

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, FEBRUARY 13, 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, February 13, 2018. Vice-Chairman Peter Lyon convened the meeting at 7:30 p.m.

Present: Board Members Kevin Hart, Jeffery Jones, Randolph Judd, Vice-Chairman Peter Lyon, John Miller, Erik Morganroth, Alternate Member Jason Canvasser

Also

Present: Francis Rodriguez, Alternate Member

Absent: Chairman Charles Lillie

Administration: Bruce Johnson, Building Official
Mike Morad, Asst. Building Official
Carole Salutes, Recording Secretary
Jeff Zielke, Building Inspector

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 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 no interpretations on this evening's agenda.

Vice-Chairman Lyon introduced the board's newest member, Francis Rodriguez, Alternate.

T# 02-09-18

APPROVAL OF THE MINUTES OF THE BZA MEETING OF JANUARY 9, 2018

Mr. Canvasser made changes to his motion as follows:.

Page 8 - Second full sentence delete "doesn't." Last line add "not" before "built."

Mr. Judd:

Also on Page 8 - First and second paragraphs, change Stephen Dor to Stephen Doerr.

Motion by Mr. Morganroth

Seconded by Mr. Jones to approve the Minutes of the BZA meeting of January 9, 2018 as amended.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Lillie

T# 02-10-18

1509 MARYLAND (adjourned from the meeting of January 9, 2018)

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. Last month the applicant did not have a very good drawing of the basement. Now a more detailed drawing has been provided.

In response to Mr. Morganroth, Mr. Morad confirmed the Michigan Residential Code requires every basement bedroom to have an escape window. He added for Mr. Jones that a survey of the lot would be required if the variance is granted. For Mr. Miller, Mr. Morad explained there is nowhere else the window well could be placed unless the floor plan is revised.

Mr. Marius Rauckis, the property owner, said he hopes to solve the pre-existing non-conformance that was there when he bought the property by installing an egress window in the bedroom. This will provide for the safety of his family and for rescue fighters who may need the window in an emergency. He described proposed landscaping that will help to minimize the appearance of the window well from the street.

Motion by Mr. Morganroth

Seconded by Mr. Canvasser regarding 1509 Maryland, Appeal 18-01, Chapter 126, Article 4, Section 4.30 C (4) with regard to the location of window wells.

Mr. Morganroth moved to approve. Although he feels that in many cases there could be a redesign of this existing non-conforming condition by moving the bedroom around, he thinks that the applicant has adequately shown that the existing condition of the basement; the mechanicals, the inability to put in other locations that are affected by exterior doors and other parameters, is a reasonable demonstration of a practical difficulty.

He does not think this will affect the neighbors or the property values in a negative way and it would do substantial justice to this applicant since the basement needs egress to properly use the bedroom. The motion is tied to the plans as presented and to make sure that the window well meets Code with whatever unit the applicant puts in.

There were no public comments on the motion at 7:45 p.m.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Lillie

Mr. Hart announced his support for the motion. He thinks it is commendable that the homeowner wants to devote this much time, effort, and money to make this a safe condition.

Mr. Miller said looking at the existing site conditions compounded by the existing conditions in the basement, it really forces the issue. There really is not another reasonable solution, given all of those conditions, so he would support also.

Vice-Chairman Lyon noted he would support as well. The public is really not going to see the window well due to the landscaping.

T# 02-11-18

**633 W. FRANK
Appeal 18-04**

The owners of the property known as 633 W. Frank request the following variance for a proposed detached accessory structure.

A. Chapter 126, Article 4, section 4.03 (G) of the Zoning Ordinance requires the maximum eave height on an accessory structure shall not exceed 12.00 ft. The applicant is proposing an eave height of 18.83 ft. Therefore, a variance of 6.83 ft. is being requested.

This property is zoned R-2.

Four letters have been received that oppose the requested variance.

Mr. Morad advised the applicant is currently in the process of constructing a new home with a detached garage at this property. The applicant is proposing alterations to the proposed detached garage that has been approved previously with a flat roof. This site was granted variances in 2016 for the new home.

Answering Mr. Morganroth, Mr. Morad believed the challenge besides just design that made the applicant reapply was to obstruct views of his pool by neighbors.

Mr. Jones received confirmation that nothing has changed since the 2016 variances were approved.

Mr. Morganroth received verification from Mr. Morad that the new proposed eave height is relatively the same as if there was a conventional ridge in the middle. It is shown that the massing of the proposed butterfly roof would be the same as a gabled roof.

Mr. Kevin Biddison, Biddison Architecture, 320 Martin, said basically they are requesting to create a roof structure that is in keeping with the original design of the house and in keeping with what visually will help the neighborhood. The proposed massing would be the same as if they were doing a traditional gable roof. They are not gaining or losing any space or volume by the request; it is purely aesthetic relative to the existing structure.

Mr. Morganroth surmised that something happened on the periphery of the property and the attempt is to hide it. Mr. Biddison responded that when the adjacent neighbor built his two-story garage with a window the applicant wanted to preserve his privacy from that point of view. They cannot do the butterfly roof from a different angle that would allow for the style without the height. In response to Mr. Jones' question, Mr. Biddison

said In his opinion the neighbors are not helped by something that doesn't fit and that doesn't look correct. To him that doesn't do justice to the neighborhood or the land owner. Mr. Jones said he is struggling with the idea that a flat roof was acceptable when granting the variances and now 18 months later this stylistic roof is being proposed as a benefit to the community. Vice-Chairman Lyon noted for the record that Mr. Biddison's client was granted variances in 2016 based on the plans that were presented at that time.

Mr. Canvasser questioned if the requested variance is denied this evening whether the applicant could put in a different roof or would they have to come back to the BZA because the board has only approved a flat roof at this point. Further he wondered whether trees could be planted in order to achieve the same effect of privacy. Mr. Biddison responded that because a Detroit Edison 6 ft. wide easement goes all the way along the back of the property they wouldn't be allowed to plant trees in that easement.

Mr. Miller thought the 12 ft. limitation on the eaves was set up to keep the neighborhood more uniform. He wondered whether the relationship to the rest of the neighborhood is to have that tall vertical wall right up against the adjacent property as opposed to the house which is further set back. So he is trying to understand whether the full reasoning is style or whether they are trying to set up a big screen in order to get more privacy. Mr. Biddison answered that it is a combination of both.

Mr. Jones asked if this evening's variance request is denied, can the applicant change the roof in any other way or does it have to remain a flat roof.

Mr. Judd said he is curious about the engine driving the variance request - is it aesthetics or reaction to the neighbor next door building a two-story garage with a window. On the one hand the architect indicates it is really aesthetics, but his client's letter to the board says it is a reaction to the garage that was built. Mr. Judd expressed his opinion that what seems to be the driving factor is the subjective reaction by Mr. Biddison's client to the perception of a problem. Mr. Biddison said he is asking the board to assess the proposed roof as a mass as they did with the original roof.

Vice-Chairman Lyon said the construction of a garage could have been foreseen because everybody is allowed to build an accessory structure 6 ft. from the lot line [in this case](#).

Mr. Biddison said if the house had a gable roof he would not be asking for a butterfly roof. He would be saying the style of the garage should match the style of the house. The flat roof did match because there are flat roof areas next to it on the adjacent garage portion, but a gable roof does not match the house. It was noted he could be consistent with the architecture by putting in a flat roof.

Mr. Hart observed this is a very unconventional structure and the Ordinance isn't really flexible enough to accommodate it. So he thinks the board has to look at it in the same light that they looked at it originally. The spirit of the Ordinance is to minimize the massing of the building. Mr. Biddison has demonstrated that if he were to do a conventional roof at the top, which he would be allowed to do, it would stick out completely contrary to the rest of the site and would look like an anomaly rather than a well designed feature.

In response to Mr. Jones, Mr. Biddison stated the flat roof was an appropriate roof to go along with the house.

Mr. Morganroth asked if there is a way to achieve the aesthetics of the butterfly roof if the flat roof is no longer palatable by lowering the butterfly slope or pitch. Mr. Biddison responded that there is. The reason the roof is at the requested pitch is because there needs to be volume up there in order to create usable space.

No one in the audience wished to comment on this appeal at 8:40 p.m.

Motion by Mr. Judd

Seconded by Mr. Jones in regard to Appeal 18-04, 633 W. Frank, an application for a 6.83 ft. variance pursuant to Chapter 126, Article 4, Section 4.03 (G), he would move to deny. In reviewing this matter several board members have commented on the fact that this is something of a case of first impression where 18 months after approval of a project that took several appearances here by the owner/petitioner they now seek to change a roof on a garage accessory building.

In reviewing this case and hearing the testimony from the architect, the one point that he was concerned with was what was the engine driving this particular case. Is it a reaction to a next door neighbor putting up a two-story garage with a window, or is this a genuine concern for aesthetics.

The petitioner seeks a variance for practical difficulty. As we discussed there are certain standards for that. In this case he doesn't feel that strict compliance with the Ordinance governing the height, bulk, and density would unreasonably prevent the owner from using the property for a permitted purpose, nor would it render conformity unnecessarily burdensome. If this is designed to be a house, whether or not we grant this it will still be a house. This is a garage which is accessory.

Second, whether granting this variance would do substantial justice to the applicant as well as the property owners in the district, and whether a relaxation would be applied to give substantial relief to the owner and be more consistent with justice for the other property owners. We have several communications written from property owners that are definitely opposed to this.

Third is the one that he found very intriguing: whether the plight of the owner is due to unique circumstances of the property and not the general conditions of the area. The presenter, Mr. Biddison, is saddled with a letter from his own client that seems to be at odds with his presentation. On the second page:

The decision to add the roof area is not about additional space but reacting to an adjacent building condition which did not exist when the original house and garage were designed.

Mr. Judd feels that there are no unique circumstances in this case and this is strictly reactive to that home with a two-story garage to the south.

Last, is whether the problem is self-created. In this case he certainly feels that it is. There would be no appeal if it wasn't for the perfectly legitimate and legal building of a structure in addition to a house directly to the south. By the claimant's own words and writing this problem is self-created in that he is reacting to this and really generating, becoming the engine, to cause this application for a variance.

For those reasons, Mr. Judd would deny.

Mr. Canvasser said he would support the motion and he disagrees with the contention that there can be a different roof here without the necessity for a variance. He disagrees that if the requested variance is denied anything can be built other than the flat roof at this point.

Mr. Jones concurred with Mr. Canvasser's statement. As Mr. Judd expressed, there is nothing unique about this circumstance, and it is self-created. Therefore, the request does not meet the requirements for granting a variance. Therefore he supports the motion. It would be nice if the City Attorney wishes to opine on this issue.

Mr. Miller also indicated he will support the motion. To him, keeping the garage very low was part of the overall approval and he doesn't see a compelling reason to pursue this appeal.

Mr. Morganroth stated he too will support. He agrees with his colleagues that the board's belief when they made a decision to approve the overall variances in conjunction with the plan as a whole including the flat roof was that any requested change even to a conforming roof within the other codes would not apply without an additional variance.

Vice-Chairman Lyon announced that he would reluctantly support the motion. The board looked at the total plan and that is what was approved. Also, the appellant has

stated for the record that there is not much unique about this. That makes it very hard to grant a variance. The only thing he found unique about this property is the unique house that is going on it potentially could match the garage, but the appellant has stated for the record that the flat roof matches the house also.

Motion to deny carried, 7-0.

ROLLCALL VOTE

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

Nays: Hart

Absent: Lillie

The board took a brief recess at 9 p.m.

T# 02-12-18

1563 LAKESIDE

Appeal 18-05

The owners of the property known as 1563 Lakeside request 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 46.40 ft. The proposed setback for the home is 33.40 ft.; therefore, a variance of 13.00 ft. is requested.

B. Chapter 126, Article 4, section 4.61 (1) of the Zoning Ordinance requires the minimum street side yard setback for this property to be 46.40 ft. The proposed setback for a covered porch is 27.40 ft.; therefore, a variance of 19.00 ft. is requested.

C. Chapter 126, Article 4, section 4.30 C (3) of the Zoning Ordinance requires that patios may not project into a required side open space. A proposed patio is projecting into the west required side open space 9.00 ft.; therefore, a variance of 9.00 ft. is requested.

This property is zoned R-1.

Mr. Zielke explained the applicant is proposing to construct a new two-story home with an attached garage. This corner lot is rectangular in shape, and has a required street side yard setback equal that of the existing front yards along the side street. There are two dimensional variances being requested to construct this home which are proposed to project into the required street facing side yard. A third variance is being requested to have a patio project into the required side yard.

In response to Mr. Morganroth, Mr. Zielke said it would be difficult to put a detached garage on this property.

Mr. John Jakupi, Residential Designer, explained they are seeking a variance for the setback, along with the patio and the covered porch. He showed that the allowable buildable area is about 1,850 sq. ft. That comes to 13.6% lot coverage. The setback restrictions make it prohibitive to create a floor plan that is practical. They are requesting the setback variance on Lakeside in order to bump out the lot coverage so that it is more consistent with the rest of the neighborhood.

Mr. Morganroth observed he does not see an attempt to box the house in order to minimize the encroachment into the setbacks.

Mr. Jakupi explained the square footage is well below what his client needed. They tried to manipulate the facade and setbacks in order to create a more architecturally pleasing design. They explored using up the envelope for the entire house and asking for a variance for a detached garage. However, with a detached garage they couldn't have living space above.

Responding to Mr. Canvasser, Mr. Jakupi advised the patio in the back is for grilling. The side yard patio is off of the cigar room and is meant for smoking outside.

Mr. Canvasser asked about mitigation to minimize the amount of variance or maybe to not require a variance. Mr. Jakupi responded the three car garage is 32 ft. wide. The Code states that the garage cannot be closer than 5 ft. to the front of the house. That is where the stairs are and everything else articulates back and forth from that point. Also, they will have the lot professionally landscaped to minimize the impact of the front patio. The homeowner has requested two patios as part of the design concept of the property.

Mr. Hart pointed out that the backyard is essentially 11 ft. 7 in. deep.

In answer to Mr. Morganroth's question about reducing the front porch down from 8 ft. x 7 ft., Mr. Jakupi said 4 ft. in depth is too narrow for a house of this size.

The Vice-Chairman invited public comments on this appeal at 9:10 p.m.

Mr. Toby Beakner, whose mother owns the house to the south, asked to have the landscaping documented because there is not a lot of space between the two driveways. Also, he thought the house seems big for the lot.

Motion by Mr. Hart

Seconded by Mr. Jones in regard to Appeal 18-05, 1563 Lakeside, he would move to approve the plans and specifications as presented. He thinks the appellant has done a very good job of trying to fit a nice home on a challenging lot.

Looking at the lot, if they were to apply all of the setbacks as they are written, there are 1,846 sq. ft. of buildable area. A decent sized 24 ft. x 24 ft. two-car garage is 576 sq. ft. That leaves 1,270 sq. ft. of buildable living space on the first floor.

As presented this floor plan provides 1,810 sq. ft. which is really a pretty commendable effort.

Mr. Hart feels that substantial justice to the neighborhood would be achieved because he thinks the level of quality of the house needs to be at this size. Further he thinks a three-car garage is appropriate and he thinks the designer has done his best to keep the encroachment from the front yard, which he feels is the most important on this lot, as far back as he could.

He doesn't think this was by any means self-created and he moves that the board approve it as presented and tie the motion to the plans as presented.

Mr. Morganroth said although he feels the setbacks in general are extreme in terms of the request, he also recognizes the challenge of the building envelope on this property. For the values of these properties on the street, he thinks there was a need to encroach in order to build a proper size home for the area. He feels the designer has mitigated down to what seems to be a very nice home with no extreme details that could be mitigated. For that reason, Mr. Morganroth will support the motion.

Mr. Jones thought the property is unique as to size and conformity of the lot. The nature of the lot and the size creates an anomaly that to him really screams at a practical difficulty. He feels the applicant has effectively mitigated the amount of requested variances. For those reasons he will support the motion.

Vice-Chairman Lyon stated he also will support the motion. The lot is unique because it is a corner lot that basically has two front setbacks. Variance requests have been mitigated and the plan keeps in conformance with the surrounding area.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Lillie

T# 02-13-18

**576 VINEWOOD
Appeal 18-06**

The owners of the property known as 576 Vinewood request the following variances for an addition and renovation of an existing non-conforming home.

A. Chapter 126, Article 4, section 4.75 A (1) of the Zoning Ordinance requires a private, attached single-family residential garage shall not occupy more than 50% of the linear building frontage. The existing garage structure is occupying 71.6% of the linear building frontage. Therefore, a variance of 21.6% (6.73 ft.) is requested.

B. Chapter 126, Article 4, section 4.75 A (1) of the Zoning Ordinance requires that attached garages be set back a minimum of 5.00 ft. from the portion of the front façade that is furthest set back from the front property line. The existing garage is 29.88 ft. in front of the furthest front facade. Therefore, a variance of 34.88 ft. is requested.

C. Chapter 126, Article 2, section 2.08 of the Zoning Ordinance requires the average front yard setback is the average of homes within 200.00 ft. The required front yard setback for this property is 27.29 ft. The existing setback of 25.50 ft.; therefore, a variance of 1.79 ft. is requested.

This property is zoned R-2.

Mr. Zielke noted the applicant is proposing to add a second story and construct an addition on the rear of an existing non-conforming home. This home was granted variances in 2009 to fill in an existing non-conforming carport to create a garage as it currently exists. The proposed renovation is requesting similar variances to maintain the previous variances with some modifications.

Mr. Zielke confirmed the following:

- For Mr. Miller that the garage is not moving.
- For Mr. Hart that the width of the garage is not changing, but the bumpout on the side expanded the width of the facade which reduced the variance from what it was in 2009. The 5 ft. was pushed further back by about 8 ft.

Mr. Sam Madorski, co-owner of the home, said they have completed several improvements to the exterior of the property that brought the overall site into compliance: namely the removal of asphalt that covered the property width to width and adding a variety of landscape plantings along with a brick paver driveway and walkway. That brought the property within the 65% open space requirement for the front yard. They are seeking to add a bedroom above the garage. The footprint of the garage will not expand, and it will only go up in height. Additionally they will be adding one story to the principal structure along with a small rear addition.

Motion by Mr. Miller

Seconded by Mr. Morganroth with respect to Appeal 18-05, 576 Vinewood, he would move to approve variances A, B, and C. He believes this problem was certainly not self-created. It relates to how the existing house sits on the existing site. The improvements would cause substantial justice to the surrounding homeowners - nice improvements to the house.

This certainly is a unique circumstance and the requested variances and changes to the house are very reasonable. The only reason, again, that these variances are needed is because of the way the existing house sits on the site.

Mr. Miller believes that some of the existing variances are being slightly mitigated by the new construction and, again, it should be a very nice addition to a house which is uniquely sited. With that garage in front, there is not many of those left in Birmingham; they are kind of a vanishing breed. But Mr. Miller thinks it is nicely augmented by the new addition. So, he would move to approve and tie the approval to the drawings as submitted.

Mr. Judd indicated his support of the motion. He recalled that back in 2009 the front yard was entirely pavement. He twisted the petitioner's arm to put some greenery there and he did. So, he has Mr. Judd's vote.

Additionally, Mr. Jones announced his support of the motion.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Lillie

T# 02-14-18

CORRESPONDENCE (none)

T# 02-15-18

GENERAL BUSINESS (none)

T# 02-16-18

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

T# 02-17-18

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 9:54 p.m.



Bruce R. Johnson, Building Official