

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS**  
**TUESDAY, OCTOBER 15, 2019**  
**City Commission Room**  
**151 Martin Street, Birmingham, Michigan**

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**1. CALL TO ORDER**

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals (“BZA”) held on Tuesday, October 15, 2019. Vice Chairman Jason Canvasser convened the meeting at 7:30 p.m.

**2. ROLLCALL**

**Present:** Board Members Jason Canvasser, Kevin Hart, Richard Lilley, John Miller, Erik Morganroth, Francis Rodriguez; Alternate Board Member Ron Reddy

**Absent:** Chairman Charles Lillie

**Administration:**

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

Chairman Canvasser 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 Canvasser took rollcall of the petitioners. All expected petitioners were present.

**T# 10-73-19**

**3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF SEPTEMBER 17, 2019**

**Motion by Mr. Lilley**

**Seconded by Mr. Morganroth to accept the Minutes of the BZA meeting of September 17, 2019 as submitted.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

**T# 10-74-19**

**4. APPEALS**

**1) 1114 Lakeside  
Appeal 19-35**

Assistant Building Official Morad presented the item, explaining the owner of the property known as 1114 Lakeside requested the following variance to construct a new home with an attached garage:

**A. Chapter 126, Article 4, Section 4.61 (A)(1)** of the Zoning Ordinance requires attached garages that face the street must be setback a minimum of 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The proposed garage is 51.16 feet in front of the furthest front facade. Therefore a variance of 56.16 feet is being requested.

Assistant Building Official Morad explained the current home was constructed in 1952 on this flag lot. This property is zoned R1 – Single Family Residential.

John Disbrow, architect, spoke on behalf of the appellant.

**Motion by Mr. Miller**

**Seconded by Mr. Morganroth with regard to Appeal 19-35, A. Chapter 126, Article 4, Section 4.61 (A)(1) of the Zoning Ordinance requires attached garages that face the street must be setback a minimum of 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The proposed garage is 51.16 feet in front of the furthest front facade. Therefore a variance of 56.16 feet is being requested.**

**Mr. Miller said the unusual layout of the lot means that the zoning ordinance does not properly pertain to the normal considerations for a front yard. He said because of this conformity with the ordinance cannot reasonably be established. He said the problem was not self-created. For this reason he said he would move to approve and to tie them to the plans distributed to the Board Members before the evening's meeting commenced.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

**2) 361 Wellesley  
Appeal 19-37**

Assistant Building Official Zielke presented the item, explaining the owner of the property known as 361 Wellesley requested the following variance to construct a porch and a garage addition to the existing non-conforming home:

**A. Chapter 126, Article 2, Section 2.06** of the Zoning Ordinance requires that the total side yard setback is 14.0 feet or 25% of the lot width whichever is greater. The required total side yard setback is 17.50 feet. The existing and proposed is 13.15 feet; Therefore a 4.35 foot variance is being requested.

**B. Chapter 126, Article 2, Section 2.06** of the Zoning Ordinance requires that no side yard shall be less than 5.00 feet. The existing and proposed is 4.40 feet; Therefore a 0.60 foot variance is being requested.

Assistant Building Official Zielke explained the current home was constructed in 1937. This property is zoned R1 – Single Family Residential.

Robin Ballew, architect, spoke on behalf of the appellant. He said the proposed plans reduce an existing non-conformity of the front porch that would have otherwise required a larger variance had that part been maintained. The plans attempt to mitigate that non-conformity as best they can to achieve the setback required by ordinance. He noted the addition in front of the garage would be within the required setbacks.

**Motion by Mr. Rodriguez**

**Seconded by Mr. Reddy with regard to Appeal 19-37, A. Chapter 126, Article 2, Section 2.06 of the Zoning Ordinance requires that the total side yard setback is 14.0 feet or 25% of the lot width whichever is greater. The required total side yard setback is 17.50 feet. The existing and proposed is 13.15 feet; Therefore a 4.35 foot variance is being requested. B. Chapter 126, Article 2, Section 2.06 of the Zoning Ordinance requires that no side yard shall be less than 5.00 feet. The existing and proposed is 4.40 feet; Therefore a 0.60 foot variance is being requested.**

**Mr. Rodriguez said a practical difficulty was established due to the unique circumstances of the existing non-conforming home. He said it was significant that the applicant would not be expanding the footprint of the non-conforming home with the proposed renovations. Noting that the issue was not self-created, that granting**

**these variances would not adversely affect the adjacent properties, and that there was evidence of attempted mitigation, Mr. Rodriguez moved to approve the variances and to tie them to the plans as submitted.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**3) 798 Tottenham  
Appeal 19-38**

Assistant Building Official Zielke presented the item, explaining the owner of the property known as 798 Tottenham requested the following variances to construct a rear second floor addition to the existing non-conforming home:

**A. Chapter 126, Article 2, Section 2.06** of the Zoning Ordinance requires that the total side yard setback is 14.0 feet or 25% of the lot width whichever is greater. The required total side yard setback is 16.25 feet. The existing and proposed is 12.60 feet; Therefore a 3.65 foot variance is being requested.

**B. 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 16.25 feet. The existing and proposed is 12.50 feet. Therefore, a 3.75 foot variance is being requested.

Assistant Building Official Zielke noted the current single family home was constructed in 1955. The home sits on the lot in such a position that requires the variances being requested for the addition. This property is zoned R1 – Single Family Residential.

Ron Stern, architect, spoke on behalf of the appellant. In reply to Mr. Morganroth, Mr. Stern stated they did not propose to step in the walls of the second story because it was felt it would be more aesthetically appealing to have the first floor exterior walls flush with the second floor exterior walls.

**Motion by Mr. Reddy**

**Seconded by Mr. Lilley with regard to Appeal 19-38, A. Chapter 126, Article 2, Section 2.06 of the Zoning Ordinance requires that the total side yard setback is 14.0 feet or 25% of the lot width whichever is greater. The required total side yard setback is 16.25 feet. The existing and proposed is 12.60 feet; Therefore a 3.65 foot variance is being requested. B. 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 16.25 feet. The existing and proposed is 12.50 feet. Therefore, a 3.75 foot variance is being requested.

Mr. Reddy said the need for the variances was not self-created because the existing building is already non-conforming. Because of this, Mr. Reddy moved to approve the requested variances and to tie it to the plans as submitted.

Motion carried, 7-0.

ROLL CALL VOTE

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

**T# 10-75-19**

**5. CORRESPONDENCE** (included in agenda)

**T# 10-76-19**

**6. GENERAL BUSINESS** (none)

**T# 10-77-19**

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

**T# 10-78-19**

**8. ADJOURNMENT**

No further business being evident, the board members passed a motion to adjourn at 7:57 p.m.



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Bruce R. Johnson, Building Official