

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS**  
**TUESDAY, JULY 11, 2017**  
**City Commission Room**  
**151 Martin Street, Birmingham, Michigan**

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Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, July 11, 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, Erik Morganroth; Alternate Board Member Jason Canvasser

**Absent:** Board Member John Miller; Alternate Board Member Kristen Baiardi

**Administration:** Matthew Baka, Sr. Planner  
Bruce Johnson, Building Official  
Carole Salutes, Recording Secretary  
Scott Worthington, Asst. 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# 07-45-17**

**APPROVAL OF THE MINUTES OF THE BZA MEETING OF JUNE 13, 2017**

Since a full set of Minutes was not provided in the packets for the board, consideration of the Minutes of the BZA meeting of June 13, 2017 was postponed to the next meeting on August 8, 2017.

**T# 07-46-17**

**612 DAVIS**  
**Appeal 17-17**

The owners of the property known as 612 Davis are requesting the following variance to allow for the construction of a porch.

**A. Chapter 126, Article 4, Section 4.30 (C. 1.)** requires a porch to be a minimum of 10 ft. from the property line. The proposed porch will be 7.7 ft. from the property line; therefore a variance of 2.3 ft. is requested.

This property is zoned R-3.

Mr. Worthington explained the house was built in 1975 and was constructed on an angle that is not parallel with the side yard property line. The applicant is proposing a one-story addition that complies with the zoning requirements and a porch which requires the above variance.

Chairman Lillie noticed that the house faces Grant but the address is Davis. He received confirmation that because this is a corner lot the required side setbacks are 10 ft. on Grant and 5 ft. on Davis.

Mr. Tom Baisler, designer for the project, said they are requesting a 2.3 ft. variance to the existing 10 ft. setback to allow for the proposed wrap-around porch. One condition is the 20 degree offset from the east property line which creates the difficulty in staying within the setback requirement. The other issue is the Davis elevation is considered the main front elevation. The purpose of the wrap-around porch is to help create access from Davis to the front door of the house on Grant.

They are hoping the board will see this as a fix to the problem of the garage front design which is no longer accepted in Birmingham. Also, the homeowner will be able to use the porch as they want on the Grant side and the Davis side as well. They kept the 5 ft. width as narrow as they could and still allow walkability. The porch doesn't negatively affect any of the neighbors and will not impede traffic on the sidewalk.

Responding to Mr. Morganroth, Mr. Baisler said if the corner is clipped it would make that corner nearly impassable, and it might not be the best look for the house. The overhang encroaches more than the porch itself.

Mr. Jones received confirmation that a variance would not be needed for the porch if the house was not sitting at a 20 degree angle. Mr. Judd did not see any use for the porch. It is not possible to walk there when people are sitting. He wondered why they couldn't just build a walkway with a more direct line to the front door. Mr. Baisler answered that the only entrance into the house from Davis is through the garage or walking around the house and coming in off of Grant. With the addition of the wraparound porch, a walkway is created from the driveway up to the Davis elevation. Also the porch would have curb appeal as well as function.

Mr. Judd thought the problem was self-created because the appellant bought the house and knew what they had. He added further that his interpretation of a garage front is not this particular house. Lastly he noted if they just had an overhang covering, it could be shaved or rounded at the corner so it wouldn't encroach and be in accordance with the Ordinance.

No one in the audience wanted to comment on this appeal at 7:52 p.m.

**Motion by Mr. Judd**

**Seconded by Mr. Lyon in regard to Appeal 17-17, 612 Davis, the petitioner seeks a variance pursuant to Chapter 126, Article 4, Section 4.30 (C.1.) which requires a 10 ft. minimum to the property line. The design of the proposed porch will be 7.7 ft. from the lot line; therefore requiring a 2.3 ft. variance.**

**Mr. Judd moved to deny since he feels that strict compliance with the ordinances dealing with setback would not unreasonably prevent the owner from using the property for a permitted purpose and is not unnecessarily burdensome.**

**The board has learned that there are solutions to this. As a former member of this board, Mr. Koseck, used to say, "I don't think you are being very imaginative here." That is the way he feels about this. It has been brought out that with just an overhang that is altered at the crucial point, the board wouldn't be here.**

**He thinks that to grant the variance would not do substantial justice to the other property owners in the district and he does not feel the plight is due to unique circumstances in this case. The house sits askew on the property, but that pre-existed and the owner bought the house with that design feature in place.**

**Most importantly, Mr. Judd feels the problem is self-created in that if it weren't for this particular design feature they wish to have, we wouldn't be here. For those reasons, he would move to deny.**

Mr. Hart thought neighboring properties will be enhanced aesthetically by creating a link for pedestrian traffic to the house which is supposed to be on Davis and it is not. The Ordinance was changed to respond to this condition. Further, he thought it would place an excessive burden on the owner to try to clip the corner because that would not match the rest of the house. Lastly, Mr. Hart felt the appellant tried to keep the width of the porch to a minimum. Therefore, he will not support the motion for denial.

Mr. Jones said he too will not support the motion to deny. This board deals time and again with what the appellant has when he is there. He doesn't believe this will do harm to the adjoining properties. He feels the house being at a 20% angle is justification for the request. Additionally, he agrees with Mr. Hart that the proposal is minimal.

Mr. Judd agreed with Mr. Hart that 5 ft. is not much of a porch. But why build a porch in that circumstance when you can derive the same benefit from having a walkway without having to construct something of this nature.

Mr. Canvasser indicated he will support the motion. He thinks the request is self-created. There are alternatives that could achieve the desired goal without requiring a variance.

Mr. Morganroth did not see a practical difficulty. He believes there are other creative solutions that would not require a variance.

Mr. Lyon expressed the view that everyone has the right to one porch, but not necessarily two if it requires a variance. For that reason, he will support the motion.

**Motion to deny carried, 4-3.**

ROLLCALL VOTE

Yeas: Judd, Lyon, Canvasser, Morganroth

Nays: Jones, Hart, Lillie

Absent: Miller

**T# 07-47-17**

**551 RIDGEDALE**

**Appeal 17-18**

The owners of the property known as 551 Ridgedale are requesting the following variance to allow for the construction of a fence higher than the 6 ft. maximum.

**A. Chapter 126, Section 4.11 A.1** requires that a fence not to exceed 6 ft. in height in the required side or rear yard. The proposed fence is 8 ft. tall; therefore a variance of 2 ft. is required.

This property is zoned R-2.

Mr. Worthington advised the property is located next to the Holiday Inn Express and zoned B-2. The Holiday Inn Express would be allowed to construct a fence over 6 ft. in height with administrative approval from Planning, but the R-2 zoned property is limited to 6 ft. in height.

Chairman Lillie noticed when driving into the Holiday Inn Express parking lot there is a wall about 3 ft. high wall before reaching the neighbor's property line behind. In response to Mr. Lyon, Mr. Worthington noted because the Holiday Inn is an older

building they did not have to follow today's screening requirements that mandate a minimum 6 ft. high brick wall for that lot line.

Mr. Judd observed the Ridgedale property is 4 ft. higher than the Holiday Inn property. Starting from the retention wall, and adding 6 ft. on top of that results in a fence that is 10 ft. tall in relationship to the Holiday Inn property. But because of the terracing it is 6 ft. at the elevation of the original property and now they want another 2 ft. on top of that.

In answer to a question from Mr. Morganroth, Mr. Worthington indicated there is no limitation in the Ordinance for the height limit of fences in the B-2 Zoning District with Planning approval. Therefore, the Holiday Inn could build a fence as high as they want. The height limit for fences in the R-2 Zoning District is 6 ft.

Mr. Baka explained in this situation, all of the Holiday Inn lights were installed before the Lighting Ordinance was in place. They don't have cut-off fixtures and the lights are probably higher than would presently be allowed. Normally the light trespass would be mitigated by the requirements of the Lighting Ordinance and a fence would not be needed to block the light.

It was noted there are no restrictions on plantings that would achieve the additional height necessary.

Mr. Randy Lake from Action Fence of Michigan spoke for the homeowner, Ms. Lila Cherri who was present. Her fence blew down in a storm and now she can see into the parking lot where traffic is coming in and out all day and headlights are shining in all night long. Also trash is thrown onto her property. She used to have arborvitae and the Holiday cut them down while she was gone. The homeowner has approached the Holiday Inn about the trash but the manager not responsive or pleasant to deal with.

Ms. Cherri said she has tried to work with the Holiday Inn over the years. In the past their cars have run into the fence and knocked it down and she has paid for it a number of times. A month ago a light was put up that is at least 25 ft. off the ground and shines into her backyard,

There were no comments on this appeal from members of the public at 8:20 p.m.

**Motion by Mr. Judd**

**Seconded by Mr. Lyon in regard to Appeal 17-18, 551 Ridgedale, the petitioner seeks a variance to erect a fence 8 ft. in height in an area which is limited to 6 ft. in height. Therefore, a 2 ft. variance is requested. The petitioner and the petitioner's representative have described the situation.**

**Mr. Judd feels that in this circumstance strict compliance with the Ordinance dealing with the height of a fence would unreasonably prevent the property owner from using the property for a permitted purpose.**

**Also, to enjoy it and have such a restriction would be unnecessarily burdensome. He further notes that Mr. Baka from the Planning Dept. has advised that the property next door being B-2 could erect a fence much higher. In fact, there isn't really a limitation.**

**In this case, based on some of the challenges that the petitioner has described, Mr. Judd feels this is reasonable. He thinks to grant the variance would do substantial justice to the applicant as well as to surrounding property owners and he feels the plight is due to unique circumstance, and certainly doesn't feel that the problem is self-created. He would tie his motion to the plans and vote to grant.**

Mr. Jones expressed his support for the motion. Part of his reason for support is that the business has been there and is grandfathered in with an existing non-conforming lighting use. That causes the issue for this applicant.

Mr. Lyon spoke in support. He believes the plight of the petitioner is not self-created in that the lighting is existing non-conforming. He also noted this business operates 24/7 and doesn't wind down at night. For that reason he thinks the homeowner is entitled to take action to alleviate the intrusion on her privacy. The fence seems to be a minimalistic action.

**Motion carried, 7-0.**

ROLLCALL VOTE

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

Nays: None

Absent: Miller

**T# 07-48-17**

**607 S. BATES  
Appeal 17-17**

The owners of the property known as 607 S. Bates are requesting the following variances to allow for the construction of a two-story addition:

**A. Chapter 126, Article 2, Section 2.10** requires the maximum building height to be 28 ft. to the midpoint. The proposed midpoint for the room referred to as a cupola is 32.81 ft.; therefore a variance of 4.81 ft. is requested.

**B. Chapter 126, Article 2, Section 2.10** requires the maximum eave height of 24 ft. The proposed cupola's eave height is 28.94 ft.; therefore a variance of 4.94 ft. is requested.

**C. Chapter 126, Article 4, Section 4.75 SS-02 B.3** requires a dormer on the side yard to be set back a minimum of 8 in. from the face of the second floor below. The dormer on the south elevation is flush with the second floor below and doesn't meet the 8 in. minimum setback; therefore a variance of 8 in. is required because it is not set back and is flush with the floor below.

**D. Chapter 126, Article 4, Section 4.75 SS-02 B.3** requires a dormer on the side yard to be set back a minimum of 8 in. from the face of the second floor below. The dormer on the north elevation is cantilevered out 3.06 ft. from the second floor below; therefore a variance of 3.73 ft. (3.06 ft. + .67 in.) is required.

This property is zoned R-3.

Mr. Worthington observed the house was constructed in 1901 and is designated historical. The applicant appeared before the Historic District Commission ("HDC") on 6/21/17 for review and comments.

The Chairman observed if the appellant was building a brand new house it could go higher. But because they are adding onto a historic house there are limitations.

In response to Mr. Judd, Mr. Worthington stated this cupola could be looked at as a habitable attic per the Ordinance. It is more like a room.

It was verified that this application came in after the new ordinance for dormers took effect.

Mr. William Finnicum, Architect with Finnicum Brownlee Architects, spoke for the homeowners, Mr. and Mrs. Joseph Angileri who were present. This project is unique from the standpoint that every decision was driven by the fact that it is a historic resource. The height of the house is kept down to a scale that is in keeping with the historic resource.

The Dept. of the Interior Guidelines for Rehabilitation of Buildings mandates that the new addition be done in a way that is distinguishable from the old historic resource, but is compatible in size, scale and proportion. One thing that they did to help distinguish the new from the old was to place the cupola squarely on the new addition.

He feels their practical difficulty is in following these Guidelines and responding to the historic resource in such a way that they can be true to the house and be true to the

Guidelines. The BZA is permitted by the Zoning Ordinance to modify the height restriction of a cupola provided such height modifications do not violate the spirit and intent of the Zoning Ordinance. They feel this is a cupola and that the height extension is warranted.

They are allowed to have an eave height of 24 ft. and their eave height is 18 ft. That means they could go all the way up to 28 ft. at the ridge. However, their average height is 6 ft. 3 in. lower than what they are permitted if they were starting new with 24 ft. eaves and maxed the ridge height out to the ultimate 28 ft. That is why they do not feel the height is harmful to the historic resource. Also, he was not sure if it is customary to judge the average roof height for a structure from a secondary roof line. The cupola is only a tiny fraction of the entire roof form.

They considered the dormers as cross gables when they were designing the house. After two meetings with staff they were never told these were dormers until the Friday before going before the HDC. Now variances were required because the gables are called dormers. However, they do not match the description of a dormer that is in the Definition Section of the Ordinance. Personally he doesn't believe these are dormers. On the north side there are no walls that interrupt the roofline. On the other side setting back the dormers would change the style of the roof and be detrimental to the historic resource because it would not be in the Queen Anne style. The existing building is a Queen Anne and the new addition has been designed to be very respectful of that style.

Mr. Finnicum respectfully requested the board to grant the requested variances to enable the Angleris to move forward with their project.

Discussion concluded that if these were not defined as dormers there would not be an issue. Mr. Worthington said if a projection from the house comes out 2 ft. on a foundation it is a secondary roofline. Then the second floor roofline is going to be looked at as a dormer unless it meets that.

Mr. Finnicum noted the two lots that his client owns are going to be rejoined into one lot. He added that his client has received a number of letters from neighbors, all positive, in support. In addition, the heights of every historic house in the Bates St. Historic District with the exception of one are much taller than this house. The Chairman replied it is nice to have input from the neighbors, but whether they are for or against the project doesn't establish practical difficulty.

Responding to Mr. Morganroth, Mr. Finnicum said the cupola is in scale with the historic resource and it was carefully thought out to be the right element to distinguish the historic house from the new addition.

Mr. Hart received information that there is one issue still outstanding with the HDC on this project. It has to do with the corner of the porch roof that is concealing some of the



existing historic detail. They asked them to look into that. Therefore they will be back before the HDC next week with ideas for that. There was strong support for the cupola and its relationship to the historic resource by committee members because the cupola is located on the new construction.

Mr. Judd pointed out that anything this board does is contingent upon the two lots being rejoined as one. He added that after reading three quotes from the Minutes he thought there was somewhat of an ambivalent feeling about this plan by members of the HDC.

An answer to the Chairman, Mr. Finnicum reported the historic house occupies approximately 25% of the entire structure.

At 9:08 the Chairman took public comments on this appeal.

Mr. Steve Lemberg, 648 S. Bates, directly across the street from the subject property, spoke in favor of the proposed construction. He passed around a handout showing the view from his window of the existing house and lot. They will be looking right at the cupola and will see it more than anyone.

Ms. Lee Sack said she lives at 630 Henrietta, directly behind. She thought that keeping the historic home as it is rather than moving it and constructing two new houses as the previous owners wanted to do lends itself to the City's intent. Just adding on keeps the flavor of the historic home and the District. She hopes for approval.

Ms. Barbara Connolly, 648 S. Bates, said this appears like it will be one of the nicest historic homes in the area. The height seems to be very much on the same plain as the Taubman house next door, so the rooflines will be consistent and fit in well with the street.

#### **Motion by Mr. Lyon**

**Seconded by Mr. Judd in regard to Appeal 17-19, 607 S. Bates, to approve the variances as advertised. He believes the appellant has shown that strict compliance with the Ordinance would be unduly burdensome. Due to the unique nature of this house being in a Historic District and the requirements that any improvements have to comply with the Secretary of the Interior Guidelines for Historic Buildings and the HDC review requirements also, he believes that strict compliance would be unduly burdensome.**

**Mr. Lyon believes the variances do substantial justice to the appellant and the other property owners in the District, especially given this is a historic building. He believes through the extensive testimony tonight that the architect has done an admirable job following all of those guidelines incorporating the elements required to both make it similar to, but not exact as the existing historic resource.**

**He believes this is due to the unique circumstances of the property. It is a unique historic home in the Queen Anne style. He does not believe the situation is self-created. To the contrary, this house has been there for a long time. It is a historic building in a Historic District and therefore the compliance with the historic guidelines is something that has to be followed and not necessarily self-created by the owner.**

**The motion is contingent on two lots being combined as one parcel.**

**He tied the motion to the plans as presented subject to any minor modification by the boards and the Building Official to comply with the needs of the Historic District.**

Mr. Jones was concerned that the first time the new ordinance for dormers comes up a variance is needed. He was surprised the appellant stated that staff surprised the architect. Therefore he is concerned about complying with the ordinance that specifically deals with dormers.

Mr. Lyon asked that Planning Staff have a look at this Ordinance to determine if there are conflicts. To him a gable end is not a dormer. If they are forced to interpret this as a dormer given the Ordinance, then the City probably needs to look at the Ordinance.

Mr. Judd pointed out that what the board is doing here doesn't set any precedent. So, he doesn't feel they are undercutting the Building Dept. or the commission in this situation.

Mr. Hart agreed. He feels the Ordinance still has merit in other applications. The Dormer Ordinance was instituted to respond to the dilemma of new construction inside of roofs. The second floor of this historic home is essentially up inside the roof itself. He thinks the spirit of the law is met with these variances. Therefore he will support the motion.

**Motion carried, 7-0.**

ROLLCALL VOTE

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

Nays: None

Absent: Miller

**T# 07-49-17**

**CORRESPONDENCE (none)**

**T# 07-50-17**

**GENERAL BUSINESS** (none)

**T# 07-51-17**

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

**T# 07-52-17**

**ADJOURNMENT**

No further business being evident, the board members passed a motion to adjourn at 9:25 p.m.

Bruce R. Johnson, Building Official