

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, MAY 8, 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, May 8, 2018. 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, John Miller, Erik Morganroth

Absent: Alternate Board Members Jason Canvasser, Francis Rodriguez

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# 05-35-18

APPROVAL OF THE MINUTES OF THE BZA MEETING OF APRIL 13, 2018

Mr. Jones made the following change:

Page 10 - Last paragraph, second line, replace "25%" with "100%."

Motion by Mr. Lyon

Seconded by Mr. Morganroth to approve the Minutes of the BZA meeting of April 13, 2018 as amended.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

T# 05-36-18

195 BALDWIN

Appeal 18-08 (tabled from the BZA meetings of March 13 and April 10, 2018)

The Chairman advised that it appears the board did not finish with this matter at the last meeting. With only three votes to deny, there was a tie and the motion didn't pass. That is why the appeal is back this evening.

The owners of the property known as 195 Baldwin request the following variances to renovate and construct an addition on an existing non-conforming home.

A. **Chapter 126, Article 2, section 2.08** of the Zoning Ordinance requires the front yard setback is the average of homes within 200 ft. The required front yard setback for this property is 28.80 ft. The existing setback is 11.00 ft.; therefore, a variance of 17.80 ft. is requested.

B. **Chapter 126, Article 2, section 2.08** of the Zoning Ordinance requires a minimum rear yard setback of 30.00 ft. The existing setback is 5.00 ft.; therefore, a variance of 25.00 ft. is requested.

C. **Chapter 126, Article 2, section 2.08** of the Zoning Ordinance requires a minimum combined front and rear setback of 55.00 ft. The existing combined setback is 16.00 ft.; therefore, a variance of 39.00 ft. is requested.

D. **Chapter 126, Article 4, section 4.74 (C)** of the Zoning Ordinance requires the minimum distance between structures on adjacent lots to be 25% of the total lot width. The required distance between is 43.75 ft. The proposed is 39.58 ft.; therefore, a variance of 4.17 ft. is requested.

E. **Chapter 126, Article 4, section 4.75 A (1)** of the Zoning Ordinance requires that the attached garage 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 proposed garage is 6.76 ft. in front of the furthest front facade. Therefore, a variance of 11.76 ft. is requested.

This property is zoned R-2.

One letter in favor of granting the variances has been received.

Mr. Morad explained this home was granted variances previously in 2012 to construct a new single-family home with an attached garage. The owners are requesting similar variances that were initially applied in 2012, (A, B, and C) along with two additional for the proposed addition and renovation. However because the first three variances were tied to the plans the applicants need to request them again for their proposed renovation.

At the last meeting the petitioners were asking 5.17 ft. for variance D. So they have mitigated their request by moving upstairs bedrooms in 1.00 ft. Further, when the home was built the Ordinance was not in effect that requires the front of the garage to be set back 5.00 ft. from the portion of the front facade that is furthest back from the front elevation.

Mr. Travis Bray, the homeowner, said they met with City staff and the conclusion was to remove 12 in. from the northern-most section of the proposed renovation to reduce the amount of variance required. He noted that because his home is currently non-conforming, any kind of renovation would require that variances either be reapproved or new ones approved. He explained that when they apply all the rules to a lot of this shape, the result would be unbuildable. So they feel they have a hardship with regard to the uniqueness of their flag shaped lot. Adding to that uniqueness is the river and flood plain which is an unbuildable area. Their proposed renovation is still below the limitation of 30% lot coverage. Also, distance between homes is significantly better than average in Birmingham which is about 13.00 ft. Their closest neighbor would be 39 ft. away. He believes the new style of the home minimizes the need to create a further visual mass of property.

Mr. Judd recalled that last month when they discussed the variances Mr. Bray pointed out the same hardships or practical difficulties dealing with the lot shape, the river, and the flood plain as in 2012. The motion to approve in 2012 directly dealt with those issues so he feels those were addressed six years ago. Mr. Bray indicated he would appreciate the same approval for those same variances. A key point for him is that any time a change is made to this home which requires pulling a Building Permit they would have to come back to the BZA.

Mr. Morganroth asked what the practical difficulty is for living in the home versus extending the bedrooms. Mr. Bray said his growing family is driving their desire to renovate and make changes to how they can use the space.

Chairman Lillie inquired why they have to extend the existing garage front. Mr. Bray replied that a proposed mud room, family room, and moving the mechanical room push the first floor out to the north.

Mr. Judd noted he thought the variances that were granted in 2012 were quite generous. The house as it is functions. Mr. Bray did not feel they are requesting something unreasonable for this size lot and the circumstance. He does not think they are impeding their neighbors' views or building too close to them. However when they apply the rule of law to this kind of a lot, there is a need for variances.

No one in the audience wanted to comment on this appeal at 7:55 p.m.

Motion by Mr. Miller

Seconded by Mr. Lyon to approve Appeal 18-08, 195 Baldwin, variances A, B, C, D, and E. He believes the whole notion of setbacks in terms of front yard, side yard, back yard, all those meanings are skewed when you have a very unusual lot like this. He also believes that what the owner wants to do has been very carefully considered here. Really, the relationship of the lot, the adjacent lots and the existing sitting structure renders conformity quite burdensome.

No matter what is done here, we are not looking to align this with adjacent houses in the neighborhood or keep the street uniform. Whatever happens on this lot is going to be very unique. Again, it is a very unusual lot. Mr. Miller thinks that the problem is created due to the lot and due to its unique circumstances. So he submits to approve, tied to the plans as submitted.

Mr. Jones indicated his support for the motion due to the uniqueness of the lot. With regard to substantial justice to the community, one has to trespass to see the house. He thinks the petitioner is correct in saying what could be built would affect the community much more.

Chairman Lillie noted he will vote against the motion only because of variance E. The uniqueness of the lot has nothing to do with extending the garage in front of the furthest front facade, rather than having it 5 ft. back from the furthest front setback. Mr. Judd concurred with the Chair's remarks. He will not support and agrees that reconsideration of variance E might change things considerably.

Mr. Lyon advised he will support the motion. In order to not need the variance for the distance between structures the petitioner could have gone with a much taller more massive building. It is Mr. Lyon's preference to allow a wider building and keep it low with a flat roof.

Mr. Hart agreed to support the motion and noted the garage is not very large from the nose to the tail end of a car. Again, this is a very unique lot.

Mr. Morganroth was glad to see there was some attempt to mitigate and he will support the motion.

Motion carried, 5-2.

ROLLCALL VOTE

Yeas: Miller, Lyon, Hart, Jones, Morganroth

Nays: Judd, Lillie

Absent: None

T# 05-37-18

**411 Coolidge
Appeal 18-10**

The owner(s) of the property known as 411 Coolidge request the following variances to construct an addition with an attached garage to an existing non-conforming home:

A. **Chapter 126, Article 4, section 4.74 (C)** of the Zoning Ordinance requires the minimum distance between structures on adjacent lots to be 25% of the total lot width. The required distance between is 14.00 feet. The proposed is 10.52 ft.; therefore, a variance of 3.48 ft. is requested.

B. **Chapter 126, Article 4, section 4.61 (1)** of the Zoning Ordinance requires a corner lot which has on the side street an abutting interior residential lot shall have a minimum setback from the side street equal to the minimum front setback for the zoning district in which such building is located. The required street side yard setback for this property is 26.30 ft. The proposed setback is 12.89 ft.; therefore, a variance of 13.41 ft. is requested.

This property is zoned R-2.

Mr. Morad reported that he property is a corner lot with a street-facing side yard. The existing home is non-conforming. The applicant is proposing to construct an addition with attached garage in front.

Chairman Lillie noted the addition is extending the existing plain on the north and south side of the house. In the case of the southern side it is extending it only 16.67 ft. and the garage is stepped back.

It was discussed after examining the Survey that the distance between structures is 10.50 ft. rather than 10.52 ft. Therefore the variance would be 3.50 ft.

However, Mr. Troy Shantos, Architect for the project, explained there is brick on the existing house on the north side. He is proposing to have no brick on the addition so it will step in a few inches. The existing distance right now is 10.48 ft. His variance for adding on to the house would step in and make that 10.52 ft. to the adjacent house.

Further, the second floor addition will follow the siding and not the brick so there will be a step in at the top of the brick.

Mr. Shantos said they are trying to be as unobtrusive as possible to the site. So they thought it was most sensible to have the variance along the north side and also follow the line on the south side out to a practical distance within the buildable area of the home.

There were no public comments on this appeal at 8:17 p.m.

Motion by Mr. Lyon

Seconded by Mr. Jones in regard to Appeal 18-10 for 411 Coolidge. He moved to grant the variance as advertised. The appellant seeks a variance under Chapter 126, Article 4, section 4.74 (C) for the minimum distance between buildings, and Chapter 126, Article 4, section 4.61 (1) for corner lot side setback.

This is a variance on our normal case of 9-5, 9-5, 5-9 in that the driveway needs to go toward the corner lot and the house to the side has built theirs to the drive on the other side so they can't stay the required 9 ft. away from the interior house.

The other thing is this is a very long lot; therefore, strict compliance with the corner setback equal to the front setback of the interior street would be unduly burdensome.

This is fairly unique to the property and not the City in general, the way this lot is laid out and then our required minimum distance between buildings. There is always the one on the street that is going to end up needing a variance because the driveway is not going to be on the regular side.

Mr. Lyon believes the appellant has done something to mitigate this by stepping in the addition in the rear, also removing the brick, pulling it in, and he would tie the motion to the plans as presented.

Mr. Miller added that he thinks the combination of having a corner lot and the way the existing structure sits on the corner lot, and this proposal which is actually quite modest is very reasonable. Therefore he would also support the motion.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: None

T# 05-38-18

**191 N. CHESTER
Appeal 18-11**

The owner(s) of the property known as 191 Chester request the following variance(s) to allow the renovation of an existing building for use as an office building:

A. **Chapter 126, Article 4, section 4.24** of the Zoning Ordinance requires office uses in between 10,001 and 50,000 sq. ft. in size to provide one off-street loading space. The proposed development contains 22,470 sq. ft. of office space, thus is required to provide one off-street loading space. The applicant is not proposing a loading space, Therefore, a variance for one loading space is requested.

This property is zoned TZ-2.

Mr. Baka explained the applicant is proposing to renovate an existing church building to be used for office. The applicant has stated that due to the nature of the proposed use as office, large delivery trucks will not visit the site. Also, due to site restrictions and the proximity to adjacent single-family residential homes, the creation of a loading space would negatively impact the neighborhood. There are additional restrictions due to the elevations of the property as well. The applicant is required to obtain a Special Land Use Permit ("SLUP") for an office use over 3,000 sq. ft. The Planning Board recommended approval of the SLUP and Final Site Plan to the City Commission on April 25, 2018. The applicant is scheduled to return to the Planning Board to complete some outstanding issues with their Community Impact Statement. They will appear before the City Commission for final approval of their SLUP on June 4, 2018.

Mr. Baka verified for the Chairman that there are three existing parking spaces on the property that do not meet the Ordinance. The applicant is proposing to add a new driveway that accesses underground spaces off of Willits. Several variances would be required to put a loading space in front of the building. It would not be big enough.

Mr. Baka further noted for Mr. Miller that the applicant met with the neighbors before they came to the Planning Board and they have letters of support from most of the neighbors on the street.

Mr. Morganroth asked if this request is approved and the building is sold for a different use, whether the approval would carry over to the new use. Mr. Baka answered this property is zoned TZ-2 and almost every use in a TZ-2 that is over 3,000 sq. ft. requires a SLUP. So, if the sale were to create issues, the City Commission would have authority to approve or not approve the SLUP.

Mr. Lyon received confirmation that this property is located in the Parking Assessment District.

Mr. Kevin Biddison, Biddison Architecture, 320 Martin, spoke on behalf of the petitioner. This is a unique site because of the grading that goes up and down. The slope that goes into the garage is fairly steep. From a grading standpoint there is not a way to get in a loading space on the sides of the building. They talked to Engineering about the two spaces that are in front of the building and there is the option to buy some hoods for a couple of parking spaces for an hour or two to allow loading or unloading. That would happen early in the morning or at the end of the day. There is really no place on the site to put in a loading space. The garage which is the existing basement of the church has only about a 10 ft. ceiling. It would be possible for a UPS truck to pull into the driveway for a short time without blocking the sidewalk.

No members of the public wished to comment on this appeal at 8:37 p.m.

Motion by Mr. Lyon

Seconded by Mr. Morganroth in regard to Appeal 18-11, 191 N. Chester, he would move to approve. The appellant seeks a variance under Chapter 126, Article 4, section 4.24 requiring a loading space for office uses between 10,001 and 50,000 sq. ft. The variance is to not provide the one loading space.

Mr. Lyon believes that strict compliance would be unduly burdensome due to the conditions of the property. It is an existing church in an almost downtown area abutted on two and a half sides by residential. Because of that, strict compliance would be unduly burdensome to force them to put in a loading spot of 12 ft. x 40 ft.

He thinks that it does substantial justice to everybody, including the owner and the surrounding area. This is an office and they do not expect significant deliveries. The appellant is well versed in office spaces and parking situations in Birmingham.

Also, Mr. Lyon believes this is not self-created. It is a renovation of an existing older church so it is not a blank slate and the conditions that exist today are going to pretty much maintain through the renovation of the building. Therefore he would tie the motion to the prints that were submitted tonight and to the use as an office building.

Mr. Jones observed that somewhere down the road the Ordinance might be amended to include a use, rather than just the size of the building. He will support the motion.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: None

T# 05-39-18

CHAPIN

Appeal 18-16

The owner(s) of the property known as 1066 Chapin request the following variance to construct a new single-family home with a detached garage:

A. **Chapter 126, Article 4, section 4.74 (C)** of the Zoning Ordinance requires the minimum distance between structures on adjacent lots to be 25% of the total lot width. The required distance between is 14.00 ft. The proposed is 10.60 ft.; therefore, a variance of 3.40 ft. is requested.

This property is zoned R-3.

Mr. Zielke reported that the proposed new single-family home meets the zoning requirement on the property itself. This property is set between homes on each side that have side yard setbacks of the minimum 5.00 ft. This property matches all the Zoning Ordinances. The problem is just the distance between the house on the west.

Chairman Lillie said that on a given street if all the driveways are either on the left side of the house or on the right side of the house, one of the corner lots will wind up having a problem with the distance between buildings.

Mr. Rick Merlini, Living Well Custom Homes, noted the biggest issue is that no matter which side he puts the driveway on, he would need a variance. So he decided to keep the driveway that is there on the left side.

At 8:45 p.m. no one in the audience wished to comment on this appeal.

Motion by Mr. Miller

Seconded by Mr. Morganroth to approve Appeal 18-16, 1066 Chapin. It is pretty straight forward here: the hardship is caused due to the position of the homes on the adjacent lots on either side. That problem was not self-created; it certainly is unique.

The structure that is proposed to be built on the lot is very reasonable. Certainly it will do substantial justice to the neighborhood. Strict compliance would render an unnecessary burden to this proposed structure.

So, the motion is to approve, tied to the plans as submitted.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: None

T# 05-40-18

Chairman Lillie opted to hear Appeals 18-17 and 18-18 as one appeal, as they are essentially the same.

34965 WOODWARD AVE.

Appeal 18-17

The owners of the property known as 34977 Woodward Ave. are appealing the decision of the Planning Board to grant Final Site Plan Approval for the property located at 34965 Woodward Ave.

A. **Chapter 126, Article 7, section 7.31** of the Zoning Ordinance grants adjacent property owners aggrieved by a decision of the Planning Board the right to appeal that decision to the Board of Zoning Appeals ("BZA").

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

Mr. Baka explained the B-4/D-4 zoning allows for the construction of a five-story building with Site Plan Approval from the Planning Board. The application was granted Final Site Plan Approval for the construction of a five-story building on February 28, 2018.

This proposal is substantially the same as the Preliminary Site Plan that the BZA saw last November, but there are some changes. The sides of the building have been recessed to create room between the adjacent buildings. In those recessed areas they have used the same material that is on the east and west facades.

The Chairman received clarification that under the Ordinance the property owner is able to build right up to the lot line.

Mr. Baka explained for Mr. Morganroth that the new recessed areas go up from the second floor.

Mr. Michael Vogt, Attorney from Dykema Gossett in Bloomfield Hills, was present for the applicant. He explained they are before the board again because of a unique feature within the Zoning Ordinance which gives the impression that parties have the ability to appeal not only the Final Site Plan Approval but also the Preliminary Site Plan Approval. They have appealed the Preliminary Site Plan Approval and now the Final Site Plan Approval in order to make sure they didn't waive any rights along the way.

There have been discussions with the proponents of the project which have resulted in some modifications to the Final Site Plan and addressed some of the concerns that have been raised. However, there are still a number of inconsistencies with the Final Site Plan which render it inconsistent with the Zoning Ordinance and that should have led the Planning Board to deny Final Site Plan Approval at this time. The Final Site Plan remains deficient in some respects because:

- It cannot satisfy the Zoning Ordinance Standards for site plan approval;
- It remains inconsistent with the Master Plan;
- It offers no detail as to how the building can be constructed and maintained without trespassing;
- With regard to the western-most side of the southern façade, the building will now entirely block eight existing windows that are occupied by commercial tenants within the Balmoral Bldg.;
- Because the project's first-floor height is so much greater than that of the Balmoral Bldg., it appears the first-floor wall will be about 7 ft. from the Balmoral's second-floor windows;
- With regard to the northern façade of the project which faces the Greenleaf Trust Bldg., the entire middle area will be built up to the property line for five floors, directly across from existing balconies which are occupied by Greenleaf's commercial and residential tenants.
- The Final Site Plan doesn't meet the criteria of Ordinance section 7,27 with regard to the provisions requiring adequate air and light and the prohibition against diminishment of value of the adjacent parcels;
- The project is inconsistent with the vision of the Master Plan for this area of the City as it is incompatible with the adjacent structures; and
- Finally, there is not adequate parking capacity to accommodate the parking demand that this building will create.

Therefore, they ask that the BZA reverse the Planning Board's granting of Final Site Plan Approval.

Chairman Lillie inquired how this is an abuse of discretion by the Planning Board. Mr. Vogt responded there was no evidence to contradict a substantial diminishment of value, and on that point he would argue there was abuse of discretion.

Mr. Lyon countered by asking how the Planning Board who granted Final Site Plan Approval for both of his clients' buildings did not abuse their discretion by diminishing

the value of the subject lot by building to the property line. Mr. Vogt replied there is no evidence to show that property was diminished in value. He would say the value of that property skyrocketed because of the redevelopment and construction of the two adjacent Class A benchmark buildings. Mr. Lyon noted that it seems to him that just because Mr. Vote's clients built first, somehow the Peabody organization can't build the building they want and are entitled to. Mr. Vogt answered they had to meet all of the same criteria and it was found to be met. However in this case it can't be said that the project as proposed meets all of the criteria of section 7.27.

Mr. Lyon stated that the issue is somewhat self-created because Mr. Vogt's clients elected to build right to the lot line and install windows, knowing that someday an adjacent building could go in right up to their lot line. He added that those clients diminished the value of the lot in question because the same standards apply. Mr. Vote noted that significant design and material expense went into the northern façade of the Balmoral Bldg. because the City impressed upon the developers the importance of making that side of the building architecturally noteworthy and a showcase for the City.

Mr. Jones said that from everything he has read and heard, the Planning Board has looked at the objections that have been raised and reached a decision contrary to the applicant's. So he wondered how a difference of opinion relates to an abuse of their discretion. Mr. Vogt replied they are asking the BZA to look at the decision of the Planning Board in the context of the evidence that was before them and the requirements of the Ordinance for Final Site Plan Approval. They are asking this body to find that the Planning Board with the evidence it was presented should not have granted Final Site Plan Approval. Mr. Jones said he understands what Mr. Vogt is saying, but he still believes that those issues were before the Planning Board and they reviewed them, and discussed the reason for their decision.

Mr. Judd said he did not see in the transcript of the Planning Board proceedings where there is an abuse of discretion by the Planning Board. He asked the applicant whether he is prepared to point out in the transcript the page and line that establishes for his satisfaction an abuse of discretion. Mr. Vogt answered that in their written materials they have addressed everything they have seen as being inconsistent and/or a violation of the Zoning Ordinance with regard to the Planning Board's approval in both the Preliminary and Final Site Plan. So, their argument isn't simply that the Planning Board made the wrong decision; it is that the decision they made couldn't have been met under the very guidelines which govern the process. That is where the abuse of discretion standard comes in.

Mr. Judd continued that he would like Mr. Vogt to point out a page and line in the transcript that establishes in his mind abuse of discretion by the Planning Board. Mr. Vote replied he is not prepared to identify language in the transcript or in the video transcription. There is no requirement to his knowledge either in the Ordinance or in the State of Michigan by statute or case law that would require an appellant before the

Board of Zoning Appeals to be able to stand up and specifically identify language in a written transcript or video transcript in order to make their case. He added they could not have been any more thorough in their analysis and in all of the materials they provided, both to the Planning Board and to this board. So, they rely upon their written submissions and all of the positions they have taken.

Mr. David Shackle, Attorney from Carson Fisher, spoke on behalf of owner of the property and the developer. The petitioners have not identified any basis for the petitioner to overturn the decision of the Planning Board. Every issue brought before this board was addressed very thoroughly by the Planning Board. This is simply a case where both petitioners built to the property line. Now they are taking every opportunity to try and prevent their competitors from doing the same. This is a business dispute and not a BZA dispute. These are the same issues and complaints that this petitioner has raised throughout this entire process.

No one from the audience commented on these appeals.

Motion by Mr. Judd

Seconded by Mr. Lyon in the matter of Appeals 18-17 and 18-18, 34965 Woodward Ave., the board is asked pursuant to MCL 125-3603 to review a decision made by the Planning Board and determine whether or not there has been an abuse of discretion. In doing so, the petitioner representing both of the aggrieved parties has provided us with written materials including a transcript of the regular meeting of the Planning Board on Wednesday, February 28, 2018 dealing with this, and other materials that the petitioner has asserted will sway our opinion in favor of the petitioner.

After listening to this and questioning the attorney representing the petitioner, Mr. Judd personally feels that the burden has not been met by the petitioner to establish an abuse of discretion. What we have been presented with are claims of inadequacy on the part of the Planning Board to address certain features which the petitioner feels are important. In reading the transcript provided, it would appear that the members of the Planning Board feel that they have addressed those issues quite directly and quite succinctly.

It comes to us to determine whether or not there has been an abuse of discretion, and he would assert that an abuse of discretion certainly exceeds a disagreement among parties, one of those parties being the Planning Board. Mr. Judd feels that the records presented demonstrate that the Planning Board followed the proper procedures and standards of a Planning Board. He does not feel that there has been an establishment by the appellant of an abuse of discretion and most telling to him is the fact that, while a transcript was provided to us, and it has always been our requirement to have a transcript; hopefully one that is marked and annotated to let us know exactly where the alleged abuse of discretion has taken

place, the appellant's attorney in this case invests that has not been done, and in fact seemed to indicate that the indication that this might be a requirement is unfair and I feel was rather cavalier in dismissing the questioning about the content or lack of content in that.

For those reasons Mr. Judd would move to affirm the decision of the Planning Board and deny the appeal taken by the petitioner, specifically in that there has been no proof of an abuse of discretion.

Mr. Lyon agreed with Mr. Judd's observation that there was a disagreement, but that does not necessarily make it an abuse of discretion. After reviewing the materials provided, he is of the opinion that the Planning Board proceeded on the right course and there was no abuse of their discretion and they acted according to the Ordinance.

Mr. Morganroth supported the motion. His perception is that the issues that the appellant has presented are all items that were presented to the Planning Board and every issue was considered. He cannot, knowing that information, find any abuse of discretion.

Mr. Jones said he will support the motion as well. He sees no evidence that the Planning Board violated the Ordinance. He concedes that it is not the petitioner's duty to spoon feed us, but it might have assisted their cause.

Mr. Miller indicated that he also didn't find any of the petitioner's arguments or evidence very compelling at all. This is an urban context with zero lot lines. It seems the situation certainly should have been anticipated. Therefore, he would support the motion.

Appeal 18-17

Motion to uphold the decision of the Planning Board carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: None

T# 05-41-18

34965 WOODWARD AVE.

Appeal 18-18

The owners of the property known as 34901 Woodward Ave. are appealing the decision of the Planning Board to grant Final Site Plan Approval for the property located at 34965 Woodward Ave.

A. **Chapter 126, Article 7, section 7.31** of the Zoning Ordinance grants adjacent property owners aggrieved by a decision of the Planning Board the right to appeal that decision to the Board of Zoning Appeals.

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

Mr. Baka explained the B-4/D-4 zoning allows for the construction of a five-story building with Site Plan Approval from the Planning Board. The application was granted Final Site Plan Approval for the construction of a five-story building on February 28, 2018.

Appeal 18-18

Motion to uphold the decision of the Planning Board carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: None

The board took a short break at 9:35 p.m.

T# 05-42-18

425 HARMON

Appeal 18-19

The owner(s) of the property known as 425 Harmon request the following variance(s) to construct patios in the required rear and side yard:

A. **Chapter 126, Article 4, section 4.03 (B)** of the Zoning Ordinance allows structures to occupy a portion of the rear open space. They shall be at least 3.00 ft. from any lot line. The proposed structure is to be located 2.25 ft. from the side lot line; therefore a variance of 0.75 ft. is being requested.

B. **Chapter 126, Article 4, section 4.03 (C)** of the Zoning Ordinance requires structures on corner lots where a rear open space abuts a front of side open space. Structures on a corner lot shall have a minimum setback of 5.00 ft. from the rear lot line. The proposed structure is to be located 2.62 ft. from the rear lot line; therefore a variance of 2.38 ft. is being 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 east required side open space 16.75 ft.; therefore, a variance of 16.75 ft. is requested.

D. **Chapter 126, Article 4, section 4.03 (A)** of the Zoning Ordinance does not allow structures to be erected in the required front and side open space. A variance to construct a proposed retaining wall in the street facing side yard is being requested.

E. **Chapter 126, Article 4, Section 4.03 (A)** of the Zoning Ordinance does not allow structures to be erected in the required front side open space. A variance to construct proposed retaining walls/steps in the street facing side yard is being requested.

This property is zoned R-2.

Mr. Zielke explained the applicant is proposing to construct retaining walls in the rear and side yard open space to allow the installation of patios in both areas. This is a corner lot with a street-facing side yard. This property has an existing stone retaining wall that is located in the R-O-W, which is proposed to be moved back onto the property in the rear yard in this proposal.

Chairman Lillie received clarification that walls become a structure when they retain back the earth.

Mr. Miller noted the walls on the street side are maybe 2 ft. high. Mr. Zielke added that on the property side they are pretty much flush with grade. From the lot there is no wall. From the sidewalk there is a perception of a wall that holds back the earth and accommodates the slope of the grade.

Ms. Maxine Lievois spoke to say that together with her husband she owns the subject property. Their front door faces Bonnie Brier and the property would be consistent with all the homes along the street with regard to the stone walls that have been put up. They have undergone a significant remodel of their home and now they are finally working on the landscaping phase. The patio area is very important to them because they don't have any other outdoor space. This is their practical difficulty. She added that the requested variances would enable them to landscape in a manner that is both tasteful and consistent with their neighbors along Bonnie Brier. Every neighbor that they were able to speak with supported their requested variances. She submitted signatures from the homes that have approved the plan.

The Chairman explained to Ms. Lievois that just because all of the neighbors approve doesn't mean she is entitled to a variance.

No one from the public wished to speak at 9:55 p.m.

Motion by Mr. Miller

Seconded by Mr. Morganroth to approve Appeal 18-19, 425 Harmon. He thinks that the appeal is needed due to the position of the existing structure on the lot and also to the topography. As you move further to the south down that same street, the topography gets more radical until you actually drop into the ravine and the river.

So, the use of retaining on that lot is not, he doesn't believe, unreasonable. The walls really are not enclosure walls; they are incidental to the site. They are to stabilize the land and create a flat area for the patios and the steps in the same way.

Mr. Miller believes this problem is due to some unique circumstances with the lot. It certainly would do substantial justice to the neighborhood. If you look at the positions of the other houses down the street and the way that they have dealt with some of the topography, it is very similar and helps with the continuity down the street.

He thinks it would be certainly burdensome to have to abide by the letter of the law, again with the positioning of that house on the lot. So he thinks that what is being asked here is very reasonable and again he moves to approve, tied to the plans as submitted.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: None

T# 05-43-18

**1185 WILLOW
Appeal 18-20**

The owner(s) of the property known as 1185 Willow request the following variance to construct and addition on an existing non-conforming home:

A. Chapter 126, Article 4, section 4.74 (C) of the Zoning Ordinance requires the minimum distance between structures on adjacent lots to be 25% of the total lot width. The required distance between is 20.00 ft. The proposed is 18.70 ft.; therefore, a variance of 1.30 ft. is requested.

This property is zoned R-1.

Mr. Zielke reported that the existing home is non-conforming. The applicant is proposing an addition to each side of the home. The addition on the south side is proposed to extend from the existing wall line of the existing home.

Chairman Lillie received confirmation that if this house had been built 1.3 ft. further north it would comply with the required side yard setbacks and a variance for distance between houses would not be needed. The existing plain of the house is being extended on the south.

Mr. Joseph Mosey, Joseph Mosey Architecture, said his clients, Larry and Maria Suarez, want to update their house which was built to 1960 standards. They are asking for the 1.30 ft. variance to extend the existing building going back. The house is non-conforming in regards to the distance between buildings. Going back with the addition they are decreasing the existing non-conformity because of the angle of the house. They are proposing a one-story addition with a shed roof in the area of concern, totally in line with the existing side of the house.

Responding to the Chairman, Mr. Mosey said they cannot indent the addition by 1.3 ft. because the way the rooms are set up it makes sense to just go straight back

There were no comments from the audience on this appeal at 10:03 p.m.

Motion by Mr. Lyon

Seconded by Mr. Morganroth in regards to Appeal 18-20, 1185 Willow. The appellant seeks a variance under Chapter 126, Article 4, section 4.74 (C) of the Zoning Ordinance for minimum distance between structures on adjacent lots to be 25% of the total lot width. In this case it requires 20.00 ft. and the proposed is 18.70 ft. Therefore a variance of 1.30 ft. is requested.

Mr. Lyon would move to approve the variance as advertised. He believes that strict compliance would be unduly burdensome due to the existing peculiarities of the lot.

The existing house has been here quite some time. The appellant wishes to add on a modest rear expansion that is completely in line with the existing plain of the house. From a vantage standpoint they are not really increasing the non-conformity. From a volume standpoint they are.

He doesn't believe this is self-created in that the house is an existing house. There has been no evidence to indicate that the appellant built the house.

He believes the granting of this variance does justice to the appellant and the surrounding neighborhood and he would move to tie it to the plans as presented.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: None

CORRESPONDENCE (none)

T# 05-44-18

GENERAL BUSINESS

Mr. Lyon announced that due to an impending departure from the City of Birmingham he unfortunately has to resign his position as vice-chair of this board. All were sorry to hear that.

Motion by Mr. Jones

Seconded by Mr. Lyon to nominate as a new vice-chairman the board's former vice-chairman, Randolph Judd.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

Chairman Lillie talked about procedure. As he explained earlier, last month they had the situation where there were only six board members present. The first motion was to deny and it was a tie vote. They should then have made a motion to grant and it would have been a tie. But since the petitioner did not get four affirmative votes their petition is denied.

He asked the board what they think of that procedure, do they want to codify it or take the position that if the vote is a tie the appellant is given the right to come back the next month. Mr. Miller said if there were five board members present and the appellant elected to go ahead and they got three positive and two negative votes, that would not be enough to carry because four affirmative are required to pass a motion.

The board discussed whether it should take four affirmative votes to deny as it does to approve. Technically if an appellant comes back before the board the same panel should hear their case. Board members were in favor to codify that on a night when six members are present and there is a tie vote to deny, then flip with another motion to approve. If there are not four affirmative votes to approve, the petition is denied.

T# 05-45-18

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

T# 05-46-18

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 10:22 p.m.



Bruce R. Johnson, Building Official