

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS  
TUESDAY, OCTOBER 9, 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, October 9, 2018. Vice-Chairman Randolph Judd convened the meeting at 7:30 p.m.

**Present:** Vice-Chairman Randolph Judd; Board Members Jason Canvasser, Kevin Hart, John Miller, Erik Morganroth; Alternate Board Member Richard Lilley

**Absent:** Chairman Charles Lillie; 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 Vice-Chairman welcomed everyone. 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 are a quazi judicial board and 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 no interpretations on this evening's agenda.

**T# 10-91-18**

**APPROVAL OF THE MINUTES OF THE BZA MEETING OF SEPTEMBER 11, 2018**

Vice-Chairman Judd noted:

Page 5 - Fourth paragraph, second line, replace "ageing" "with aging."

**Motion by Mr. Morganroth**

**Seconded by Mr. Canvasser to approve the Minutes of the BZA meeting of September 11, 2018 as corrected.**

**Motion carried, 6-0.**

VOICE VOTE

Yeas: Morganroth, Canvasser, Hart, Judd, Miller, Lilley

Nays: None

Absent: Lillie, Rodriguez

**T# 10-92-18**

**1997 VILLA  
Appeal 18-34**

The owner(s) of the property known as 1997 Villa request the following variance to construct 6.00 ft. privacy fencing in the front open space:

A. **Chapter 126, Article 4, Section 4.11** of the Zoning Ordinance limits the height of fences in the front open space to 3.00 ft. The existing/proposed privacy fencing is 6.00 ft; therefore, a variance of 3.00 ft. is requested.

This property is zoned R-6.

Mr. Baka explained that due to the configuration of the buildings in this multi-family development the front (main) entrance is accessible from the parking area behind the building. The façade facing Villa has sliding door walls that access a patio space for each tenant. There are currently existing 6 ft. wooden divider fence sections between each unit. The applicant is proposing to demolish the existing dividers and install new PVC fencing in their place. Since they are replacing the fencing rather than repairing it they are required to meet the current ordinance or obtain a variance. This proposal concerns just two buildings as the rest of the dividers in the complex are in the rear of their space.

Mr. Morganroth asked if there was discussion about going lower than 6 ft. Mr. Baka responded the dividers are generally intended to create privacy between the back patios. The replacement would be very similar to what is existing.

Mr. Canvasser received confirmation that the existing dividers are considered legal non-conforming. The Ordinance doesn't differentiate between dividers and a fence.

Ms. Rhonda Fazio, Community Manager for Eton Square Apartments, said they have already replaced all of the interior courtyard wood dividers with the same PVC privacy fences. The remaining wood dividers are falling apart and are an eyesore from the

street. She replied to Mr. Canvasser they have not considered anything in place of the fences that would not require a variance. She would like to keep them all the same since the vinyl has already been installed on the interior units.

There were no comments from the audience on this appeal at 7:45 p.m.

**Motion by Mr. Miller**

**Seconded by Mr. Morganroth to approve Appeal 18-34, 1997 Villa. It seems that this request is based upon a situation where the buildings were built in the 1950s. At least two of them in this complex are built kind of reversed of what you would expect to see. Where what would be the back yard there is the front door, and the mail box, and in what is really the back yard that faces the street there is a patio, patio furniture, barbeque grills. Putting these privacy fences between what is in the back yard seems very reasonable, given that these buildings are built the way they are and they were built obviously before current zoning ordinances were in place.**

**So Mr. Miller thinks it presents an unreasonable difficulty if these fences had to come down and be at only 3 ft. That would defeat the privacy of the backyard area and be quite burdensome to the petitioner.**

**He thinks the fences being replaced with what is proposed is very reasonable and would do substantial justice to the complex and the neighborhood.**

**The problem is due to the unique circumstance of the building design and the problem was not self-created. So, again Mr. Miller moves to approve, tied to the plans as submitted.**

**Motion carried, 6-0.**

Mr. Morganroth indicated he supports the motion because of the perpendicular nature of the dividers. He doesn't see them as a fence, but more as a partition for the individual use of the property. That is why he doesn't mind seeing this replacement of a non-conforming use.

**ROLLCALL VOTE**

Yeas: Miller, Morganroth, Canvasser, Hart, Judd, Lilley

Nays: None

Absent: Lillie, Rodriguez

**T# 10-93-18**

**1524 HAYNES**

**Appeal 18-35**

The owner(s) of the property known as 1524 Haynes request the following variance to construct a second-story addition on an existing non-conforming single-family home:

A. **Chapter 126, Article 2, Section 2.08** of the Zoning Ordinance requires that no side yard setback shall be less than 5.00 ft. The existing and proposed is 4.60 ft., therefore a variance of 0.40 ft. (4.8 in.) is being requested.

This property is zoned R-2.

Mr. Johnson advised the existing home at this location was constructed in 1955. The proposed second-story addition will not project closer to the property line than the existing first story below. The property meets all other Zoning Ordinance requirements.

Mr. Morganroth received confirmation that the overhang is the minimum to minimize any further encroachment and the addition is not increasing the already existing non-conformity.

Mr. Dan Lynch, Lynch Custom Homes, represented his clients, Joe and Sarah Valentine. The current house is 1,078 ft. It meets the distance between structures from the neighbor to the west. To reduce the variance they could move the house over, which doesn't make much sense. Also they could try to step in the second floor with a little shed roof which would require a vented soffit, It would look silly from the street to have a 4.8 in. jog.

This is consistent with the spirit and intent of the Ordinance. The 4.8 in. is minimal and doesn't impinge on the neighbors

The practical difficulty was not created by the homeowner. The home was built well before it was purchased by the applicants.

The circumstances are unique, and granting the variance would promote substantial justice. All the other homeowners in that zone where the houses were built conforming are able to do a second-story addition and stack it and have a reasonable architectural look. That is why stepping this in would look like they made a mistake. Further, stepping it in would increase the cost, which seems burdensome on the homeowner.

No one from the public wished to comment at 7:55 p.m.

**Motion by Mr. Morganroth**

**Seconded by Mr. Canvasser regarding Appeal 18-35, 1524 Haynes. The applicant is requesting a variance from Chapter 126, Article 2, Section 2.28 for the side yard setback at 5 ft. The applicant needs a 0.40 ft. variance.**

**Mr. Morganroth proposes to approve this request. The applicant has demonstrated mitigation by exploring all the different options of the hip and gable roofs, discussing the offset, and how that would affect cost as well a function.**

**The property is existing non-conforming so he thinks it would be unreasonably burdensome to expect the applicant to shift the house over in order to try to remove a non-conformity that is already existing.**

**Mr. Morganroth thinks it does justice to the homeowner, justice to the neighbors and for that reason he would approve and tie the motion to the plans as presented.**

Mr. Canvasser indicated he would support the motion. He noted there will be no enlargement of the pre-existing non-conforming use and should have no impact on any surrounding neighbors.

Mr. Hart said he would also support the motion. As mentioned earlier, the mitigation was investigated fully, there is demonstrated practical difficulty, it is harmonious with the neighborhood and with the existing structure, and he thinks it is a nicely done minimization of the encroachment.

**Motion carried, 6-0.**

ROLLCALL VOTE

Yeas: Morganroth, Canvasser, Hart, Judd, Miller, Lilley

Nays:

Absent: Lillie, Rodriguez

**T# 10-94-18**

**242 ASPEN  
Appeal 18-36**

The owner(s) of the property known as 242 Aspen request the following variance to modify the existing front façade of an existing non-conforming home:

A. **Chapter 126, Article 2, Section 2.06** of the Zoning Ordinance requires a minimum front yard setback to be the average of the homes within 200.00 ft. each direction. The required front yard setback for this property is 31.52 ft. The proposed setback is 29.85 ft., therefore a variance of 1.67 ft. is requested.

This property is zoned R-1.

Mr. Zielke noted the applicant is proposing a renovation of the front façade of this existing nonconforming home that was constructed in 1997. The proposed renovation consists of a parallel extension of the front façade to the left and reduction in the non-conformity on the right.

It was noted the wing wall has already been removed as part of interior renovation. Mr. Zielke said there wasn't an issue with removing a non-conformity. This is an exchange of one non-conformity to add another.

Mr. Robert Clarke, Architect, represented the homeowners, Rebecca and Andrew Grove. The homeowners are removing the existing arched wing wall due to the relocation of their front door. The center line of the existing front gable is not currently centered between the existing exterior walls, which will now be emphasized with the removal of the north wing wall. By adding a small wing wall to the south side of the existing front wall, they can accurately center the gable with the existing exterior walls which was not correctly done on the original house.

The homes on either side are forward of this. A home three doors down to the north affects the average front yard setback because it is 9 ft. further back. They have looked at multiple solutions for this and have not come up with one that makes it work because the ridgeline is controlling everything they are doing.

The existing non-conformity was not created by the homeowners because they purchased the home within the last year.

In answer to Mr. Canvasser, Mr. Johnson said that changing or expanding the non-conforming front facade would require a variance. Mr. Clarke verified they are not projecting any further into the street with the additions. They are actually reducing the non-conformity.

Mr. Hart noted that anything that is done to the front of this house would require a variance because it is already located in the front setback.

There were no comments from members of the audience at 8:10 p.m.

**Motion by Mr. Miller**

**Seconded by Mr. Hart to approve Appeal 18-36, 242 Aspen. After he personally inspected the site it was interesting that the need for an appeal is not immediately apparent. So, he views this as a very minimal request based on an existing 1997 non-conforming home. What is being done actually reduces the amount or the length of the non-conformity.**

**To maintain strict compliance would put the petitioner in an unreasonable situation. Mr. Miller thinks the variance would also do substantial justice to the**

**neighborhood. The houses immediately surrounding this house are much more forward. As you go down the street they step back again. So this house is really not out of step with the surrounding neighbors. Therefore he thinks substantial justice is done there, and also substantial justice to the expression of the architecture of the home itself.**

**The problem is due to certainly unique circumstances of the existing non-conformity. He believes it was not self-created and he would tie approval to the plans as submitted.**

**Motion carried, 6-0.**

ROLLCALL VOTE

Yeas: Miller, Hart, Canvasser, Judd, Morganroth, Lilley

Nays: None

Absent: Lillie, Rodriguez

**T# 10-95-18**

**1684 W. LINCOLN**

**Appeal 18-32**

The owner(s) of the property known as 1684 W. Lincoln request the following variance 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.

This property is zoned R-1.

Mr. Morad 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. Last month they had proposed a garage in the rear and were asking for a rear yard setback. Now they have brought everything forward and only require the one variance. Mr. Morganroth noted the massing in front of the garage is less of a non-conformity than the already existing massing below it.

Mr. Johnson verified the plans are sufficient for the City's purposes.

Ms. Kelly Genslinger was present with her husband, Dave, and they are the homeowners. Ms. Genslinger said when they came last month they had a self-imposed variance on the back that encroached 5 ft. into the rear setback. They have since corrected that and now they are not making their existing nonconformity worse. Presently they are just asking for one setback on the street-facing side of their corner lot.

They think this is not doing anything to impede the neighbors. There is a practical difficulty that they did not create, in that the existing house is non-conforming and they are not making it worse. Also their circumstances are somewhat unique in that not only is this a corner lot, but it is also slightly smaller in the R-1 Zone. It is 8,166 sq. ft., where the minimum lot size in this Zone is 9,000 sq. ft. Even though their lot is significantly smaller by 1,000 sq. ft. they are adhering to all of the setbacks except this one which is pre-existing, non-conforming. Also, they have stepped in going back to continue to meet the setbacks. Lastly, Ms. Genslinger pointed out they have gone through many months of iterations of this plan and she doesn't think there is another option. They mitigated by stepping back and bringing the house in. She feels this plan is harmonious with the neighborhood.

At 8:20 p.m. there were no comments or questions from the audience.

**Motion by Mr. Miller**

**Seconded by Mr. Canvasser to approve with regard to 1684 W. Lincoln, Appeal 18-37. He believes the difficulty is basically due to the location of the non-conforming existing home and its location on the site. That is what really caused the non-conformity here.**

**The new construction does step back from that existing home and he believes it is in a reasonable location and really respects the adjacent neighbor.**

**Strict compliance he thinks would impede the applicant in an unreasonable way, given again the location of the existing home.**

**Also he believes it would do substantial justice to the neighborhood. The variance will permit architectural consistency of the building. The difference between the existing home and what is proposed is very dramatic, all for the good.**

**Mr. Miller believes this problem was not self-created, so he will move to approve, tied to the plans as submitted.**



Mr. Morganroth said he will support the motion. He reminded everyone that at the last meeting the applicant had considerably more variances than are presently being requested. So this definitely shows major mitigation.

Mr. Hart noted he would approve the motion as well. He likes the way the mitigation was accomplished to the north by stepping it back to match up with the front yard setback of the neighboring properties. That shows a real sensitivity to the neighborhood.

Vice-Chairman Judd said he would also support. The applicant listened to what was said at the last meeting and obviously it paid off.

**Motion carried, 6-0.**

ROLLCALL VOTE

Yeas: Miller, Canvasser, Hart, Judd, Lilley, Morganroth

Nays: None

Absent: Lillie, Rodriguez

**T# 10-96-18**

**101 S. OLD WOODWARD AVE.**

**Lululemon**

**Appeal 18-38**

The owner(s) of the property known as 101 S. Old Woodward Ave. request the following variance to block a window along the front facade:

**A. Chapter 126, Article 4, Section 4.90 (A)(4)** of the Zoning Ordinance prohibits windows from being blocked with opaque materials or furniture, products, signs, blank walls or the backs of shelving. The eastern-most window bay of the north facing façade along E. Maple Rd. is proposed to be blocked with a vinyl application; therefore; a variance to block the eastern most window along the E. Maple Rd. elevation is requested.

This property is zoned B-4.

Mr. Baka advised the area on the interior of the subject window is the location of a fitting room and storage area of the store. In order to provide privacy for the customers using the fitting room and to screen the storage area from public view, the applicant is proposing to cover the window with either vinyl graphics or drapes.

The Zoning Ordinance requires 70% of the storefront facades in commercial areas to be glazing. Staff went out and measured and it turns out they are at 79,5% glazing. So

they subtracted what the applicant is requesting to block and that brought the glazing down to 71%. Therefore the applicant would still meet the Ordinance requirement of 70% clear glazing allowing views into the store. However, that doesn't negate the need for a variance because the Ordinance clearly states that no windows can be blocked.

Answering Mr. Canvasser, Mr. Baka said that anything within 3 ft. inside the window is considered to be window signage or blocking the window. Previously the applicant had three windows blocked but now they are proposing to block two out of 21 windows. Mr. Canvasser asked if staff has a preference of drapes over a decal. Mr. Baka thought the application of vinyl to the window would be more permanent and could be easily maintained.

Mr. Hart noticed there is a wonderful rhythm to the archways on Maple Rd. and along the N. Old Woodward Ave. side. Mr. Baka added that changing the configuration of the windows is definitely a negative for this historic building.

Mr. Ryan Weller, Architect, was present for Lululemon and said he has been working with them for six years. Their new initiative is to provide more visibility into their stores. Due to the complex layout of this space, it was very difficult to pull everything that needed to be opaque away from the windows. However they want to block the delivery receiving area and the ADA fitting room.

Mr. Miller saw that the amount of glass seems to be tremendous, compared to the interior square footage. Mr. Weller noted their plans try to open up as much glazing as possible. He feels that with the amount of metal fixturing they have provided that is almost entirely transparent, the space will really be improved. They like the decal rather than the drapes. It will pull in both elevations because they are doing the same thing with the metal and also applying the design in several areas of the interior.

At 8:45 p.m., there were no public comments.

**Motion by Mr. Canvasser**

**Seconded by Mr. Morganroth in regard to Appeal 18-38 for property located at 101 S. Old Woodward Ave. The request is for a variance from Chapter 126, Article 4, section 4.90 (A) (4) to place a vinyl application on the eastern-most window bay on the north-facing facade along E. Maple Rd.**

**Mr. Canvasser moves to approve the request. In so doing, he finds that strict compliance with the Ordinance would be unreasonably burdensome. He thinks that the variance would actually do substantial justice to the petitioner as well as not only neighboring property owners, but the community at large. We want to avoid situations where we are looking at stacked boxes and the bare side of a changing room.**

**He thinks this is due to unique circumstances of the property. We have seen an effort to mitigate the request and he doesn't believe it is self-created.**

**He would indicate specifically that the approval would be tied to Option 1, the opaque vinyl as requested by the petitioner. So, the motion is tied to the specific drawing for Option 1, labeled underneath *Option for E. Maple Elevation*.**

Mr. Morganroth added they have identified the structure as having more than 70% glazing so that even with this opaque application the applicant will have 71% glazing. So this historic structure with its unique shape and uniform glazing on three full walls along the major part of Birmingham is still maintaining the minimum amount of glazing necessary to meet the Ordinance.

Mr. Miller noted the board doesn't want to set any kind of precedent. This is in large part due to the acute angle of the site which causes it to have a very high percentage of glass, compared to the interior square footage. He feels that certainly presents a hardship in this particular case.

Vice-Chairman Judd indicated that he is glad the board has reached concurrence and thanked the petitioner for coming up with a good design and giving a presentation explaining why one option is superior to the other.

**Motion carried, 6-0.**

ROLLCALL VOTE

Yeas: Canvasser, Morganroth, Hart, Judd, Miller, Lilley

Nays: None

Absent: Lillie, Rodriguez

**T# 10-97-18**

**CORRESPONDENCE** (none)

**T# 10-98-18**

**GENERAL BUSINESS** (no discussion)

**T# 10-99-18**

**OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA** (no public remained)

**T# 10-100-18**

**ADJOURNMENT**

No further business being evident, the board members passed a motion to adjourn at 8:52 p.m.



Bruce R. Johnson, Building Official