

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, JUNE 13, 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, June 13, 2017. Chairman Charles Lillie convened the meeting at 7:30 p.m.

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

Absent: Alternate Board Member Jason Canvasser

Administration: Bruce Johnson, Building Official
Carole Salutes, Recording Secretary

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# 06-38-17

APPROVAL OF THE MINUTES OF THE BZA MEETING OF MAY 9, 2017

Motion by Mr. Morganroth

And seconded to approve the Minutes of the BZA meeting of May 9, 2017 as presented.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

T# 06-39-17

345 HAWTHORNE

Appeal 17-15

Mr. Hart recused himself on this matter because his firm represents the appellant. Ms. Baiardi joined the board.

The owners of the property known as 345 Hawthorne request the following variance to allow for the construction of a one-story addition.

A. **Chapter 126, Article 4, Section 4.74 (C)** requires a minimum of 27.56 ft. between principal structures. The existing and proposed distance between principal structures (north side) is 17.39 ft.; therefore a variance of 10.17 ft. is requested.

B. **Chapter 126, Article 2, Section 2.06** requires the total side yard setback to be a minimum of 27.56 ft. The existing and proposed total side yard setback is 25.87 ft.; therefore a variance of 1.69 ft. is requested.

This property is zoned R-1.

Three letters have been received that complain about the condition of the property.

Mr. Worthington explained the one-story addition is in line with the existing non-conforming home that was built in 1950. A variance was granted on 9/13/2016 for the installation of pool on the south side of the home to project into the required side open space.

Mr. John Vanbrook, Vanbrook & Associates, spoke to represent Kevin Hart Architects as well as the homeowner, Mr., Anthony Kupisz. Basically they are following the existing pattern of the home with the single-story addition. They are just filling in the corner of the garage by extending the rear wall to square it off. That was the most logical way to give the owner additional space in the garage and to create a new laundry/mud room area in the back. It cleans up that side of the garage by continuing the roof line across and squaring it up.

With respect to the condition of the property, the owner has now hired a building contractor and from this point on it will be professionally cared for. The project should be completed in about three months.

At 7:43 p.m. no one in the audience wished to comment on this appeal.

Motion by Mr. Miller

Seconded by Mr. Morganroth to approve appeal 17-15 at 345 Hawthorne. It seems that the problem is due to the circumstance of the property and the seating of the existing house on the property. The problem was not self-created. It is about the position of the existing house on the property.

It also seems reasonable to be able to add on to your house aligning with the side wall that kind of notches back. Filling that in would seem to be a reasonable use of the property. Certainly rendering conformity to the Zoning Ordinance would be burdensome in that regard. Mr. Miller believes this kind of addition is very reasonable within the context of that neighborhood.

With regard to the written objections that were submitted, they seem to be more about the timing and construction concerns and not really applicable to our judgment here. So, Mr. Miller would move to approve the appeal, tied to the drawings as submitted.

Mr. Lyon asked the owner's agent to be aware of the condition of the property and he encouraged Mr. Johnson to have the Code Enforcement folks pay visits periodically.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Hart

T# 06-40-17

1407 STANLEY

Appeal 17-16

Mr. Hart rejoined the board at this time, and Ms. Baiardi stayed in the audience for the election of officers.

The owners of the property known as 1407 Stanley are requesting the following variance to allow for the construction of a new house.

A. Chapter 126, Article 4, Section 4.74 (C) requires a minimum of 14 ft. between principal structures. The proposed distance between principal structures (south side) is 12.34 ft.; therefore a variance of 1.66 ft. is requested.

This property is zoned R-2.

Mr. Worthington noted this is a corner lot and the house to the south is 5.84 ft. off the property line.

Chairman Lillie said the applicant needs 10 ft. on one side and 5 ft. on the other. He is providing 6.49 ft. Chairman Lillie noticed that everyone on the east side of Stanley has their driveway on the south side of the house. So if that pattern follows the whole block then the lot on the corner of Stanley and Fourteen Mile Rd. doesn't have a problem but the house at the other end has a problem. If the driveways were reversed, then this house would not have a problem but the house at Fourteen Mile Rd. and Stanley would have a problem. It was agreed there is always one house on the block that will have a problem.

Mr. Rick Merlini, Live Well Custom Homes, said his hardship is relatively simple. He indicated that most of his competitors have a 35 ft. building envelope. He tried to minimize his variance request by reducing the size of the home.

At 7:50 p.m. the chairman asked for comments from the audience on this appeal.

Mr. J. Bryan Williams, 1421 Stanley, the house immediately to the south, said he did not receive a postcard about this hearing, nor did his neighbor at 1439 Stanley. Mr. Williams noted he is opposed to the variance. The houses as they exist are about 15 ft. apart. There has been no hardship demonstrated other than the petitioner wants to build a bigger house. He pointed out that if the variance is granted and some day if he were demolish his house, he could not build without a variance even to the footprint that he currently has because he would be less than 14 ft. between structures. He believes this is not only a hardship; it is basically a taking of his property value.

Mr. Williams also pointed out that the rear of the lot floods and he hopes the Building Dept. will ensure that the construction will not be raised up so that there is further flooding onto his yard.

Mr. David Bloom, 1591 Stanley, pointed out that the petitioner will not benefit from this except financially. The backyard floods in his area as well, and larger houses certainly contribute more to flooding. He suggested that the board deny this request and the property owner can either work within the confines of the existing regulations or he can find someone else that will.

Motion by Mr. Lyon

Seconded by Mr. Judd in regard to Appeal 17-16, 1407 Stanley, while he agrees with the concerns of the neighbors he believes the appellant has met the burden

for a practical difficulty. This is a variation on our 9-5, 5-9 issue, and now he will call it the 9-5, 5-10 rule in that everybody on one block is going to need a variance because of the distance between principal structures.

He believes that strict compliance would be unduly burdensome due to the plight of this property. It is the unique lot on this block, with the driveway to the south facing it, along with being on a corner, and there are going to be two houses that will need a variance, this one and the one next to it.

Mr. Lyon believes it does substantial justice to both the appellant and the surrounding neighborhood, in that this is somewhat of an unfortunate part of our Ordinance. But, we do need to grant these variances as they arrive for this particular circumstance of a corner lot with an adjacent sidewalk.

He feels the appellant has mitigated it. As he stated, other folks could build 36 ft. on a 50 ft. lot with 14 ft. total. He has reduced it to 33 ft. and change to help mitigate. Mr. Lyon tied the motion to the plans as presented.

Mr. Morganroth announced he would support the motion. There does appear to be mitigation on the maximum width that could have been requested. In addition, it looks like all the room dimensions seem appropriate and not out of scale relative to this size home on this size property.

Mr. Jones said that Mr. Lyon is correct. This is a variation on the 9-5, 5-9 issue. Economics are not the business of this board. It is the land and what has occurred by it. What competitors are doing cannot be this board's business.

Mr. Lyon further noted this problem is not self-created, in that the house to the south is part of the issue forcing the variance appeal.

Chairman Lillie said this is a common problem that the BZA runs into. Going down the street if all the driveways are not on the same side of the house, at some point in time you run into a problem where the houses are going to be too close together. In this case if all the driveways are on the south side, then the corner lot at Northlawn and Stanley has the problem. If the house to the south was not there the appellant would not need a variance. He is complying with the Ordinance. The only problem is distance between buildings. It works out that someone along the block will run into this discrepancy. Therefore, the chairman indicated he would also support the motion.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: None

Mr. Williams announced his intention to take his appeal to Circuit Court.

T# 06-41-17

**612 DAVIS
Appeal 17-17**

This appeal is postponed to the July 2017 BZA meeting.

CORRESPONDENCE (none)

T# 06-42-17

GENERAL BUSINESS

Election - Chairman

**Motion by Mr. Lyon
Seconded by Mr. Judd to nominate Charles Lillie as Chairman.**

There were no further nominations.

Motion carried, 8-0.

Election - Vice-Chairman

**Motion by Mr. Judd
Seconded by Mr. Hart to nominate Peter Lyon as Vice-Chairman.**

There were no further nominations.

Motion carried, 8-0.

Mr. Jones thanked Mr. Judd for his years of service as vice-chairman. Everyone joined in.

T# 06-43-17

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

T# 06-44-17

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:02 p.m.

Bruce R. Johnson, Building Official