

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, AUGUST 8, 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, August 8, 2017. Vice-Chairman Peter Lyon convened the meeting at 7:30 p.m.

Present: Vice-Chairman Peter Lyon; Board Members Jeffery Jones, Randolph Judd, John Miller, Erik Morganroth; Alternate Board Members Kristen Baiardi, Jason Canvasser

Absent: Chairman Charles Lillie; Board Member Kevin Hart

Administration: Bruce Johnson, Building Official
Mike Morad, Building Inspector
Carole Salutes, Recording Secretary

The Vice-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# 08-53-17

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

Motion by Mr. Jones

Seconded by Mr. Morganroth to approve the Minutes of the BZA meeting of June 13, 2017 as presented.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Hart, Lillie

APPROVAL OF THE MINUTES OF THE BZA MEETING OF JULY 11, 2017

Mr. Jones amended as follows:

Page 1 - Last line, change August 9 to August 8

Page 4 - Motion to deny carried 4-3 rather than 4-0.

Page 10 - Fourth paragraph, second sentence should be clarified by saying "He was surprised that the appellant claimed the staff surprised him."

Motion by Mr. Morganroth

Seconded by Mr. Canvasser to approve the Minutes of the BZA meeting of July 11, 2017 as amended.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Hart, Lillie

T# 08-54-17

1728 W LINCOLN

Appeal 17-22

Two letters have been received that oppose this variance.

The owners of the property known as 1728 W. Lincoln are requesting the following variance to allow for the construction of a rear, one-story addition.

A. **Chapter 126, Article 4, Section 4.74 C.** requires a minimum of 16.25 ft. between principal structures. The proposed addition is 11.25 ft. away from the adjacent house to the east; therefore; a variance of 5.0 ft. is requested.

This property is zoned R-1.

Mr. Johnson advised the house was constructed in 1955. The proposed addition complies with all zoning regulations with exception of distance between houses. The house is inset .25 ft. from the existing plane of the home off the east property line. The house to the east received a variance in 2006 for distance between structures which has created a hardship for the petitioner to build an addition straight back off her existing house.

Mr. Miller noticed the Survey has some dimensions scribbled in on top of the original drawn survey. Mr. Miller had concerns over the survey because the board's findings are tied to drawings as submitted. Mr. Johnson responded to Mr. Canvasser that the house to the east was newly built.

Mr. Jamie Craig, Renaissance Restorations, spoke to represent the homeowner, Ms. Eleanor Litt, who was present. They wanted to go straight back with the addition but the house to the east was granted a variance with a huge jog when it was built. That causes Ms. Litt not to be able to build a straight addition off the back of her house without a variance. Only a very minor portion of the addition requires the variance. He noted that Mr. Worthington wrote on the Survey in order to clarify it for the board.

Vice-Chairman Lyon explained the variance granted for the house to the east was not for the jog. That actually didn't require a variance because there was no existing house there. So, they could have gone 5 ft. from the property line. The variance was for distance between buildings on the main part of the house. He added the proposed addition to the subject property has been mitigated by a .25 ft. inset from the house wall.

Mr. Craig explained which walls they are keeping in the house. Mr. Morganroth suggested that flipping the master bedroom and the master bath would function for a revised design. Mr. Craig replied the master bathroom would end up being too small. Further, with the current proposal if he has to take 5 ft. out of the master bedroom it would be unworkable.

Mr. Canvasser received confirmation that the subject property was purchased by the applicant in 2005 and the variance to the east property was granted in 2006.

Ms. Eleanor Litt said she was never notified about the request for variance next door. She now has flooding in her basement because the grade of that house is higher. When they put in landscaping they blocked off all of the drain tiles.

Motion by Mr. Jones

Seconded by Mr. Judd as it relates to Appeal 17-22, 1728 W. Lincoln, to approve. He believes that strict compliance with the Ordinance under these circumstances would unreasonably prevent the owner from using the property for the permitted purpose. He also believes that granting the variance would do substantial justice to the applicant. Further he believes the requested variance in the shape, however we have all agreed is questionable, is nonetheless diminimus and reducing from the point narrower and a small area to begin with.

Mr. Jones thinks the plight of the owner is due to the unique circumstances of the land. He does not see this as a self-created situation. However he will say for the benefit of the television audience that the Ordinance never does require that you

receive a notification. It requires that the City send. He presumes if there was a variance granted in 2006 that the City and staff complied. Therefore he believes that although memory may serve, and therefore he takes no umbrage nor does he disbelieve the applicant. It is still a fact the receipt is not the requirement. The City sending is the requirement of notice.

For those reasons he would hopefully ask that staff maintain the standard and get a Certified Survey to clarify these issues along with this and would in fact then request that to be part of his motion. Then, tie it to those plans along with the Certified Survey.

Mr. Miller announced that he cannot support the motion. He thinks the design as drawn is easily modified to meet the zoning requirements. So, he believes the problem is self-created. In the matter of doing substantial justice to the neighborhood, an extension of a 20 ft. long windowless wall of vinyl siding is certainly less quality than the existing house which is brick. Again, that is very easily designed around without violating the zoning.

Vice-Chairman Lyon indicated he will also support the motion. He believes the neighbor to the east moved their house in and didn't keep it parallel with the existing house. They did it because there was nothing else there. Therefore the appellant now needs a significant variance because the neighbor jogged their house too far to the west. He thinks that substantial justice to the homeowner comes into play in this case.

Motion carried, 5-2.

ROLLCALL

Yeas: Jones, Judd, Baiardi, Canvasser, Lyon

Nays: Miller, Morganroth

Absent: Hart, Lillie

T# 08-55-17

**615 EMMONS
Appeal 17-23**

The owners of the property known as 615 Emmons are requesting the following variance to allow for the construction of a front porch.

A. Chapter 126, Article 4, Section 4.61 requires a minimum of 10 ft. off the side street for a front porch. The proposed porch is 4.7 ft. off the side street setback; therefore, a variance of 5.3 ft. is requested.

This property is zoned R-3.

Mr. Johnson reported that the house was constructed in 1927. The proposed addition complies with all zoning regulations with exception for a portion of the front porch. The porch is in line with the existing home and is not going any closer to the property line. The City will require an updated architectural plan that will be based in the Certified Survey. In response to Mr. Morganroth, he stated it is accurate to say if the proposed front porch doesn't go all the way across and stops in the middle of the office/den it would not need a variance, Mr. Johnson determined there is enough information to indicate exactly what is going on with the project

Ms. Tania Yatooma, the homeowner, said they are not demolishing the existing structure; they are just adding an addition. They want to add to the proposed porch so it extends all the way across and conforms with the rest of the neighborhood. She went on to detail the entirety of what they propose to do.

Mr. Jones inquired why the property requires a 5 ft. variance for the porch. Ms. Yatooma replied that the neighborhood is beautiful and everyone hangs out on everyone's front porch. Her house is very plain and having a porch going from end to end would make it look more uniform with the rest of the new construction houses on their block.

Mr. Judd stated that she is asking the board to extend a non-conformity by 5 ft. A tree or bush could be added that would fill in the gap. Ms. Yatooma said she would consider this a unique circumstance. Her desire to add to the porch is self-created but she doesn't feel it is hurting anyone. Her house is on the corner and the porch isn't going into someone's yard.

Mr. Jones said that part of this board's concern is whether a variance does substantial justice to the neighbors and to the community. Ms. Yatooma noted her unique situation is that this is a non-conforming house. To have a porch going from end to end coincides with the neighborhood feel of Birmingham and adds to the look of this plain house.

The Vice Chairman took comments from members of the audience at 8:20 p.m.

Ms. Amy Byer, 832 Emmons, said she is thrilled the Yatoomas are going to renovate their home. She would like to see the variance granted because of the aesthetic of the house and how welcoming it will be to come around the corner.

Motion by Mr. Miller

Seconded by Mr. Morganroth to support the petitioner in their appeal at 615 Emmons, Appeal 17-32. He believes the existing house was built long ago and actually forward of many of the other houses and any of the newer houses on the block. He thinks that is what is causing the discontinuity. So, he believes the

request for the variance is caused because of the existing relationship of that older house to the lot. When you lay the new zoning ordinance onto it, it pushes the house more forward and out of alignment with the rest of the street.

There are substantial renovations being done. One of them is to add a front porch across the front of the house. It would certainly do substantial justice to the neighborhood. The City of Birmingham has over the years greatly encouraged front porches. Also with respect to the corner in question here, there is no neighbor directly adjacent to it so it is not impacting any neighbor at all. It is a corner lot. Also it is a porch so it is not a filled in piece of the house. It is an open air portion.

For those reasons, and the unique circumstances again of that existing house, and the substantial justice that is done to the neighborhood, and the fact that building a front porch across the front of the house is a very reasonable thing to do, he supports the motion and would tie it to the plans as submitted for the Building Application, as modified to get the variance.

Mr. Judd said he has lived in the Birmingham area his entire life and has yet to have anyone greet him from a porch. That personal experience aside, he can certainly understand the attractiveness of a porch. In this case he will support the motion because this is a real and functional porch. It does increase the non-conformity but it works. For that reason, he will support the motion.

Mr. Jones stated he will support the motion as well. The telling thing for him is the location of this building. It is on a corner. It does substantial justice to the community to have that full area when turning off Emmons onto Grant. He feels the self-created matter is over borne by the nature of the house and the fact they are keeping the original non-conforming house.

Ms. Baiardi said she will support the motion also, but with some of those same reservations that were just indicated. She doesn't think the problem is self-created for the reasons that Mr. Miller put on the record. The location of the existing non-conforming house is the real issue here.

Mr. Canvasser indicated he is wrestling with the non-conforming aspect. He thinks this is self-created but is leaning towards supporting the motion because the overriding factors have been articulated for support of the motion.

Vice-Chairman Lyon noted he will support the motion. He believes It does substantial justice to both the appellant and the neighborhood. This existing non-conforming house is unique because it is too close to the side lot line. The area has full width front porches and the appellant wishes to do the same without moving the house over. So

this is kind of a minimalistic variance to conform with the rest of the neighborhood by adding a front porch.

Motion carried, 7-0.

ROLLCALL

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

Nays: None

Absent: Hart, Lillie

T# 08-56-17

CORRESPONDENCE (none)

T# 08-57-17

GENERAL BUSINESS (none)

T# 08-58-17

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

T# 08-59-17

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:31 p.m.



Bruce R. Johnson, Building Official