

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, JULY 10, 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, July 10, 2018. Vice-Chairman Randolph Judd convened the meeting at 7:30 p.m., welcomed Mr. Canvasser as the newest regular board member, and appointed him as temporary Chairman.

Present: Board Members Jason Canvasser, Kevin Hart, Jeffery Jones, Vice Chairman Randolph Judd, Erik Morganroth

Absent: Chairman Charles Lillie; Board Member John Miller, Alternate Board Member 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.

As only five board members were present, Chairman Canvasser give the appellants an opportunity be postponed to the next meeting when a more full board might be present. The first two appellants wished to go forward.

T# 07-54-18

APPROVAL OF THE MINUTES OF THE BZA MEETING OF JUNE 12, 2018

Motion by Mr. Jones

Seconded by Mr. Morganroth to approve the Minutes of the BZA meeting of June 12, 2018 as presented.

Motion carried, 5-0.

VOICE VOTE

Yeas: Jones, Morganroth, Canvasser, Hart, Judd

Nays: None

Absent: Lillie, Miller Rodriguez

T# 07-55-18

34977 WOODWARD AVE.

Appeal 18-23

The owner(s) of the property known as 34977 Woodward Ave. request the following variance(s):

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 tenant is located on the first floor of the building, which is accessible from one entrance on Peabody. The applicant is proposing four signs where one is permitted. Therefore, a variance to allow four signs where one entrance exists is requested.

B. Chapter 86, Article 01, Table B, Ground Signs, permits ground signs to be constructed up to a height of 8.00 ft. The applicant is proposing a ground sign at the height of 21.50 ft. Therefore, a variance of 13.50 ft. is requested.

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

Mr. Baka advised the applicant is requesting new signage for a first-floor tenant space that fronts on three streets (Peabody St., E. Maple Rd. and Woodward Ave.). The entrance to the restaurant is located on Peabody St. The applicant is proposing one sign per elevation as well as one sculpture that incorporates the initials of the restaurant and is therefore considered a sign. The previous restaurant located in this space had four signs as well which were considered legal non-conforming. As discussed at recent Board of Zoning Appeals meetings, the Overlay Signage Standards are currently under review by the City for modification or elimination. The Historic District Commission ("HDC") and the Design Review Board ("DRB") have studied this topic and both boards recommended elimination of the Overlay Standards.

Mr. Jones noticed that three of the proposed signs are the same size as an awning valance. In response to Mr. Morganroth, Mr. Baka explained this amount of signage

would be allowed if the applicant was not under the Overlay Signage requirements. Further, the sculpture could be allowed without the initials "HRD."

It was discussed that the change in the Sign Ordinance might occur within three to four months.

Mr. Roman Bonislowski, Ron and Roman Architects, Architect for the appellant, noted they are bringing in a new casual dining atmosphere with a great operator. The prominent weathervane sculpture is intended to indicate the Peabody entrance location. They feel this is the minimum amount of signage needed in order to give this business the best opportunity for success.

Mr. Judd said he does not understand the sculpture and is not on board with it. Mr. Bonislowski advised that with the elimination of "HRD," the sculpture would not have to be considered by the BZA.

Mr. Morganroth pointed out the challenge is that this building is littered with signage. He indicated that obviously this is a diverse board, His favorite part of this signage is the sculpture with its bright color. Mr. Bonislowski commented that the unique circumstance surrounding this project is that the presence is on Woodward Ave. and Maple Rd. but the entrance is on Peabody. A problem is that the entrance to the restaurant is completely isolated from the visuals of the restaurant. This is the third restaurant moving into that space and they are trying to provide them with the best opportunity for success.

Mr. Hart agreed. This is a beautiful, stately building but something whimsical is needed to attract attention to it. He asked if there is a way to bring the entrance out to Woodward Ave. Mr. Bonislowski replied they are removing the storefront wall and creating an outdoor patio with a small market inside that will offer coffees, along with wonderful foods and rolls and pastries. It will be protected from the weather and heated in the winter.

The Chairman called for members of the public to speak on this appeal at 8:05 p.m.

Ms. Marla Kaftan, 850 Purdy, said she admires the piece of art that is proposed for that location. It is a nice way to round out the art in the City.

Mr. Roger Young, Young and Young Architects, said he agrees with the comments supporting the piece of art work. The building has a dark and ominous feeling and it needs something to make it more uplifting and inspiring. Anything that can be done to help the new restaurant owners succeed is a plus.

Motion by Mr. Hart

Seconded by Mr. Jones to approve Appeal 18-23, 34977 Woodward Ave., variance A, under Chapter 86, Article 01 section 1.10 B (4) d. Mr. Hart thinks that considering the number of signs on the existing building and the previous operations at the site, the Board should try to apply the same level of signage and allow this recognition of the restaurant to carry over and to assist on this difficult site.

Mr. Hart thinks that the appellant has demonstrated that there is a significant practical difficulty. He tied his motion to the plans and documents that were attached to the case description.

Mr. Morganroth spoke to support the motion. He sees the value of that corner and he is drawn to the art. He would like to see the art changed and removed as a sign and potentially approved that way.

Mr. Jones said he supported the motion primarily to bring the issue before the Board. The Ordinance that exists is unworkable, especially in this island of Peabody, Woodward Ave. and Maple Rd. The Board is at sea because it has been told that this Ordinance is in flux. The frustrations and problems also exist by virtue of the design of the building with its entrance off of Peabody. This is about as unique a situation as there is in town. He has concluded that the requested signage is minimal at best. As much as he is reluctant, he doesn't see any direction other than to support the motion and grant the variance.

Mr. Hart agreed this is a unique circumstance. It has been shown this is a troubled site and there are hardships built into the building. So to him this is a unique situation and the board would not be setting a precedent by granting the variance. This type of operation does not exist elsewhere in the City and it is part of this Board's job to uphold the spirit of the Ordinance.

Mr. Judd noted that the present Ordinance is in flux. However it is not the Board's job to write or re-write it. It is their job to interpret.

Chairman Canvasser indicated he will not support the motion. He can support three signs but not the monument sign. The Board is not asked to approve a piece of art; it must be called what it is, a sign. The appellant has stated there can still be a piece of art that would call attention to the corner without the initials.

Motion carried, 4-1.

ROLLCALL VOTE

Yeas: Hart, Jones, Judd, Morganroth

Nays: Canvasser

Absent: Lillie, Miller Rodriguez

Motion by Mr. Morganroth

Seconded by Mr. Hart regarding Appeal 18-23, 34977 Woodward Ave. variance B, Chapter 86, Article 01, Table B, Ground Signs. The applicant is asking for 21.50 ft. when he is only allowed 8.00 ft. He moves to approve based on the challenges of this property, the practical difficulty of the location, and the fact that signage will potentially benefit the site and the community in general by making this property more visible. He ties his motion to the plans and proposal submitted to the City.

Motion failed, 2-3.

ROLLCALL VOTE

Yeas: Morganroth, Hart

Nays: Canvasser, Jones, Judd

Absent: Lillie, Miller Rodriguez

T# 07-56-18

850 PURDY

Appeal 18-24

The owner(s) of the property known as 850 Purdy request the following variance to construct an attached pergola on an existing home:

A. Chapter 126, Article 2, section 2.10 of the Zoning Ordinance requires maximum lot coverage of 30.0%. The maximum allowable coverage is 2794.00 sq. ft. The proposed coverage is 3285.00 sq. ft. (35.30%); therefore a variance of 491.00 sq. ft. (5.3%) is being requested.

This property is zoned R-3.

Mr. Zielke explained this existing home was built in 2005 and completed in 2006. At that time, the home was constructed to the maximum lot coverage of 30%. The applicant is requesting to construct a pergola with a fireplace which requires additional lot coverage, and will exceed the allowable per the zoning.

Responding to Mr. Judd, Mr. Zielke verified that if the pergola were removed, even the fireplace would be over the lot coverage allowance.

Mr. Johnson concluded that the advertisement is correct. The pergola and the outdoor fireplace were included in the calculation of the variance amount.

Mr. Zielke explained for Mr. Hart that the surface beneath the pergola is existing impervious pavers. Responding to Mr. Morganroth, he added that no structure could be added to this site without a variance.

Mr. Alex Bogaerts, Architect for the petitioners, Jeffrey and Maria Kaftan, explained the pergola is a fully open air structure. The reason his client requests a pergola is because the neighbors on either side have elevated windows that look right down into the Kaftan's backyard. The pergola would create some privacy between the properties. Also, the Kaftans have no protection from the afternoon sun. They have decided to plant arborvitae along the back of the fireplace to create an adjacent green space.

- They feel this is a special condition because of the extreme elevation of the first floors of the neighbors on both sides.
- Secondly, literal enforcement of the Chapter results in undue hardship because their privacy is being invaded.
- Granting the variance will not be contrary to the spirit of the Ordinance because the pergola is within the spirit and intent of residential design. This is an open air structure.
- Lastly, they feel this affords justice to the applicants and the general public, supported by the fact that five neighbors have come forward to say they take no exception to the proposal.

Responding to the Chairman, Mr. Bogaerts said the proposed pergola measures 20 x 21 ft. A smaller pergola would still be over the Ordinance requirement for open space.

Ms. Marla Kaftan came forward to say the homes next door were existing when they built their home in 2005.

Mr. Jones wondered how the issue of privacy to the extent that it rises to the level of practical difficulty is something that is new.

Mr. Judd noticed when he visited the house that there are some very well-developed trees planted along the south lot line which certainly block any view from height. Further, on the north side he doesn't feel that house looms as described. Also he noticed that the petitioners have an enviable amount of tree coverage to the west where the sun sets. So he doesn't think the petitioners have proved the looming, and they apparently have ignored the tree coverage from the setting sun. Therefore, he doesn't think they have an argument.

Mr. Bogaerts stated that this is primarily a privacy issue. The proposal is to add a light structure with a low percent of coverage, and five neighbors have submitted letters saying they are not opposed. Therefore they think it is reasonable for them to be in front of the board this evening. Chairman Canvasser reminded everyone that this is not a popularity contest with neighbors.

Responding to Mr. Hart, Mr. Johnson stated that a pergola meets the definition of a structure in the Zoning Ordinance.

Mr. Bogaerts explained to Mr. Morganroth that the proposed pergola would be placed over existing bluestone pavers. He responded to Mr. Jones that his intuition tells him that the two adjacent houses would be non-conforming by today's standards.

No one from the audience wished to speak on this matter at 8:50 p.m.

Motion by Mr. Judd

Seconded by Mr. Jones in regards to Appeal 18-24, 850 Purdy, the petitioner seeks a variance to Chapter 126, Article 2, section 2.10 of the Zoning Ordinance dealing with maximum allowable lot coverage. In this case the subject house was built to the maximum allowable coverage of 2794.00 sq. ft. The petitioner wishes to construct a pergola and brick barbeque and fireplace which would raise the amount of coverage to 3285.00 sq. ft. or a lot coverage of 35.30%, and a violation of 5.3%.

The petitioners have based their case on a perception of houses to the north and the south, which we have established certainly complied with City ordinances then, and the fact that these houses deprive them of privacy. There is also an argument that the afternoon sun is oppressive.

In reviewing this case, Mr. Judd noted that he feels there are ample shade trees to the west and from the observations he made, together with adequate trees along the property line between the petitioners' house and the house to the south, it certainly seemed to be a case that was mitigated by those trees.

Taking that in mind, he feels that strict compliance with the Ordinance would not reasonably prevent the owner from using the property for a permitted purpose. Indeed, it has been used as a home for twelve years.

He does not feel that granting the variance would do substantial justice to the adjoining property owners or other property owners in the district, and also that a lesser relaxation if applied would not give substantial relief to the property owner consistent with justice to the other property owners adjacent.

He does not feel that the plight of the owner is due to unique circumstances of the property and since the property owner built the house with the two houses to the north and the south pre-existing, he would argue that the condition is self-created. For those reasons, Mr. Judd would move to deny.

Mr. Hart indicated that he will not support the motion because he thinks this structure would do no harm to the neighboring properties. He feels the whole idea of accessory structures and the percentage of lot coverage is to protect the drainage of the City and to allow for pervious coverage. This proposal really does not add to impervious coverage and there is a valid argument for this variance.

Mr. Jones said he does not see a practical difficulty here; what he sees is someone wanting to do something that the Ordinance prohibits. That is why he supported Mr. Judd's motion.

Chairman Canvasser stated he also will support the motion. Under the definition, this pergola is deemed to be a structure. That is the hand the board is dealt in terms of whether or not to grant a variance. One of the drawbacks of living in Birmingham is visual intrusion, as many houses are very close to each other. He believes the variance request is self-created and therefore will support the motion.

Mr. Morganroth said that since the existing hard cape is not changing, this open air structure doesn't seem to impact the property any more or less than it is impacted now. Therefore he will not support the motion.

Mr. Judd pointed out that the impervious surface is a non-starter. The board is dealing with the pergola as a structure and dealing with lot coverage. He thinks the board has to deal with the Ordinance that is presented and their course is clear.

Motion to deny failed, 3-2.

ROLLCALL VOTE

Yeas: Judd, Jones, Canvasser

Nays: Hart, Morganroth

Absent: Lillie, Miller Rodriguez

Motion by Mr. Morganroth

Seconded by Mr. Hart in regards to Appeal 18-24, 850 Purdy, Chapter 126, Article 2, section 2.10 of the Zoning Ordinance dealing with maximum allowable lot coverage. The existing home on the property has a maximum allowable coverage of 2794.00 sq. ft. The request is to build a pergola with a fireplace per plan that would provide a coverage of 3285.00 sq. ft., which is 5.3% above the lot coverage allowance.

Mr. Morganroth moves to approve the variance request. He feels that it is a unique circumstance. It is not necessarily the property itself, but it would do substantial justice to the homeowner to allow for an open air structure that he believes is a subjective term on the coverage. He believes that this would do

substantial justice to the neighbors. Although it is not a practical difficulty, he believes it would do justice to the property.

Motion failed, 2-3.

ROLLCALL VOTE

Yeas: Morganroth, Hart

Nays: Canvasser, Jones, Judd,

Absent: Lillie, Miller Rodriguez

T# 07-57-18

1370 LATHAM

Appeal 18-25

Mr. Judd advised the petitioner that only five board members are present and some of the people who supported them last month are not present this evening. Mr. Morganroth stated the question is whether they want to plead to five to get four, or do they want to plead to seven to get four.

Mr. Roger Young, Architect, agreed to postpone until next month.

Motion by Mr. Jones

Seconded by Mr. Morganroth that upon the offer made by Mr. Judd, and the acceptance by the petitioner on Appeal 18-25, 1370 Latham, to table this on the acceptance of Mr. Judd's offer to table this appeal until our next regular meeting.

Motion carried, 5-0.

VOICE VOTE

Yeas: Jones, Morganroth, Canvasser, Hart, Judd

Nays: None

Absent: Lillie, Miller Rodriguez

T# 07-58-18

CORRESPONDENCE (none)

T# 07-59-18

GENERAL BUSINESS

T# 07-60-18

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

T# 07-61-18

ADJOURNMENT

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

Bruce R. Johnson, Building Official