obvious that this problem is not self-created, and due to the unique circumstances of the property. This is really about the unusual arrangement of two adjacent lots. Here, one determines the alignment of the other and really forces the really undesirable zoning requirement for the petitioner.

Mr. Miller also believes that the proposed building would do substantial justice to the surrounding area, as the position of the building is really nicely sited in terms of a really good urban response.

So for those reasons he submits a motion to approve based on the drawings as submitted.

Mr. Judd noted that Mr. Saroki's written materials have set forth the difficulties with this particular site. They add credence to his support of the motion.

Mr. Jones indicated that he too will support the motion. The site is very unique and the applicant has sought to minimize his request and has complied with everything except the rear yard setback, and that is a function of the uniqueness of the property.

Mr. Lyon stated he will also support the motion. This is a unique piece of property with kind of an unusual Ordinance. Given the uniqueness of this property he feels strict compliance would be unduly burdensome and not desired. The problem was not self-created.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: None

CORRESPONDENCE (none)

T# 03-18-17

GENERAL BUSINESS

Mr. Johnson announced the next BZA meeting will be on April 18, the third Tuesday of the month. Election of officers will be on the agenda.

T# 03-19-17

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

T# 03-20-17

ADJOURNMENT

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

Bruce R. Johnson, Building Official