

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, JUNE 11, 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, June 11, 2019. Chairman Charles Lillie convened the meeting at 7:30 p.m.

2. ROLLCALL

Present: Chairman Charles Lillie; Board Members Jason Canvasser, John Miller, Erik Morganroth, Francis Rodriguez, Richard Lilley; Alternate Board Member Ron Reddy

Absent: Board Member Kevin Hart

Administration:

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

Chairman Lillie then appointed Mr. Morganroth as Chairman for the duration of the evening's meeting.

Chairman Morganroth welcomed everyone and 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 Morganroth then took rollcall of the petitioners; all petitioners were present.

T# 06-43-19

3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF MAY 14, 2019

Mr. Canvasser noted that in the motion for 1645 Buckingham 'because' should be changed to read 'believes'.

Motion by Mr. Canvasser

Seconded by Mr. Rodriguez to accept the Minutes of the BZA meeting of May 14, 2019 as amended.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

T# 06-44-19

4. APPEALS

**1) 570 Pierce
Appeal 19-19**

Assistant Building Official Morad explained the owner of the property known as 570 Pierce Street requested the following variance to replace the existing driveway:

A. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires a minimum 40% (2202.74 SF) open space to be provided. The existing and proposed is 38.40% (2119.76 SF). Therefore, a variance of 1.60% (82.96 SF) is being requested.

Assistant Building Official Morad added the applicant proposed to remove and replace the existing driveway at this home that was constructed in 2003. This property is zoned R3 – Single Family Residential. No additional concrete will be added and the turnaround in the back of the home is required to use the garage properly.

Robert Connors, owner, spoke as the appellant and reviewed the information regarding 570 Pierce included in the Board's agenda packet. The Board had no questions for Mr. Connors.

Motion by Mr. Rodriguez

Seconded by Mr. Lillie with regard to Appeal 19-19, A. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires a minimum 40% (2202.74 SF) open space to be provided. The existing and proposed is 38.40% (2119.76 SF). Therefore, a variance of 1.60% (82.96 SF) is being requested.

Mr. Rodriguez said he would move to approve the variance request tied to the plans as submitted since a practical difficulty had been established. He said the need is not self-created due to an existing non-conformity, that strict compliance would prevent

the applicant from using the property for its permitted purpose, and that granting the variance would affect no adjacent properties.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 06-45-19

**2) 1624 Cole
Appeal 19-20**

Assistant Building Official Morad explained the owner of the property known as 1624 Cole requested the following variance to construct a new single family home with a detached garage:

A. Chapter 126, Article 4, Section 4.74 (C) of the Zoning Ordinance requires a minimum distance between principal residential buildings for this lot to be 14.00 feet. The proposed distance is 12.70 feet, therefore a variance of 1.30 feet is requested.

Assistant Building Official Morad added the proposed home meets all the zoning requirements on the site with the exemption of the distance between structures to the neighboring existing non-conforming home. This property is zoned R3 – Single Family Residential. If the home were in-line with the existing ordinances this variance would not be necessary.

Al Fathi, owner, spoke as the appellant. He explained his planned home adheres to ordinance, and that the issue is his neighbor's non-conforming home being closer to his planned home than would otherwise be allowed.

Andrew Seton, neighbor of the appellant and owner of 1638 Cole, addressed the Board. Mr. Seton asked the Board for a guarantee that he would be able to build an addition in the future if Mr. Fathi is granted his variance now.

Chairman Morganroth told Mr. Seton that a future addition to his home would need a variance if he wanted to maintain or expand the footprint since his home is currently too close to the lot line, regardless of whether Mr. Fathi is granted a variance this evening. Chairman Morganroth emphasized that Mr. Seton's home's non-conformity is what could necessitate a variance for a future addition.

Mr. Seton expressed concern that Mr. Fathi's proposed construction could cause drainage issues and damage to Mr. Seton's property.

Building Official Johnson confirmed that the Building Department could meet with Mr. Seton and advise both Mr. Seton and Mr. Fathi's builders on ways to mitigate potential drainage issues.

Sergeant Craig Ludwig spoke as a homeowner at the corner of Tory and Cole, near 1624 Cole. He stated his beliefs that the proposed home did not meet many of the City's codes, that Mr. Seton's concern about the proposed home at 1624 Cole should be able to prevent the construction of 1624 Cole, that the majority of the neighbors were not in favor of a home being built at 1624 Cole, that 1624 Cole, as planned, will be out of character with the neighborhood, and that extant non-conforming homes should not be considered non-conforming because they were built before the new codes were instituted.

Chairman Morganroth replied that 1624 Cole meets all the City codes excepting the one before the Board this evening, that a property owner may build on their property as long as the proposed structure conforms to City code and granted variances, and that extant non-conforming homes are not effected by code changes as long as they remain as-is. When the owner of an extant non-conforming home seeks to alter their home, however, their updates must either adhere to current City codes or the owner must seek a variance.

Sgt. Ludwig stated that Mr. Fathi cut down some of Sgt. Ludwig's trees, and that the City's code enforcement did not take sufficient action in his opinion.

Chairman Morganroth advised Sgt. Ludwig to discuss further concerns on the matter with the Building Department in order to make sure that Sgt. Ludwig's rights are sufficiently protected.

Chairman Morganroth then clarified that the Board could only decide whether the variance request before them has merit according to Board procedure, and that the Board could neither weigh in on the appropriateness of the home proposed at 1624 Cole or on the neighbors' opinions of it.

Sgt. Ludwig stated that to grant this variance would be to change the footprint of the block as it sits currently.

Mr. Lillie and Chairman Morganroth assured Sgt. Ludwig that his opinion was noted for the record.

Sgt. Ludwig submitted a letter from Victoria Pinello, another neighbor, to the Board.

Mr. Lillie said the letter would be added to the file.

Motion by Mr. Miller

Seconded by Mr. Rodriguez with regard to Appeal 19-20, A. Chapter 126, Article 4, Section 4.74 (C) of the Zoning Ordinance requires a minimum distance between principal residential buildings for this lot to be 14.00 feet. The proposed distance is 12.70 feet, therefore a variance of 1.30 feet is requested.

Mr. Miller said he would move to approve the variance request tied to the plans as submitted because compliance with the variance would unreasonably prevent the petitioner from using the property for its permitted purposes, which is entirely due to the neighbor's non-conformity. Mr. Miller continued that the problem was not self-created because the adjacent house is outside of the zoning envelope, and that the

proper location of 1624 Cole on its lot would do substantial justice to the neighborhood.

Mr. Lillie supported the motion because the petitioner is in compliance with all the current zoning ordinances and the problem is caused by the adjacent home. Mr. Lillie said this is not an unusual issue for the Board to hear.

Mr. Reddy said that, like Sgt. Ludwig, he was concerned that the variance could be injurious to the neighborhood. He noted the lots in the neighborhood are very small and that a new home on that lot may not be appropriate.

Mr. Canvasser said he would be supporting the motion, and reiterated that the BZA sits as a quasi-judicial Board which much make its decisions based on certain facts and tests it must analyze in granting or denying a variance. He stated that the Board as decisors must put aside their personal decisions on the appropriateness of a project. He reminded neighbors that if there are code violations, encroachments on their property, or other issues they do have avenues for redress with the City. That said, the Board may only decide to grant or deny variances based on whether the required standards have been met. Mr. Canvasser asserted those standards have been met in this case.

Motion carried, 6-1.

ROLL CALL VOTE

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

Nays: Reddy

T# 06-46-19

**3) 1024 Southlawn
Appeal 19-21**

Assistant Building Official Morad explained the owner of the property known as 1024 Southlawn requested the following variance to construct a two story rear addition to an existing non-conforming home:

A. Chapter 126, Article 4, Section 4.74 (C) of the Zoning Ordinance requires a minimum distance between principal residential buildings for this lot to be 17.50 feet. The existing and proposed distance is 16.40 feet, therefore a variance of 1.10 feet is requested.

Assistant Building Official Morad added the applicant proposes to construct a two story rear addition to extend out and to be in-line with the existing non-conforming home on the northwest side. The existing home was constructed in 1953. This property is zoned R2 – Single Family Residential. Other than the requested variance the house meets the ordinance requirements.

Steve Powers spoke as the contractor for the home and the representative of the owners. Mr. Powers reviewed the information regarding 1024 N. Southlawn included in the Board's agenda packet.

In response to Chairman Morganroth, Mr. Powers opined that an attempt at mitigation would stymie the planned family room and kitchen expansion. Mr. Powers also said mitigation would not be in keeping with the ordinance for the area.

Motion by Mr. Miller

Seconded by Mr. Canvasser with regard to Appeal 19-21, A. Chapter 126, Article 4, Section 4.74 (C) of the Zoning Ordinance requires a minimum distance between principal residential buildings for this lot to be 17.50 feet. The existing and proposed distance is 16.40 feet, therefore a variance of 1.10 feet is requested.

Mr. Miller said he would move to approve the variance request tied to the plans as submitted because the non-conformity is due to the location of the neighbor's house which would prevent the petitioner from building as otherwise permitted. He stated the problem is not self-created, that the variance would do substantial justice to the adjacent neighbors, and that the brick base will be carried around the perimeter of the house to maintain architectural continuity with the existing structure.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 06-47-19

**4) 945 Stanley
Appeal 19-22**

Assistant Building Official Zielke explained the owner of the property known as 945 Stanley requested the following variance to construct a one story covered rear porch to an existing conforming home:

A. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires a minimum rear yard setback to be 30.00 feet. The proposed distance is 20.54 feet. Therefore a variance of 9.46 feet is requested.

Assistant Building Official Zielke added the applicant proposed to construct a one story rear covered porch to the existing home that was constructed in 2002. The lot is an irregular shape. This property is zoned R3 – Single Family Residential.

Loch Durrant spoke as the contractor and representative for the petitioner. Mr. Durrant reviewed the information regarding 945 Stanley included in the Board's agenda packet.

In reply to Mr. Canvasser, Mr. Durrant stated a patio with a covering is preferred to a patio with umbrellas due to a medical condition of one of the home's occupants.

Mr. Lillie clarified that medical conditions are not relevant for the purpose of determining practical difficulty.

Motion by Mr. Lillie

Seconded by Mr. Canvasser with regard to Appeal 19-22, A. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires a minimum rear yard setback to be 30.00 feet. The proposed distance is 20.54 feet. Therefore a variance of 9.46 feet is requested.

Mr. Lillie said he would move to approve the variance request tied to the plans as submitted because, while the granting of an encroachment into the rear yard setback of 30 feet is exceedingly rare, this is an unusual shaped lot and granting the variance would do substantial justice to both the petitioner and adjoining landowners. He noted that the need for a variance is not self-created and that getting closer to the adjacent house will not be a problem because the house behind 945 Stanley is set further north on its lot.

Mr. Miller concurred with Mr. Lillie and added that the granting of this variance does not set a precedent because it is specifically based on the unusual shape of the lot.

Mr. Morganroth said he would also be supporting the variance because the majority of the lot represents the greater depth as the parcels south of 945 Stanley, making the 945 Stanley's lot unique. Mr. Morganroth stated the variance is justified for that reason.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 06-48-19

**5) 1200 W. Lincoln
Appeal 19-23**

Assistant Building Official Zielke explained the owner of the property known as 1200 W Lincoln, requested the following variance to replace the existing non-conforming driveway:

A. Chapter 126, Article 4, Section 4.31(A)(1) of the Zoning Ordinance requires a minimum of 65% (2548.00 SF) of the front open space in single family districts shall be

free of paved surfaces. The existing and proposed amount is 56.45% (2213.00 SF), therefore a variance of 8.55% (335.00 SF) is requested.

Assistant Building Official Zielke added the applicant proposed to remove and replace the existing driveway at this home that was constructed in 1964. This property is zoned R1 – Single Family Residential.

Patrick Zaremba spoke as the landscape designer and representative for the applicant. Mr. Zaremba reviewed the information regarding 1200 W. Lincoln included in the Board's agenda packet.

Motion by Mr. Canvasser

Seconded by Mr. Rodriguez with regard to Appeal 19-23, A. Chapter 126, Article 4, Section 4.31(A)(1) of the Zoning Ordinance requires a minimum of 65% (2548.00 SF) of the front open space in single family districts shall be free of paved surfaces. The existing and proposed amount is 56.45% (2213.00 SF), therefore a variance of 8.55% (335.00 SF) is requested.

Mr. Canvasser said he would move to approve the variance request tied to the plans as submitted because the proposal replaces the deteriorating driveway, adding no square footage. He explained that the problem is not self-created and is due to the unique features of the property including the height variation and the steep decline which could cause drainage problems into the house. He said granting the variance would do substantial justice to the owner of the property and the surrounding property owners, and strict compliance with the ordinance would unreasonably prevent the petitioner from using the property for the permitted purpose.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 06-49-19

**6) 271 Westchester Way
Appeal 19-24**

Assistant Building Official Morad explained the owner(s) of the property known as 271 Westchester Way requested the following variance to construct a second floor and rear addition on an existing non-conforming home:

A. Chapter 126, Article 4, Section 4.74 (C) of the Zoning Ordinance requires that the distance between buildings on adjacent residential lots be 14 feet or 25% of the width of the lot. The required distance is 15.00 feet. The existing and proposed is 14.16 feet. Therefore, a variance of 0.84 feet is requested.

B. Chapter 126, Article 4, Section 4.75 A (1) of the Zoning Ordinance requires that attached garages be setback a minimum of 5.00 feet from the portion of the front façade that is furthest setback from the front property line. The existing garage is 3.00 feet back from the furthest front facade. Therefore, a variance of 2.00 feet is requested.

He added that the applicant proposed to construct a second floor and rear addition to the existing non-conforming home that was constructed in 1950. The rear addition meets all zoning requirements. This property is zoned R1 – Single Family Residential.

Robin Ballew spoke as the designer and representative for the applicant. Mr. Ballew reviewed the information regarding 271 Westchester Way included in the Board's agenda packet.

Mr. Ballew confirmed for Chairman Morganroth that two offsets were included in the project as an intentional attempt to mitigate the need for additional variances for the project. He stated the goal was to avoid all variances, but that ultimately there was no way to mitigate the two variances being requested while maintaining the garage.

Motion by Mr. Miller

Seconded by Mr. Lillie with regard to Appeal 19-24, A. Chapter 126, Article 4, Section 4.74 (C) of the Zoning Ordinance requires that the distance between buildings on adjacent residential lots be 14 feet or 25% of the width of the lot. The required distance is 15.00 feet. The existing and proposed is 14.16 feet. Therefore, a variance of 0.84 feet is requested; and, B. Chapter 126, Article 4, Section 4.75 A (1) of the Zoning Ordinance requires that attached garages be setback a minimum of 5.00 feet from the portion of the front façade that is furthest setback from the front property line. The existing garage is 3.00 feet back from the furthest front facade. Therefore, a variance of 2.00 feet is requested.

Mr. Miller said he would move to approve the variance request tied to the plans as submitted because conformity would unnecessarily burden the homeowner due to the location of the existing house on the site, because the variance would do substantial justice to the petitioner, because the proposed variance would keep all new construction in the zoning envelope except for where the house would be built above the the two slight existing non-conformities, because the house was built before the current zoning was in place, and because the problem was not self-created.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 06-50-19

**7) 187 Euclid
Appeal 19-25**

Assistant Building Official Zielke explained the owner(s) of the property known as 187 Euclid requested the following variance to construct a raised patio in the rear open space:

A. Chapter 126, Article 4, Section 4.30(C)(5) of the Zoning Ordinance limits porches and decks to one story in height in the rear open space. The proposed patio is to be constructed over one story in height. Therefore, a variance to construct a rear patio above one story is requested.

He added the applicant proposed to construct a rear raised patio that extends into the required rear open space. This home was constructed in 2005, which was approved for a building height variance (BZA Case 04-33) due to the sloping grades to the rear of the property (minutes attached). This property is zoned R2 – Single Family Residential.

Glenda Meads spoke as the architect and the representative for the applicant. Ms. Meads reviewed the information regarding 187 Euclid included in the Board's agenda packet.

Chairman Morganroth observed that, despite the applicant's assertion of a lack of outdoor useable space, the property has outdoor space over the garage that is nearly the width of the home with a seven to eight foot depth.

Ms. Meads clarified the outdoor space to which Chairman Morganroth referred is not useable and would not permit even a table or a chair.

In reply to Chairman Morganroth, Ms. Meads explained there would be a retaining wall around three sides, and that the retaining walls on the east and west sides already exist. Those walls would be expanded up and the rest of the space would be filled with open railing.

Mr. Lillie noted that the current circumstances of the home have existed for 14 years, and asked why the applicant is interested in altering the exterior layout now.

Ms. Meads said she was unsure of how long the homeowners had lived in the home, but that the proposed changes would allow the homeowners to consolidate their living space closer to the house and further from the neighbors, and would create one flat, open space as opposed to the current circumstances of multiple unusable spaces.

Ms. Meads also assured the Board that the adjacent neighbors to the south have no objections to the plans.

Motion by Mr. Lillie

Seconded by Mr. Canvasser with regard to Appeal 19-25, A. Chapter 126, Article 4, Section 4.30(C)(5) of the Zoning Ordinance limits porches and decks to one story in height in the rear open space. The proposed patio is to be constructed over one story in height. Therefore, a variance to construct a rear patio above one story is requested.

Mr. Lillie moved to deny the variance request because practical difficulty had not been sufficiently established and the issue seemed to be self-created. Citing concern that

the proposed elevation relative to the adjacent properties could cause a problem, Mr. Lillie asserted it would not be unduly burdensome to conform to the ordinance and would avoid the possibility of doing an injustice to the neighbors.

Mr. Miller said he would not support the motion to deny because the desire to have useable backyard space on the first floor is reasonable and justified. He observed that the bottom two elevations slope down in two different directions, making the lot uniquely difficult to deal with. No injury would be done to the adjacent properties as there is already a brick retaining wall next to the house to the west and these plans would only extend it slightly.

Motion failed, 2-5.

ROLL CALL VOTE

Yeas: Lillie, Canvasser

Nays: Miller, Morganroth, Rodriguez, Reddy, Lilley

Motion by Mr. Miller

Seconded by Mr. Rodriguez with regard to Appeal 19-25, A. Chapter 126, Article 4, Section 4.30(C)(5) of the Zoning Ordinance limits porches and decks to one story in height in the rear open space. The proposed patio is to be constructed over one story in height. Therefore, a variance to construct a rear patio above one story is requested.

Mr. Miller moved to approve the variance request tied to the plans as submitted because he said the request was reasonable and due to the unique and difficult situation of the lot. He said the plans represent a sensitive and accommodating solution for creating a useable backyard space on the first floor. Mr. Miller said the issue was not self-created, that the design would do substantial justice to the neighbors, and that strict conformity to the ordinance would be uniquely burdensome to the property owners.

Mr. Reddy concurred with Mr. Miller's observations.

Mr. Canvasser said he would not be supporting the motion to approve because, while the existing topography of the lot is challenging, there is useable outdoor space accessible by stairs. He opined that the proposal represents a preference on the part of the homeowners and not the establishment of a practical difficulty. Lastly, Mr. Canvasser noted these circumstances have been sufficient for the property owners for 14 years.

Chairman Morganroth said the measurement off of grade, the need for a home with a dropping slope to have a usable deck on the first floor level, and the visual disruption of multiple staircases instead of a consistent single patio at a height that is functional would be the reasons for his support of the motion to approve.

Motion carried, 5-2.

ROLL CALL VOTE

Yeas: Miller, Rodriguez, Reddy, Lilley, Morganroth

Nays: Canvasser, Lillie

T# 06-51-19

5. CORRESPONDENCE (included in agenda packet)

T# 06-52-19

6. GENERAL BUSINESS

T# 06-53-19

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

T# 06-54-19

8. ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 9:12 p.m.



Bruce R. Johnson, Building Official