

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS  
TUESDAY, SEPTEMBER 11, 2018  
City Commission Room  
151 Martin Street, Birmingham, Michigan**

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Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals (“BZA”) held on Tuesday, September 11, 2018. Chairman Charles Lillie convened the meeting at 7:30 p.m.

**Present:** Chairman Charles Lillie; Board Members Jason Canvasser, Vice-Chairman Randolph Judd, John Miller, Erik Morganroth; Alternate Board Members Richard Lilley, Francis Rodriguez

**Absent:** Board Members Kevin Hart, Jeffery Jones

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

The Chairman welcomed everyone in the audience along with the new alternate board member, Richard Lilley. He 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. He pointed out that this board does not make up the criteria for practical difficulty or hardship. That has been established by statute and case law. 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# 09-72-18**

**APPROVAL OF THE MINUTES OF THE BZA MEETING OF AUGUST 14, 2018**

Chairman Lillie made the following corrections:

Page 2 - VOICE VOTE Yeas should reflect Canvasser, Jones, Hart, Judd, Lillie, Miller.

Page 4 - ROLLCALL VOTE Yeas should be Miller, Jones, Canvasser, Hart, Judd, Lillie, Rodriguez. Motion carried, 7-0.

Page 6 - ROLLCALL VOTE Yeas should be Canvasser, Judd, Hart, Jones Lillie, Miller, Rodriguez.

Mr. Canvasser corrected the following:

Page 4 - Fourth paragraph, replace "Canvasser" with "Miller."

**Motion by Mr. Morganroth to approve the Minutes of the BZA meeting of August 14, 2018 as amended.**

**Motion carried, 7-0.**

VOICE VOTE

Yeas: Morganroth, Lillie, Canvasser, Judd, Miller, Lilley, Rodriguez

Nays: None

Absent: Hart, Jones

**T# 09-73-18**

**1345 COLE  
Appeal 18-29**

Tabled from the meeting of August 14, 2018.

**T# 09-74-18**

**1807 HENRIETTA  
Appeal 18-30**

The owner(s) of the property known as 1807 Henrietta request the following variance(s) to construct an addition on the kitchen to an existing non-conforming home:

**A. Chapter 126, Article 2, Section 2.10** of the Zoning Ordinance requires maximum lot coverage is 30.0%. The maximum allowable coverage for this property is 1630.00 sq. ft. The proposed coverage of 1761.76 sq. ft. (31.46%); therefore a variance of 81.76 sq. ft. (1.46%) is being requested.

**B. Chapter 126, Article 2, Section 2.08** of the Zoning Ordinance requires that no side yard setback be less than 5.00 ft. The required side yard setback for north side of this property is 5.00 ft. The existing/proposed setback is 2.70 ft; therefore, a variance of 2.30 ft. is requested.

**C. Chapter 126, Article 2, Section 2.08** of the Zoning Ordinance requires that the total side yard setbacks be 14.00 ft .or 25% of the width of the lot, whichever is greater. The

required total side yard setback for this property is 14.00 ft. The existing/proposed setback is 11.30 ft.; therefore, a variance of 2.70 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 14.00 ft. or 25% of the total lot width, whichever is greater. The required distance between is 14.00 ft. The proposed (north side) is 12.70 ft.; therefore, a variance of 1.30 ft. is requested.

This property is zoned R-3.

Mr. Morad explained the applicant is proposing an addition to their existing non-conforming home which was constructed in 1926. The proposed addition will follow the existing exterior wall of the home, which does not meet the current setback per the Ordinance. The house is non-conforming because it is too close to the lot line on the north side, and there is not sufficient distance between structures. Chairman Lillie added that the existing house is already over the required lot coverage.

Mr. Morganroth noted the only exacerbated non-conformance is lot coverage. Mr. Miller stated the addition of sq. footage to the house and garage adds to the non-conformance.

Mr. John VanBrouck spoke to represent Kevin Hart Architects. The homeowners desire to improve their house and add a small 7 ft. x 9 ft. kitchen. The practical difficulty is that there is really no room to go with the kitchen other than filling in the corner.

Chairman Lillie said he has a real problem because the house is already non-conforming and the board is not supposed to be increasing non-conformities.

Mr. Miller inquired if they had considered reducing the square footage of the garage in order to build the proposed addition within the zoning requirement for lot coverage. Mr. VanBrouck did not think the homeowners would like to do that. The increase of lot coverage is very minor, 1.4 %. It would not harm the neighbors in any way.

No one in the audience wished to speak to this appeal at 7:48 p.m.

**Motion by Mr. Canvasser**

**Seconded by Mr. Morganroth in regard to Appeal 18-30, 1807 Henrietta, the request is for four variances:**

- A) Chapter 126, Article 2, Section 2.10;**
- B) Chapter 126, Article 2, Section 2.08;**
- C) Chapter 126, Article 2, Section 2.08;**
- D) Chapter 126, Article 4, Section 4.74 (C).**

**Mr. Canvasser would move to deny the request for all four variances. The motion stems from the lot coverage. What the board is hearing is that this is a situation**

**of simply wanting a bigger kitchen and he hasn't heard any practical difficulty. It sounds like the applicants have used their existing kitchen for a substantial period of time.**

**So, looking at the criteria that the board has to meet, Mr. Canvasser thinks this problem is self-created. He doesn't believe there is a unique circumstance of the property. He does not believe the variances will do substantial justice to the property owners and he doesn't believe that compliance with the Ordinance is unnecessarily burdensome.**

**For those reasons, Mr. Canvasser would move to deny the request.**

Mr. Miller indicated he supports the motion. He thinks what is really hurting the petitioner is the size of the garage. If they had a roughly 20 ft. x 20 ft. garage they could easily fit in the requested square footage for the kitchen within the required lot coverage.

Mr. Morganroth said he will support the motion. The lot coverage is a challenge. Increasing the non-conformance when there is a home that is already existing non-conforming is something this board tries to avoid.

Chairman Lillie added that he also will support the motion for the reasons already stated. The home is already non-conforming as far as lot coverage and to grant the variances would make it worse. Also he doesn't believe the petitioner has shown a practical difficulty.

**Motion to deny carried, 7-0.**

ROLLCALL VOTE

Yeas: Canvasser, Morganroth, Judd, Lilley, Lillie, Miller, Rodriguez

Nays: None

Absent: Hart, Jones

**T# 09-75-18**

**129 W. ABBEY  
Appeal 18-31**

The owner(s) of the property known as 129 W. Abbey request the following variance(s) to construct a second-story addition on an existing non-conforming single-family home with an attached garage:

A. 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 35.40 ft. The proposed setback is 24.90 ft.; therefore, a variance of 10.50 ft. is requested.

This property is zoned R-1.

Mr. Morad noted the applicant is proposing a second-story addition to this existing non-conforming home that was constructed in 1969. This home was granted a variance in July 1999 for a similar one. This addition is proposed to be constructed over the existing footprint of the previously approved case. Chairman Lillie noted the non-conformity is because this is a corner lot. By building completely on top of what is there, they are not increasing the building envelope.

Mr. Judd was assured there is sufficient safety provided for escape in case of fire. Mr. Morad established there are egress windows in the bedroom and a door to get out onto a porch.

Mr. John VanBrouck spoke again to represent Kevin Hart Architects. He explained the homeowners desire to install a mother-in-law suite for their aging mother. The practical difficulty is that they cannot add onto the home other than in this location without exceeding the lot coverage. They are adding an elevator as well.

Mr. Morganroth received confirmation that there was an attempt to bring the second-floor walls in to try and mitigate the increase of the non-conformity.

At 8 p.m. no one from the public wanted to comment on this appeal.

**Motion by Mr. Miller**

**Seconded by Mr. Morganroth to support Appeal 18-31 for 129 W. Abbey. He thinks that compliance with the Zoning Ordinance as written is very difficult because this is a corner lot situation and on top of that the front of the house is really not on the address side of the house. So a very awkward spin is put on the intent of the Zoning Ordinance in terms of front yard versus side yard. Also, the existing house has a non-conformity. He would think that is preventing the petitioner from executing a reasonable design on this house of that spin on the side yard, front yard corner lot situation.**

**Mr. Miller thinks that the addition as proposed does substantial justice to the area. As you walk around the neighborhood he doesn't think there would be any negative impact at all.**

**It is a very unique circumstance here. He believes the problem was not created; it is due to the front yard, side yard and which side is actually the address side of**

**the house, and the existing non-conformity. He would tie the approval to the plans as submitted.**

Mr. Rodriguez said he would support the motion for the reasons stated. In this case it is significant that the petitioner is not increasing the existing envelope.

**Motion carried, 7-0.**

ROLLCALL VOTE

Yeas: Miller, Morganroth, Canvasser, Judd, Lilley, Lillie, Rodriguez

Nays: None

Absent: Hart, Jones

**T# 09-76-18**

**1684 W. LINCOLN  
Appeal 18-32**

The owner(s) of the property known as 1684 W. Lincoln request the following variance(s) to construct an addition to an existing non-conforming home:

**A. 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 26.50 ft. The proposed setback is 15.29 ft.; therefore, a variance of 11.21 ft. is requested.

**B. Chapter 126, Article 2, Section 2.06** of the Zoning Ordinance requires a minimum rear yard setback of 30.00 ft. The proposed setback is 24.79 ft.; therefore, a variance of 5.21 ft. is requested.

This property is zoned R-1.

Mr. Zielke explained the applicant is proposing to add a second floor and construct a rear addition to the existing non-conforming home which was constructed in 1948. The rear addition is conforming with the side yard setback down the side street. This is a corner lot in the R-1 Zoning District.

Chairman Lillie received confirmation that the part that is going into the rear setback is new construction.

Ms. Kelly Genslinger was present with her husband, Dave, their family, and their architect, Mr. Mike Jarman. She explained they recently purchased this non-conforming

home and their plan is to bring it up to Birmingham standards. They are looking to construct an addition that will not make the existing non-conformity any worse. They are just adding a full second floor where there is a bungalow second floor. After a number of iterations, In the end they thought the best compromise was to encroach on the rear yard setback by 5.21 ft. for their addition.

They have the signatures of many of their neighbors indicating they are comfortable with the plans.

The lot is unique in that the R-1 Zone requires 9,000 sq. ft. and this lot only has about 8,600 sq. ft. That might be a unique circumstance in which it would be difficult to meet the other setback requirements because the lot is smaller than it should be in R-1.

The Chairman pointed out this is not a popularity contest. Even though all the neighbors are in favor the Board has had to turn down a request in the past if the Ordinance has not been met. He could not think of a case where the Board has granted a variance for rear setback. He asked if they considered going out and staying in the existing non-conforming plane on the west side of the house. Then they would only need one variance rather than two. Ms. Genslinger answered that may give them difficulty in arranging the space.

Mr. Mike Jarman explained they studied this in several different ways. The one way to get around the rear encroachment is to construct a detached garage 3 ft. from the property line. He can easily do this house without the need for a rear variance. However he feels that would be unfair to the neighbor. Additionally he stepped the design in and back so the roofline is smaller and doesn't impact the neighbors.

Mr. Morganroth said if the pantry and mud room were moved towards the side the garage could come in and mitigate the 5 ft. Mr. Jarman replied if he does that the roof section would be huge. Mr. Morganroth noted aesthetics are important but this Board's job is to keep within the zoning requirements and it seems the 5 ft. could be mitigated down to nothing either with the detached garage or in this case not requesting an unnecessary variance.

Mr. Jarman pointed out that the neighbors could either have 24 ft. of open space or they could have 6 ft. of open space (including easement). He could build a detached garage which is not as safe. It would be closer to the adjacent house and take up more yard.

No one in the audience wanted to comment on this appeal at 8:20 p.m.

**Motion by Mr. Morganroth**

**Seconded by Mr. Canvasser regarding Appeal 18-32, 1684 W. Lincoln. The owners of the property are requesting two variances:**

**A) Chapter 126, Article 4, Section 4.61 (1) of the Zoning Ordinance with regard to the side yard setback. The petitioner is proposing a second-floor addition that would be equal to the current existing non-conformity on the side yard setback; and**

**B) Chapter 126, Article 2, Section 2.06 of the Zoning Ordinance for the rear setback. The requirement is 30 ft. and the proposal is 24.79 ft., so a 5.71 ft. variance is requested.**

**As pointed out in the discussion it appears there is no practical difficulty. The petitioner could build something similar to what they are looking for without requesting that second variance. The biggest issue, at least for him, is the need to go within the required 30 ft. setback. Since there is the ability to build something similar without that, there is no practical difficulty.**

**There is nothing unique about the property that prevents the petitioner from building something that would suit their needs. For those reasons Mr. Morganroth would deny the requests.**

Mr. Canvasser stated he will support the motion. He has no problem with the first request, but it is the 5 ft. encroachment into the rear setback that could be avoided and is not necessary.

Mr. Miller concurred. Building on top of the existing house seems reasonable. There is nothing that unreasonably prevents the petitioner from using the property for the purpose they want. They can build the same amount of square footage and still be within the Zoning Code which was declared by the petitioner. Therefore he supports the motion.

Chairman Lillie said he also will support the motion for the reasons previously stated. The applicant's representative has represented they could do something without the need for a variance.

**Motion to deny carried, 7-0.**

ROLLCALL VOTE

Yeas: Morganroth, Canvasser, Judd, Miller, Lilley, Lillie, Rodriguez

Nays: None

Absent: Hart, Jones

**T# 09-86-18**

**1701 WINTHROP  
Appeal 18-33**



Chairman Lillie disclosed that this property is owned by Jeff Jones, current Board member.

The owner(s) of the property, known as 1701 Winthrop request the following variance(s) to construct a new single-family home with a detached garage:

A. **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 23.73 ft. The proposed setback is 13.38 ft.; therefore, a variance of 10.35 ft. is requested.

Mr. Zielke explained that the applicant is proposing to construct a new single-family home with a detached garage on this corner lot. This corner lot has the setback challenge of the street-facing side yard and that of ability to construct a new home to it potential.

Chairman Lillie noticed the lot is a trapezoid. The south lot line is shorter than the north line and they are not perpendicular. Mr. Morganroth received confirmation that If the applicant stayed within all the setback requirements the maximum width they could build at the shortest dimension of the property would be 25 ft.

Mr. Zielke noted the current existing structure sticks out further than what is being proposed.

Mr. Paul Muni PRM Custom Builders said they are trying to be considerate of the neighbor to the west and trying to minimize the number of variances required to make this project feasible and also being mindful of the current zoning requirements with respect to the Chesterfield setbacks. They tried to do their best to mitigate the sheer massing of the variance required. Hence the tapering of the footprint of the house. Given where the existing structure sits relative to what they are proposing they feel this is a reasonable request. One of the other unique things with this is that the neighbor to the west sits 3.4 ft. from the adjoining lot line.

So they feel that strict enforcement of the Ordinance given the unique nature of this property would result in unnecessary hardship.

At 8:35 p.m. there was no one in the audience who wanted to comment on this appeal.

**Motion by Mr. Miller**

**Seconded by Mr. Rodriguez that with regard to Appeal 18-33, 1701 Winthrop, he would move to support the petitioner. This is our third corner lot situation tonight. However this is a corner lot that is also slightly irregular. Also there is**

**an existing house on the lot that is in a non-conforming situation. He thinks this would render non-conformity to be burdensome to the owner.**

**The new house is sited to lessen the irregularity that has been already built on the site. It is also respecting the neighbor to the west, pulling back further than they have to just to recognize some of the unique nature of the site and respecting that neighbor. So Mr. Miller thinks that would do substantial justice to certainly the other property owners in the area.**

**Again, the problem is due to the unique circumstances of this property and not self-created. Mr. Miller would tie approval to the plans as submitted.**

Mr. Morganroth said he supports the motion. He noted the applicant pointed out how the house tapers in order to minimize the variance. That emphasizes the challenges of the lot.

Mr. Rodriguez commented that he supports the motion. The lot really is a trapezoid shape which is unique. The fact they are constructing a detached garage and reducing an existing non-conformity is important.

Mr. Judd said that he supports this well crafted motion.

Chairman Lillie announced he also will support the motion for the reasons stated. He also noted that the house next door is non-conforming which adds to the uniqueness.

**Motion carried, 7-0.**

ROLLCALL VOTE

Yeas: Miller, Rodriguez, Canvasser, Judd, Lilley, Lillie, Morganroth

Nays: None

Absent: Hart, Jones

**T# 09-87-18**

**CORRESPONDENCE (none)**

**T# 09-88-18**

**GENERAL BUSINESS**

**T# 09-89-18**

**OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA (none)**

**T# 09-90-18**

**ADJOURNMENT**

No further business being evident, the board members passed a motion to adjourn at 8:40 p.m.



Bruce R. Johnson, Building Official