

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, NOVEMBER 12, 2019
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, November 12, 2019. Chairman Charles Lillie convened the meeting at 7:30 p.m.

2. ROLLCALL

Present: Chairman Charles Lillie; Board Members Jason Canvasser, Kevin Hart, Richard Lilley, John Miller, Erik Morganroth, Francis Rodriguez

Absent: Alternate Board Member Ron Reddy

Administration:

Bruce Johnson, Building Official
Mike Morad, Asst. Building Official
Jeff Zielke, Asst. Building Official
Brooks Cowan, City Planner
Laura Eichenhorn, Transcriptionist

Chairman Lillie welcomed everyone and invited Vice-Chairman Canvasser to conduct the meeting for its duration.

Vice-Chairman Canvasser explained BZA procedure to the audience. He noted that the members of the Board of Zoning Appeals 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. Appeals are heard by the board as far as interpretations or rulings. In that type of appeal the appellant must show that the official or board demonstrated an abuse of discretion or acted in an arbitrary or capricious manner. Four affirmative votes are required to reverse an interpretation or ruling.

Vice-Chairman Canvasser took rollcall of the petitioners. All petitioners were present.

T# 11-79-19

3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF OCTOBER 15, 2019

Chairman Lillie recommended the second sentence under Call to Order be changed to read "Vice-Chairman Canvasser convened the meeting at 7:30 p.m." Then, under administration, he recommended the sentence reading "Jason Canvasser acted as Chairman for the duration of the evening's meeting" be removed.

Motion by Mr. Morganroth

Seconded by Mr. Lilley to accept the Minutes of the BZA meeting of October 15, 2019 as amended.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

T# 11-80-19

4. APPEALS

**1) 1124 Smith
Appeal 19-39**

Assistant Building Official Zielke presented the item, explaining the owner of the property known as 1124 Smith requested the following variance to construct a new home with a detached garage:

A. Chapter 126, Article 4, Section 4.74 (C) of the Zoning Ordinance requires the minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is greater. The required distance is 14.00 feet. The proposed is 10.00 feet. Therefore, a 4.00 foot variance is being requested.

Assistant Building Official Zielke noted the property is adjacent to a corner lot with an existing nonconforming structure located on it. The property is zoned R3 – Single Family Residential.

Jim Vervisch, builder on the project, was present on behalf of the appellant.

Motion by Mr. Miller

Seconded by Mr. Morganroth with regard to Appeal 19-39, A. Chapter 126, Article 4, Section 4.74 (C) of the Zoning Ordinance requires the minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is greater. The required distance is 14.00 feet. The proposed is 10.00 feet. Therefore, a 4.00 foot variance is being requested.

Mr. Miller moved to approve Appeal 19-39 and to tie it to the plans as submitted. He stated that strict compliance with the ordinance would unreasonably prevent the petitioner from using their property due to the positions of the houses on either side.

Mr. Miller said the problem was not self-created and that the proposed solution was reasonable.

Mr. Morganroth explained he would be supporting the motion because while the home is narrow the owners still out forth effort to minimize the non-conformities on both sides of the home.

Chairman Lillie said he would support the motion because if the houses on either side of the appellants' home were not present, the appellant would not need a variance.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**2) 33680 Woodward
Appeal 19-40**

City Planner Cowan presented the item, explaining the owner of the property known as 33680 Woodward requested that the BZA reverse a decision of the building official.

A. Chapter 126, Article 8, Section 8.01(D) of the Zoning Ordinance, which states the Board of Zoning Appeals may hear and decide appeals from any decision made by an administrative official as it relates to the Zoning Ordinance. The BZA may reverse or affirm, wholly or partly, or may modify such decisions.

The applicant is aggrieved by the decision of the Building Official with the interpretation of Chapter 126, Article 9, Definition of health club/studio and Chapter 126, Article 2, Section 2.31, Permitted Uses in the B2-B Zone.

The applicant has applied to open Roots Jiu Jitsu Academy at the subject property of 33680 Woodward. The Building Official has determined that this type of use is categorized as a Health Club/Studio, which is defined in Chapter 126, Article 9, Definitions as "A place designated for and equipped for the conduct of sports, exercise and physical fitness activities." A Health Club/Studio use is not permitted within the B2-B zone.

The applicant has requested that the BZA reverse the interpretation of Roots Jiu Jitsu as a Health Club/ Studio by the Building Official, in favor of classifying the use as a School, which is defined in Chapter 126, Article 9, Definitions as "An institution, either public or private, offering instruction in primary, secondary or collegiate courses of study." School use is permitted within the B2-B zone.

City Planner Cowan specified that the property is zoned B2-B. In regards to relevant history of the site, a pilates studio applied to occupy the subject space in 2003. The Building Official

determined a pilates use was classified as a Health Club/Studio and therefore was not permitted in the B2-B zone. The applicant appealed this interpretation to the BZA on August 12, 2003 (Appeal 03-37), requesting that the Board reverse the Building Official's decision in favor of determining that a pilates studio satisfied the definition and classification of a School, which is permitted in the B2-B zone.

After considering the applicant's case, the BZA motioned to overturn the ruling of the Building Official, determining that the applicant satisfied the Zoning Ordinance's definition of School. Relevant meeting minutes for Appeal 03-37 are attached. It is of note that this hearing in 2003 included a discussion by the Board of a prior case on April 9th, 2002 (Appeal 02-54) where the Building Official's interpretation of a martial arts studio Kuk Sool Won as a Health Club/Studio was also overturned by the BZA in favor of the Zoning Ordinance's definition of School for the property at 33488 Woodward. Relevant meeting minutes for Appeal 02-54 are attached as well.

In 2012, after the pilates studio Body Pure moved out, the dance studio Ballroom moved into the subject site as a permitted use classified as a school. The subject tenant space has been vacant since 2017.

Kevin Denha, property owner and manager, was present to represent the appeal.

Vice-Chairman Canvasser advised Mr. Denha that the BZA would need to see that Building Official Johnson either abused his discretion, made an arbitrary or capricious decision, or based his decision on an erroneous finding of a material fact or an erroneous interpretation of the zoning ordinance.

Mr. Denha replied that the students are taught both martial arts and life skills in Jiu Jitsu class, which makes the proposed establishment more of a school than a health club or studio.

Vice-Chairman Morganroth said he was very open to hearing a persuasive argument for the proposed establishment being a school. He noted that the instructor of the proposed classes was not present and therefore could not explain to the BZA how the proposed establishment would fit the definition of a "school". Vice-Chairman Morganroth asked Mr. Denha to elaborate on how this would be more of a school than "a place designated for and equipped for the conduct of sports, exercise and physical fitness activities," as per Chapter 126, Article 9, Definitions.

Mr. Denha said that just because there was open space instead of traditionally divided classrooms did not mean that school-like teaching could not occur in the space.

In reply to Mr. Miller, Mr. Denha stated his team did not consider pursuing a use variance from the BZA. He said he decided to follow this course after reviewing previous City rulings regarding the property.

Mr. Hart observed that an individual would not be able to enter the proposed establishment at an unscheduled time and independently 'work-out' as one might do at a gym or fitness club. He noted that any individual hoping to use the establishment's facilities would have to attend a scheduled class taught by an instructor.

Mr. Denha confirmed that was the case.

Seeing no further comment from the Board, Vice-Chairman Canvasser invited comment from the public.

Jeff Wilmot of Glenn Wing Power Tools shared concern that the patrons of the Jiu Jitsu studio would use the public parking in front of the building, instead of parking in the designated parking in the back. If this occurred, it would limit the amount of parking available to Glenn Wing Power Tool patrons and patrons of other adjacent retail shops. Mr. Wilmot explained this happened in the past and had a negative impact on his establishment.

Vice-Chairman Morganroth noted that a school use, which is permitted in that space, would likely cause a similar parking issue.

Mr. Wilmot confirmed that would likely be the case.

Michele Major of Sol Potion Studio echoed Mr. Wilmot's concerns. She explained that any establishment where the patrons stay for a longer period of time causes parking congestion in that area.

Joe Hajjar of ML. Spirits echoed Mr. Wilmot's and Ms. Major's concerns regarding parking.

Mr. Wilmot, Ms. Major, and Mr. Hajjar all expressed their respect for Mr. Denha and their appreciation of the renovations he did to the building. They said their only concern was the matter of parking, and they all concurred that they wanted to see Mr. Denha succeed in the space more generally.

Chairman Lillie stated that, while there were clearly parking concerns, the BZA would not be able to weigh in on parking because it was not the issue before the Board. He clarified that the only question before the Board was whether the proposed establishment could be considered a 'school' as defined in the ordinance.

Motion by Vice-Chairman Canvasser

Seconded by Mr. Lillie with regard to A. Chapter 126, Article 8, Section 8.01(D) of the Zoning Ordinance, which states the Board of Zoning Appeals may hear and decide appeals from any decision made by an administrative official as it relates to the Zoning Ordinance.

Vice-Chairman Canvasser moved to deny appeal 19-40. He explained that the BZA is confined by a very high burden of proof in such a matter. Since the BZA makes its determinations on a case-by-case basis, prior decisions regarding similar matters or the same property are informative but not binding. Based on the ordinance definitions of school and health club/studio, Vice-Chairman Canvasser stated the Building Official made an appropriate determination in regards to this case.

Chairman Lillie said there had not been a showing that the proposed establishment would meet the definition of school as set out in the ordinance.

Mr. Miller said he would also be supporting the motion, and said the Building Official's determination was correct.

Mr. Rodriguez said he would be supporting the motion. He also said there are some ambiguities regarding 'schools' in the ordinance definitions of Districts B-1, B-2 and B-3, and said the City should seek to clarify those.

Vice-Chairman Canvasser concurred with Mr. Rodriguez. Vice-Chairman Canvasser said he did not make his motion based on any parking considerations, but agreed it would behoove the City to revisit the definition of 'school' in City ordinance.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Canvasser, Lillie, Rodriguez, Miller, Morganroth, Hart, Lilley
Nays: None

T# 11-81-19

5. CORRESPONDENCE (included in agenda)

T# 11-82-19

6. GENERAL BUSINESS (none)

T# 11-83-19

7. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA (no one from the public wished to comment)

T# 11-84-19

8. ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:25 p.m.



Bruce R. Johnson, Building Official