

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, DECEMBER 10, 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, December 10, 2019. Chairman Charles Lillie convened the meeting at 7:29 p.m.

2. ROLLCALL

Present: Chairman Charles Lillie; Board Members Jason Canvasser, Kevin Hart, Richard Lilley, Francis Rodriguez; Alternate Board Member Jerry Attia

Absent: Board Members John Miller, Erik Morganroth; Alternate Board Member Ron Reddy

Administration:

Bruce Johnson, Building Official
Mike Morad, Asst. Building Official
Jeff Zielke, Asst. Building Official
Laura Eichenhorn, Transcriptionist

Chairman Lillie 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.

Chairman Lillie took rollcall of the petitioners. All petitioners were present.

T# 12-85-19

3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF NOVEMBER 12, 2019

Motion by Mr. Canvasser

Seconded by Mr. Lilley to accept the Minutes of the BZA meeting of November 12, 2019 as submitted.

Motion carried, 6-0.

VOICE VOTE

Yeas: Canvasser, Lilley, Rodriguez, Attia, Lillie, Hart

Nays: None

T# 12-86-19

4. APPEALS

**1) 2282 W Lincoln
Appeal 19-41**

Assistant Building Official Zielke presented the item, explaining the owner of the property known as 2282 W. Lincoln requested the following variance to improve the existing driveway:

A. Chapter 126, Article 4, Section 4.31(A)1 of the Zoning Ordinance requires a minimum of 65% of the front open space in all single family districts shall be free of paved surfaces. The required open space is 1851.20 square feet (65%). The proposed is 1522.00 square feet (53.44%). Therefore, a 329.20 square feet (11.56%) variance is being requested.

Assistant Building Official Zielke noted the property is located near the high school. An impervious permit had been issued in 2005 to rework the existing driveway into a circular driveway. This property is zoned R1 – Single Family Residential.

Roger Marchetti and Karisma Sharma, owners of 2282 W. Lincoln, were present on behalf of the appeal. Mr. Marchetti provided some visual media to illustrate the appeal and answered questions posed by the Board. As per his letter included in the evening's agenda packet and dated November 12, 2019, the appeal's main concern was how the pavers increase the safety with which the residents of 2282 W. Lincoln can exit their driveway onto a busy road.

Mr. Marchetti explained:

- With the pavers more than one vehicle can park in the driveway and vehicles can more easily maneuver entering and exiting the driveway. While he is confident in his ability to safely exit his driveway with or without the pavers, he has children who will be driving and the home's proximity to Seaholm High School means there are many inexperienced and distracted drivers going through the area, which means increased safety and maneuverability would be key.
- It is not unusual for there to be two vehicles in the driveway since he works from home and often has meetings with consulting clients at his home.
- If he were to have a larger gathering at his home, visitors would need to park either in his driveway or on adjacent streets, as there seldom parking available on Lincoln.

- Drivers routinely exceed the speed limit on Lincoln, which makes backing out of the driveway both difficult and unsafe. Having the pavers installed allows a vehicle to more easily exit face-first.
- In reply to Mr. Rodriguez, that Mr. Marchetti had not considered contacting the City to do a traffic study on this area with the aim of increasing safety.

Mr. Hart stated he had a chance to visit 2282 W. Lincoln, and noticed that the across-the-street neighbors had both a circular driveway and the same sized lot as 2282 W. Lincoln. The difference between the two lots, Mr. Hart noted, is that next to 2282 W. Lincoln's driveway is a large tree on City property that forces the narrowing of their driveway.

Mr. Marchetti concurred with Mr. Hart, commenting that while he appreciates the aesthetics of the tree it does obscure some sightlines.

Motion by Mr. Hart

Seconded by Mr. Attia with regard to Appeal 19-41, A. Chapter 126, Article 4, Section 4.31(A)1 of the Zoning Ordinance requires a minimum of 65% of the front open space in all single family districts shall be free of paved surfaces. The required open space is 1851.20 square feet (65%). The proposed is 1522.00 square feet (53.44%). Therefore, a 329.20 square feet (11.56%) variance is being requested.

Mr. Hart made a motion to approve Appeal 19-41 and tie it to the plans as submitted. He said the geometry on the site makes maneuvering very difficult, that the proximity to a large high school with adult educational facilities and sports venues means there is consistently traffic in the area, that the grade school near 2282 W. Lincoln also increases the activity in the area, and that these factors amount to a pronounced hardship and make it difficult for the appellants to enter and exit their driveway.

Chairman Lilley noted that the grade school referenced by Mr. Hart no longer functions as a grade school, and rather is part community senior center and part pre-school. Chairman Lilley continued that if the request were just for the pavers around the driveway he would not have an issue. He said he could not see the justification for the pavers located near the wall, and that not all the homes in the neighborhoods have circular drives, which means that others in the neighborhood are navigating the safety issues without extending their driveways or requesting a variance.

Mr. Canvasser acknowledged that there are some unique circumstances to the property, and that a circular driveway is likely a benefit. He concurred with Chairman Lilley that he could not see the need for pavers near the wall, and that their installation amounted to a self-created issue. Mr. Canvasser said he could see a way to vote to approve were the pavers near the wall not part of the appeal.

Mr. Rodriguez echoed Chairman Lilley and Mr. Canvasser regarding the pavers near the wall. He added that beyond that there is some assumption of risk factors living in a well-travelled area. He also added that perhaps the issue could be better remedied by requesting that the City try to study and improve traffic in the area. He said he

would not be able to approve the current motion, and could consider voting affirmatively for a different motion calling for the removal of the pavers by the wall.

Mr. Attia stated that the pavers near the wall improve the traffic safety of the street by virtue of creating an additional parking spot on 2282 W. Lincoln's property. He ventured that the intent of the ordinance is to maintain proper drainage and erosion control, an aim to which semi-pervious materials contribute positively. Since the pavers are semi-pervious and the ones near the wall amount to the small dimension of 128 sq. ft., Mr. Attia opined that it would be a benefit to the City to approve the motion as stated as it would improve street congestion without negatively affecting drainage on the site. As a result, Mr. Attia said he disagreed with his fellow Board members given the limited drainage impact of the pavers as installed. He said the Marchettis should not have installed the pavers without going through the proper application process first, and added that they seemed remorseful regarding the mistake during the evening's discussion.

Motion failed, 3-3.

ROLL CALL VOTE

Yeas: Hart, Attia, Lilley

Nays: Canvasser, Lillie, Rodriguez

After some discussion, the Board agreed to set aside the previous vote on Appeal 19-41 and to reconsider the matter at its regularly scheduled meeting on January 14, 2020. Mr. Hart also offered to withdraw his motion regarding Appeal 19-41.

Motion by Mr. Canvasser

Seconded by Mr. Rodriguez with regard to Appeal 19-41, A. Chapter 126, Article 4, Section 4.31(A)1 of the Zoning Ordinance requires a minimum of 65% of the front open space in all single family districts shall be free of paved surfaces. The required open space is 1851.20 square feet (65%). The proposed is 1522.00 square feet (53.44%). Therefore, a 329.20 square feet (11.56%) variance is being requested.

Mr. Canvasser moved to accept Mr. Hart's withdrawal of the previous motion regarding Appeal 19-41, to set aside the Board's vote on the previous motion regarding Appeal 19-41, and to table consideration of Appeal 19-41 until the Board's January 14, 2020 meeting in order to allow the Board time to review revised drawings and have a full Board present for a vote on the matter.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Canvasser, Rodriguez, Attia, Hart, Lillie, Lilley

Nays: None

T# 12-87-19

5. CORRESPONDENCE (included in agenda)

T# 12-88-19

6. GENERAL BUSINESS (none)

T# 12-89-19

7. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

No members of the public wished to comment.

T# 12-90-19

8. ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:10 p.m.



Bruce R. Johnson, Building Official