

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

1. CALL TO ORDER

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

2. ROLL CALL

Present: Chairman Charles Lillie; Board Members Jason Canvasser, Kevin Hart, Vice-Chairman Randolph Judd, Erik Morganroth, Francis Rodriguez; Alternate Board Member Richard Lilley

Absent: John Miller

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

The 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 quasi 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# 12-109-18

3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF NOVEMBER 13, 2018

Chairman Lillie made the following changes:

Page 5 - Second sentence, scratch "represented" and substitute with "been presented."

Page 8 - Third line of the motion, substitute "lot" for "not."

Motion by Mr. Morganroth

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

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Miller

The Chairman congratulated Mr. Rodriguez who is now a regular board member.

T# 12-110-18

4. APPEALS

**1) 592 W. FRANK
Appeal 18-42**

The owner(s) of the property known as 592 W. Frank request the following variances to construct a new single-family home with a detached garage:

A. Chapter 126, Article 4, Section 4.61(C)(1) of the Zoning Ordinance requires a corner lot which has on its 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. This requirement shall not reduce the buildable width of any lot to less than 25.00 ft. The required side yard setback for this property is 18.50 ft. The proposed setback is 16.10 ft., therefore a variance of 2.40 ft. is requested.

B. Chapter 126, Article 4, Section 4.30 (C)(2) of the Zoning Ordinance allows overhangs to project into the required side open space 2.00 in. per foot for each 1.00 ft. of such required open space. The required allowable projection is 3.08 ft., the proposed overhang projection is 4.73 ft., therefore a variance of 1.65 ft. is being requested.

C. Chapter 126, Article 4, Section 4.30 (C)(3) of the Zoning Ordinance does not allow patios to project into the required side open space. A proposed patio is projecting into the required open space for 6.40 ft., therefore a variance of 6.40 ft. is being requested.

Mr. Zielke noted that the applicant is requesting to construct a new single-family home with a detached garage on this corner lot. There is an interior residential lot at the rear of the property requiring that the street side-yard setback be the average of the homes facing the side street without reducing the buildable width to less than 25.00 ft. The width of this lot is 48.50 ft. and buildable width is 25.00 ft. There is a newly constructed home to the east located 6.80 ft. from the side property. The applicant is proposing to comply with the minimum distance between principal structures by shifting the home to the west, requiring the proposed street side-yard setback variance.

Chairman Lillie received confirmation from Mr. Zielke on the following:

- With regard to Variance (A), while the proposed house will be closer to the house to the east the applicant is reducing the non-conformity on the street side.
- Regarding (B), if there wasn't the problem with the side setback, the house would comply with the overhangs because they will be reduced back to 2.4 ft.
- With (C) if the patio was pushed back into the house it would be about 3 ft. going into the side yard. The steps to the sidewalk would be allowed.

Mr. Canvasser received confirmation that if this was an interior lot the variance for the patio would still be needed.

In response to Mr. Morganroth, Mr. Zielke verified that the decorative awning with wire cables is the only overhang that needs the variance.

Mr. Charles Hess, the homeowner, added his perspective on each of the variance requests:

- Regarding Variance (A), the proposed house requires a variance on its proximity to the home to the east. When they do that they compromise 2.4 ft. on the required side yard setback. They felt this was the least intrusive location for the proposed home on that lot. The current home has a setback of 14.0 ft. and the proposed structure will increase that setback to 16.1 ft.
- For Variance (B), they are allowed to have a canopy that projects out into the open space by 3.08 ft. Their design is only 2.33 ft. So the canopy is well within the allowable projection into open space. The canopy is attached to the house and because the house is 2.40 ft. to the west of the required side lot there is nothing to do other than obtain a variance.
- With Variance (C) they don't consider that the design is meant to be a patio. Low 6.00 in. tall steps lead up to an entrance to the home which will likely be the main entrance. The steps project out from the house by 4.00 ft. The Ordinance allows a projection of 3.00 ft.

They worked on this design for a long time trying to get what they need as well as comply with the Zoning Ordinances.

Responding to Mr. Canvasser, Mr. Johnson established that a walkway up to 3.00 ft. in width does not count against open space; it is considered as open space. Walks that

are in excess of 3.00 ft. wide count against open space. So, Mr. Canvasser deduced the applicant could have a 3.00 ft. wide walkway up to the door with a couple of stairs and they wouldn't need a variance.

Mr. Morganroth asked Mr. Hess whether the entrance is more of a covered deck area rather than a simple means of egress. Mr. Hess responded that the porch is inset by 2.00 ft. so they have given up interior floor space, but it is not big enough to have furniture. So, it is a matter of aesthetics. He suggested that the recess was a mitigation of not having the patio go further into the side setback. The Ordinance allows for a projection of 3.00 ft. for steps. They are at 4.00 ft. The original design had an 8.00 ft. deep full length porch. After discussion with staff, they trimmed it all back so that it just provides shelter from either the sun or the rain when entering the home.

Mr. Hart received confirmation from Mr. Hess that the center section that insets slightly in the dining room and the living room was to minimize the encroachment onto the side yard. That was also the intent of not having columns over that space for the canopy.

Mr. Canvasser said he is struggling with the patio issue as to whether or not it was self-created. Mr. Hess explained the reason for requesting the variance for the structure, Variance (A), is that it encroaches onto the required side yard open space of 18.50 ft. Variance (B) follows suit with the same because the projection into open space goes beyond 18.50 ft. and requires a variance. The same follows for the steps leading to the patio Variance (C). The steps project out beyond the 18.50 ft. and that requires a variance. The design intent for the steps is for an entrance.

Responding to Mr. Morganroth, Mr. Johnson advised the walkway is allowed to be 3.00 ft. wide. If they did not have the indentation they would have another 2.00 ft. plus the 3.00 ft. So they would have 5 ft. and not need a variance.

Mr. Judd felt that in a sense the Board is arguing about aesthetics versus measurement. Therefore he agreed with Mr. Canvasser that this is self-created.

At this time the Chairman called for comments from members of the audience.

Mr. Mark Alhermizi said he lives at 556 W. Frank and is also building a house 633 W. Frank, immediately kitty-corner to this home. He used to own this lot and the lot next door. The reason that he sold both lots is because this lot is a very difficult one. Its unusual nature makes it complicated to design and construct something that not only matches the community but the value of the properties. He thinks the lot has turned hands several times because of the significant setback issues. As a neighbor, he asked the Board to approve the variances for the good of the neighborhood.

Motion by Mr. Judd

Seconded by Mr. Canvasser in regard to Appeal 18-42, 592 W. Frank, the petitioner seeks three variances on what has been described as a very difficult piece of property. Variance (A) is a variance to Chapter 126, Article 4, section 4.61 (C)(1) which is a setback on the side street, Watkins, that is required to be 18.50 ft. The petitioner seeks a proposed setback of 16.10 ft., or a variance of 2.40 ft. As to that variance, Mr. Judd feels that strict compliance with the restrictions dealing with setbacks would unreasonably prevent the owner from using the property for a permitted purpose. He feels to grant that particular variance would do substantial justice to the applicant as well as to the surrounding property owners. Further, he feels that the plight of the owner is due to unique circumstances, and in this case he does not feel that the problem is self-created. If it is, it is certainly well mitigated.

As to Variance (B) which deals with Chapter 126, Article 4, section 4.30 (C)(2) of the Zoning Ordinance dealing with an overhang projection, the petitioner seeks a variance of 1.65 ft. The required allowable projection is 3.08 ft., and the proposed overhang is 4.73 ft. As with Variance (A) Mr. Judd feels that strict compliance once again would unreasonably prevent the owner from using the property for a permitted purpose and would be unnecessarily burdensome. He feels that to grant the variance would do substantial justice to the applicant as well as to the surrounding property owners. Further, he feels that the plight of the owner is due to unique circumstances due to the unique configuration of the lot and its location. Once again while the problem may be self-created, he feels that it has been mitigated. The applicant has certainly adequately and very ably explained the requirement.

Variance (C) deals with a patio in the side open space, and this is a variance to Chapter 126, Article 4, section 4.30(C)(3) of the Zoning Ordinance. Mr. Judd has heard this architectural feature projects into the required open space for 6.40 ft. and requires a variance of 6.40 ft. In discussion, that seems to be really dealing with 1.00 ft. beyond what is required in the Ordinance in this circumstance. But, he feels that the particular feature in this case is one that is driven by style and not by necessity, and he also feels that that the problem is self-created. For that reason, Mr. Judd feels that strict compliance with that particular section does not unreasonably prevent the owner from using the property for a permitted purpose; and he feels that substantial justice would not be done to the applicant or to adjacent property owners. He does not feel that the plight of the owner is due to unique circumstances; rather a desire on the petitioner's part. Additionally he feels that the problem is self-created.

For those reasons, Mr. Judd would move to grant Variances (A) and (B) and deny Variance (C). The motion is tied to the plans presented this evening.

Motion to grant Variance (A) as advertised:

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Miller

Motion to grant Variance (B) as advertised:

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

Absent: Miller

Motion to deny Variance (C) as advertised:

Mr. Morganroth said he would be able to support Variance (C) if they granted 5.4 ft.; but he has a challenge in denying it outright because he thinks everyone agrees that it is really 1.00 ft. because of the recessed area plus the 3.00 ft. that are allowed that could be granted as a variation of this. So he will not support the motion.

Mr. Hart indicated he will not support the motion for the same reason. He thinks that the appellant is being penalized for making concession to move the house in. He doesn't think this is really a patio, but doesn't feel there is any other title for it. This is an integrated inset or access point to the house.

Mr. Canvasser noted he will support the motion for two reasons: He thinks this is entirely self-created. Also, since this has been defined by staff as a patio, he believes the Board needs to review it as a patio, absent a request for an interpretation. While this feature may be aesthetically pleasing, what he has heard tonight is that there could still be an entrance at that location; there could still be a walkway; and there could still be stairs without the need for a variance.

Responding to Mr. Morganroth, Mr. Johnson explained that because the applicant has chosen to maintain 14.00 ft. between principal buildings to the east, he has moved the house 2.00 ft. out past the setback line. He agreed the patio is recessed back 2.00 ft. but they are looking at what is projecting past the face of the house which adds another 4.40 ft.

Motion failed, 3-4.

ROLLCALL VOTE

Yeas: Judd, Canvasser, Lillie

Nays: Hart, Lilley, Morganroth, Rodriguez

Absent: Miller

Since the motion to deny Variance (C) of the petitioner's request did not pass, Chairman Lillie asked for a motion to approve Variance (C) of the petitioner's request.

Mr. Hart motioned with regard to Appeal 18-42, 592 W. Frank, Chapter 126, Article 4, section 4.30(C)(3) to approve Variance (C) for of 6.40 ft. as requested and tied to the plans. **The motion failed for lack of a second.**

Since no motion was passed to approve Variance (C) of the petitioner's request as advertised, it is deemed denied.

Motion by Mr. Hart

Seconded by Mr. Morganroth with regard to Appeal 18-42, 592 W. Frank, Chapter 126, Article 4, section 4.30(C)(3) to approve a variance 5.40 ft. for a side projection structure, contingent upon approval of the design by the Building Dept.

Mr. Canvasser raised the issue of what the Board would be approving in terms of 5.40 ft. as there are no drawings. That is why he cannot support the motion.

Mr. Johnson responded that he understands those concerns. If the patio was part of the structure he would have the same concerns; but when it is a patio near a slab on grade he thinks that could be handled during the review process to make sure that it follows the guidelines of the motion.

Mr. Morganroth indicated he would support the motion for the following reasons:

- He believes this is a challenging lot;
- The limitations of the lot are not self-created;
- The applicants have gone to the minimum and maximum width potentially to build a home of this caliber on this lot;
- They have made an active attempt to mitigate the side entrance by recessing and sacrificing potential square footage;
- He believes that Variance (C) will do substantial justice to the homeowner and to the neighbor;
- He further believes they could say that since the steps are a typical size, the 1 ft. would have to come out of the flat patio as a means to achieve this approval.

Motion carried, 6-1.

VOICE VOTE

Yeas: Hart, Morganroth, Lilley, Judd, Lillie, Rodriguez

Nays: Canvasser
Absent: Miller

T# 12-111-18

5. CORRESPONDENCE (none)

T# 12-112-18

6. GENERAL BUSINESS

1) Rules of Procedure Revisions

Board members reviewed the proposed changes to the Rules of Procedure.

Motion by Mr. Judd

Seconded by Mr. Morganroth to adopt the proposed Rules of Procedure as presented.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: Miller

Mr. Judd noted that sections of the Code that deal with the powers of the BZA to sit in judgment of two sister boards and the Building Official are based on State Statute MCL125.581. Unfortunately in 2006 that statute was repealed. Yet the BZA still goes by that same section. Now there is a new section MCL125.3603 that became effective July 1, 2006, which is the same date that the old section was repealed. So, the Board has been dealing with a section that is 12 years out of date.

Mr. Johnson said they can work on bringing that up to date. It has to go before the Planning Board as an amendment to the Zoning Ordinance. Mr. Judd added they might also request an opinion from the City Attorney.

T# 12-113-18

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

T# 12-114-18

8. ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:35 p.m.

Bruce R. Johnson, Building Official