

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, JANUARY 9, 2018
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, January 9, 2018. In the absence of the Chairman, Vice-Chairman Peter Lyon convened the meeting at 7:30 p.m.

Present: Vice-Chairman Peter Lyon; Board Members Kevin Hart (arrived at 8:40 p.m.), 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
Mike Morad, Asst. Building Official
Carole Salutes, Recording Secretary
Jeff Zielke, Building Inspector

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 who serve staggered three-year terms. 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 two interpretations on this evening’s agenda.

T# 01-01-18

APPROVAL OF THE MINUTES OF THE BZA MEETING OF NOVEMBER 14, 2018

Motion by Mr. Morganroth

Seconded by Mr. Jones to approve the Minutes of the BZA meeting of November 14, 2018 as presented.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Absent: Hart, Lillie

T# 01-02-18

**1509 MARYLAND
Appeal 18-01**

The owners of the property known as 1509 Maryland request the following variance:

A. Chapter 126, Article 4, Section 4.30 C (4) of the Zoning Ordinance requires that basement window wells are only allowed to project into the required side and rear yard open spaces. The applicant is proposing to locate an egress window well in the required front open space. Therefore, a variance to allow an egress window to project 3.00 ft. into the front open space is requested.

This property is zoned R-2.

Mr. Morad explained that the existing house was constructed in 1952. The owners propose to install an egress window well from an existing bedroom that extends into the front required open space of the home. If the variance is granted, a survey would be needed to verify the window well would not extend further into the required front open space than the variance allows.

Discussion clarified that window wells are allowed in the front of the house but not in the required front yard setback. Mr. Morad explained for Mr. Morganroth that to be conforming the window well would have to be installed in the bedroom and that is located at the front of the house.

Mr. Marius Rauckis, the property owner, said he purchased the home a year ago and subsequently found out that they could not use the basement bedroom without installing an egress window well. Therefore his hardship is loss of the use of the bedroom for a pre-existing non-conformance. When he bought the home his building inspector did not indicate that an egress would be needed for the basement bedroom.

In response to Mr. Morganroth, Mr. Morad stated that a legal egress window must be a minimum of 3 ft. from the window to the inside of the well. Mr. Rauckis noted the home next door is 3 ft. closer to the street than theirs.

Mr. Miller expressed his feeling that the drawing submitted is very minimal. It is difficult to tell how hard it would be to construct a bedroom on one of the other sides of the basement.

No one from the public wished to comment on this appeal at 7:50 p.m.

Chairman Lyon noted the board could ask the appellant if he would like to adjourn the request pending his submission of more information,

Mr. Miller indicated he would have difficulty supporting this appeal with the information submitted.

Chairman Lyon offered Mr. Rauckis the opportunity to adjourn his appeal to next month. Mr. Rauckis agreed to adjourn his variance request to the next meeting of the BZA.

Motion by Mr. Jones

Seconded by Mr. Morganroth with regard to Appeal 18-01, 1509 Maryland, that upon the request of the applicant, to move that the board adjourn his appeal to the next scheduled BZA meeting, unless the applicant cannot get the survey by then.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Absent: Hart, Lillie

T# 01-03-18

34901 WOODWARD AVE.

Appeal 18-02

The owners of the property known as 34901 Woodward Ave. are requesting the following variances to allow three (3) signs on the exterior of the building:

A. Chapter 86, Article 01, Section 1.10 B (4) d Overlay Sign Standards states that each business whose principal square footage is on the first story may have one sign per entry. The principal square footage for this tenant is located on the second floor of the building. Therefore, a variance to allow a second-floor tenant to have exterior signage is requested.

B. Chapter 86, Article 01, Section 1.10 B (4) d Overlay Sign Standards states that each business whose principal square footage is on the first story may have one sign per entry. The principal square footage for this tenant is located on the second floor of the building, which is accessible from one entrance on Peabody. The applicant is proposing

three signs where one is permitted. Therefore, a variance to allow three signs where one entrance exists is requested.

This property is zoned B-4/D-4.

Mr. Baka advised the applicant is requesting to place the new CIBC signs at the location of three previously existing Private Bank signs. The Private Bank signs are considered legal nonconforming and therefore cannot be changed per section 2.07 A(2) of the Sign Ordinance.

He went on to explain that approvals for the Private Bank signs were issued in error by the Community Development Dept. several years ago. The bank has since been bought out by CIBC and they want to switch the signage to reflect the name change. One sign would be mounted on the Woodward Ave. elevation, one sign on the E. Brown elevation, and one sign on the Peabody (lobby) elevation. The Design Review Board ("DRB") reviewed the new signage for CIBC Bank and gave a positive recommendation for the design and the placement. They approved the signs with the contingency that the applicant receive variances from this board.

In 2014 the Balmoral Building was approved for a Master Sign Plan which designated several areas where signage could be permitted. Presently the Private Bank signage is down and it has not been replaced. The issue is there are two sets of signage regulations in Birmingham. One is for Underlying Sign Standards which govern the majority of the City, and then there is the Overlay Signage which applies to new buildings that have been developed under the Overlay Regulations Downtown.

The DRB plans to hold study sessions within the next couple of months to discuss the two different sign standards and whether or not they should be condensed into one or if the Overlay Sign Standards should be changed. Their decision will be reviewed by the City Commission for final approval.

Mr. Baka stated that any non-conforming signs that are out there right now would be allowed to stay, because it was the City's error.

Mr. Canvasser received confirmation from Mr. Baka that the number of signs isn't changing, the square footage of the signs is decreasing, and there is no new tenant. The FDIC mandated that the private bank change their name, so this is really a continuation of an existing business as far as he can tell.

Ms. Tracey Diehl, 6487 Hillier Dr., Winchester, OH, was present to represent the sign manufacturer, the property owner, and CIBC Bank. She advised that nothing about the business itself has changed. They still have the same Federal Tax ID number. But unfortunately FDIC regulations require them to represent themselves under the current bank name. The bank has a lease which requires them to occupy this space. When

they did their investigation to obtain the space they were given sign approval. Having no signage to represent themselves has created a hardship for them and their customers who are trying to find their way to CIBC and don't understand that it is in the same location.

The bank's greatest hardship is that when the Balmoral Building was constructed it was determined the second floor would be occupied by a commercial business. However it cannot be expected that a commercial business would occupy a space and not be able to represent themselves adequately in some way. CIBC is actually looking for a reduction of signage. The DRB felt the signage is appropriate for the overall aesthetic appeal of the building and consistent with other buildings like this within the City limits.

No one from the public wished to comment on this appeal at 8:10 p.m.

Motion by Mr. Miller

Seconded by Mr. Canvasser to approve Appeal 18-02, 34901 Woodward Ave., variances A and B. He believes this problem certainly wasn't self-created. It is due to a unique circumstance of past City interpretation. He thinks the variances would certainly do substantial justice to the owner, and other surrounding property owners would not be adversely affected.

Forced compliance with the Zoning Ordinance would be unnecessarily burdensome. With the support of the DRB and the general situation of us being kind of grandfathered into this situation, he thinks that what is being asked for here is quite reasonable.

So again, Mr. Miller would move to approve, tied to the drawings as submitted.

Mr. Morganroth said he would support the motion although he does not want to continue to support errors and/or non-conformity. He feels that with the same Tax ID number and the unique situation for this particular business they need to change the sign. Nothing else really major has changed within the business and it is reasonable in this particular case to allow the new signage to continue in the same location.

Mr. Jones indicated he would reluctantly support the motion. He feels the board is getting back doored again into accepting circumstances rather than supporting the ordinances. He believes that when the City Commission approved the ordinances the rationale of having a business on the second floor potentially wanting signage there was considered. He hopes the legislative process will speed a resolution rather than having these come before this board.

Mr. Judd agreed the BZA should not be circumventing the authority of the legislative branch, but we know how long it would take them to write or re-write this ordinance. So, as long as they are not overstepping, he is quite comfortable with the motion.

Chairman Lyon noted he will also support the motion. He believes the spirit of the ordinance is being supported because it does equity to everyone involved.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Hart, Lillie

T# 01-04-18

1598 REDDING

Appeal 18-03

The owners of the property known as 1598 Redding are requesting the following variances to construct a new home:

A. Chapter 126, Article 4, Section 4.61(1) of the Zoning Ordinance requires the minimum street side yard setback for this property to be 37.50 ft. The proposed setback is 32.00 ft.; therefore, a variance of 5.50 ft. is requested.

B. Chapter 126, Article 4, Section 4.30 C(2) of the Zoning Ordinance requires that projections can project 2.00 in. per foot of required side open space. The required side open space is 37.50 ft., allowing a 75.00 in. projection. Variance A above is requesting a 5.50 ft. variance. A 24.00 in. overhang is proposed along with the variance above; therefore a variance of 15.00 in. is requested beyond the allowable 75.00 in.

This property is zoned R-1.

Mr. Zielke noted the applicant is proposing to construct a new two-story home with an attached garage. This corner lot is irregular in shape, and has a required street side yard setback equal to that of the existing front yards along the side street. A dimensional variance is being requested to project into the required street facing side yard. All other setbacks and distance requirements are conforming.

It was discussed that the existing house is non-conforming. Mr. Canvasser noted the applicant plans to tear down the existing house and build a new house on a blank slate.

Mr. Morganroth received confirmation from Mr. Zielke that the requested 26 ft. garage is not too far off the norm.

Mr. Zielke advised for Mr. Canvasser that the swimming pool has no bearing on the variance request because it falls within the required 40% green space overall.

Responding to Mr. Jones, Mr. Zielke reviewed how the applicant tried to hold back the buildable area. The intention was to square up the house on the irregular shaped lot. He felt they did a good job minimizing their variance requests.

Mr. Judd announced that he lives next door to this property; however he doesn't feel that creates a conflict of interest that prevents him from reviewing this particular appeal.

Mr. Zielke responded to Mr. Morganroth by saying the metal awning overhangs are responsible for variance request B. In reply to Chairman Lyon, Mr. Zielke confirmed that the side yard along Pilgrim minimizes the buildable area of the lot.

Mr. Miller received confirmation that it is the aesthetics of the overhang that required variance B of this appeal.

Mr. Lou Derosiers, Architect for Derosiers Architects, introduced Ms. Jaradi, who along with her husband is the property owner. He explained this is one of those rare lots where the backyard goes up against the side yard of another house. That is almost like having two front yards and causes them to push the house back, He thought the best thing they are doing to get rid of the house that is way out front and blocking the views down the street. They will have a two-car garage while most of the other houses have three. They worked hard with the City on their plan. Their biggest sacrifice was the two-car garage because almost everybody along Redding has three.

Mr. Canvasser announced he is struggling with whether this problem was self-created. He asked if there is any reason a house cannot be built on that blank canvas without the necessity of variances. With respect to the overhangs, Mr. Derosiers said they will be great to stop the western sun from coming into this house. Also, they would keep the front door protected from the rain.

Discussion followed regarding the wall that surrounds the house. Mr. Derosiers stated that it affords privacy for the homeowners.

Mr. Miller said he also is wrestling with the problem being self-created. It was discussed that the house must be at least twice as wide as the garage front facade. Mr. Derosiers pointed out that they want to make sure the shape of the building is interesting, not just straight across.

In response to Mr. Canvasser, Mr. Derosiers said they looked at the possibility of having the garage face Pilgrim, However, they tried but could not get the layout to work right.

Mr. Hart arrived at this time.

The Chairman called for comments from the audience at 8:45 p.m.

Mr. Stephan Doerr, 2050 Pilgrim, said there is no house in Quarton Lakes that has a 6 ft. wall surrounding it. To him the wall is an eyesore. Chairman Lyon explained the variance requests are not for the wall. If the wall does not meet the requirements of the Ordinance, a Building Permit will not be issued for it. Mr. Doerr added that all of the building owners in the neighborhood have to deal with unimpeded sun rays entering their homes. None of them have protection from the sun.

Ms. Patricia Doerr said she feels the wall will alienate her from the community. She asked the board to think about what they are doing and try to keep Quarton Lakes a special part of Birmingham.

Mr. Greg Moore, 1431 Pilgrim, pointed out this is the eighth house to be torn down since he has been there for twelve years and none of them required a variance. He had to buy a small sports car to fit into his three-car garage because the garage had to be cut in order to conform, Therefore he has a problem with self-created issues. The applicant should do a little more work to make their house fit.

Motion by Mr. Canvasser

Seconded by Mr. Miller in regard to Appeal 18-03 for the property located at 1598 Redding, to deny the variances as requested. Based on some of his questioning and the responses received, he finds that this request is not self-created. To the contrary, he thinks it is entirely self-created. What they have is a blank sheet of paper and while he recognizes that sheet of paper may be somewhat irregular, he has not heard anything from the applicant suggesting that a reasonable house could not be built on that piece of paper without the need of two variances.

He does not believe there has been a showing that compliance with the Ordinance is unnecessarily burdensome and he has not heard that the variances will do substantial justice to the property owners in the area.

So for those reasons Mr. Canvasser would move to deny the two requests.

Mr. Miller agreed with Mr. Canvasser because he cannot get around the notion of this not being self-created. Further, he thinks that variance B is rather frivolous. Regarding variance A, he doesn't think it has been demonstrated what the difficulty is in meeting the Ordinance. Therefore, he would support the motion.

Mr. Morganroth said he also supports the motion. He understands the challenges for variance A and recognizes that the corner lot with two fronts is a challenge as well as the tapering lot. However he feels the building envelope could still be re-worked. But in the case of variance B he agrees that it is completely self-created

and is pure aesthetics. The board is not here to judge aesthetics. The aesthetics have to be designed within the Ordinance and in this particular case they are not.

Chairman Lyon indicated he will not support the motion. This is a corner lot with interior lots behind it, which is rather unique. This is substantially less of a non-conformance than what is there now and has been there for years. He doesn't believe the request is self-created. The problem is the way the lot is platted.

Mr. Jones said he understands that new construction is always self-created. He grows weary of hearing the difficulties of a corner lot because he doubts that anyone who purchased one didn't know it was a corner lot. Yet he thinks what the applicant has done leads him to a conclusion this is a minimal situation and that he has tried to mitigate it. He thinks this would be acceptable construction on the lot, albeit he understands both sides.

Mr. Judd agreed this is an extremely difficult lot with a limited building envelope. He feels in this circumstance there has been a good faith attempt. Because of the number of times the petitioner and his architect have been before the Building Dept, staff working on this, he thinks there has been mitigation. So, he will vote against the motion and in favor of the proposed plan.

The Chairman made one last comment that if this was his house he would not erect the wall. He believes we live in a community and that putting up a 6 ft. wall in the front yard is not very community like. He does not like that aspect of this proposal.

Motion failed, 3-4.

ROLLCALL VOTE

Yeas: Canvasser, Miller, Morganroth

Nays: Hart, Jones, Judd, Lyon

Absent: Lillie

Motion by Mr. Hart

Seconded by Chairman Lyon to approve Appeal 18-03, for the property located at 1598 Redding. He thinks that the appellant has demonstrated the difficulty of this particular property. He is personally familiar with this neighborhood and the geometry of the adjacent properties. He feels the appellant has demonstrated that they have tried to remediate.

This is a difficult property. Again, we have two front setbacks, we have an irregular shape, and so he moves to approve as advertised, calling in the drawings as part of the approval.

Chairman Lyon indicated he supports the motion because he believes it really meets the requirement that this property is unique, it being a corner lot with interior lots behind it. He believes that strict compliance would be unduly burdensome and prevent the adequate use of the property compared to what the surrounding neighbors can do. Also he believes the appellant has mitigated to a fairly substantial extent in the way they have shaped the house and reduced the front fascia of the garage in comparison to other neighbors.

Mr. Jones commented he feels the applicant's design and location of the house does substantial justice to the community. Applying for a variance is not a stigma and under these circumstances he believes the property merits the variance.

Motion carried, 4-3.

ROLLCALL VOTE

Yeas: Hart, Jones, Judd, Lyon

Nays: Canvasser, Miller, Morganroth

Absent: Lillie

T# 01-05-18

CORRESPONDENCE

Letter from a neighbor expressing opposition to the proposal for 1598 Redding.

T# 01-06-18

GENERAL BUSINESS

Mr. Johnson mentioned that he has forwarded an e-mail about available training for BZA members. The training will be at the Oakland County offices on January 30th. All are invited to attend.

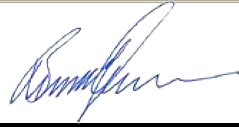
T# 01-07-18

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

T# 01-08-18

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 9:10 p.m.



Bruce R. Johnson, Building Official