

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

2. ROLL CALL

Present: Chairman Charles Lillie; Vice-Chairman Randolph Judd; Board Members Jason Canvasser, Kevin Hart, 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
Laura Eichenhorn, Transcriptionist

The Chairman 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 Lillie then took rollcall of the petitioners; all were in attendance.

T# 03-16-19

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

Motion by Mr. Morganroth

Seconded by Mr. Rodriguez to accept the Minutes of the BZA meeting of February 12, 2019 as presented.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

T# 03-17-19

4. APPEALS

Chairman Lillie noted one letter to the Board regarding 1708 S. Bates. Building Official Johnson confirmed the letter was provided to the petitioner.

1) 1423 BENNAVILLE Appeal 19-05

Assistant Building Official Zielke explained that the owner(s) of the property known as 1423 Bennaville requested the following variances to construct a second floor and rear addition to an existing nonconforming home:

A. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires a minimum front yard setback to be the average of the homes within 200 feet in each direction. The required front yard setback for this property is 20.10 feet. The existing and proposed is 19.60 feet; therefore, a variance of 0.50 feet is requested.

B. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires that no side yard setback shall be less than 5.00 feet. The existing and proposed setback is 4.30 feet; therefore, a variance of 0.70 feet is requested.

Assistant Building Official Zielke also noted the applicant is proposing to construct a second floor addition over the existing footprint of the home which is non-conforming, along with a rear addition to the home which conforms to the zoning ordinance. This property is zoned R3.

In answer to Boardmembers' questions, Assistant Building Official Zielke confirmed:

- The home was likely built before the existing zoning ordinances were in place.
- The box-out in bedroom one will not increase the non-conformance. It is set back so it is still able to go the 24 inches and still meets the allowable projection.

Anatola Sesi spoke as the owner and one of the residential redevelopers of 1423 Bennaville. She stated that the original intent for the home was to bring the second story inward in order to comply with the zoning. As the process moved forward it became clear that there were structural issues that would prevent her from doing that. The other option was to knock down a

wall on the east side of the home, but the structural engineer consulted said it would likely impact the structural integrity of the house.

Motion by Mr. Miller

Seconded by Mr. Morganroth with regard to Appeal 19-05, A. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires a minimum front yard setback to be the average of the homes within 200 feet in each direction. The required front yard setback for this property is 20.10 feet. The existing and proposed is 19.60 feet; therefore, a variance of 0.50 feet is requested.; and for B. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires that no side yard setback shall be less than 5.00 feet. The existing and proposed setback is 4.30 feet; therefore, a variance of 0.70 feet is requested.

Mr. Miller said it was a straightforward situation because the discrepancy with the zoning ordinance was not caused by the petitioner, but through the existing non-conforming house. The request for the addition is reasonable and would do substantial justice to the neighboring homes. Even with the requested variance on the east side there will still be a difference of 15.6 feet between the houses, and the variance at the front of the house will be minimally different from the rest of the neighborhood.

For those reasons Mr. Miller moved to approve the petition and to tie it to the plans as submitted.

Mr. Rodriguez said he would support the motion as well since the variance requested is the minimum necessary and the records show the petitioner sought to mitigate the issue.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

T# 03-18-19

**2) 1708 S. BATES
Appeal 19-06**

Assistant Building Official Zielke explained he owner(s) of the property known as 1708 S. Bates requested the following variance to construct a new single family home with an attached garage:

A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires the minimum distance between structures on adjacent lots to be 14.00 feet or 25% of the total lot width, whichever is greater. The required distance between is 14.00 feet. The

proposed distance between on the south side is 12.04 feet; therefore, a variance of 1.96 feet is requested.

Assistant Building Official Zielke also noted the proposed new home meets the zoning ordinance on the property, with the exception of the distance between structures to the south of the property. This property is zoned R2.

Chairman Lillie noted that the current distance between the petitioner's house and the neighboring home on the south side is 15 feet.

Assistant Building Official Zielke confirmed for Chairman Lillie that the petitioner could likely move their home closer to Southlawn by .83 feet, thus requiring less of a variance. Assistant Building Official Zielke said he would have to double check that the bump-outs are under the 20 inches allowable in the side yard, which he believes they are.

Vice-Chairman Judd said this appeal was disconcerting because variances on such small lots tend to magnify the problems.

Asking why the house is not more oriented to the north, Assistant Building Official Zielke replied to Vice-Chairman Judd that a lot of mitigation was done throughout the process, and the possibility of moving the home towards Southlawn by .83 may have been overlooked by Assistant Building Official Zielke when he reviewed the plans.

In addition, Assistant Building Official Zielke explained one reason why the house is not fully conforming is because the home reached the maximum amount of lot coverage allowed at 29.8% of the lot.

Vice-Chairman Judd said that the full weight of the requested variance will impact the petitioner's neighbors to the south, which means that if that house is demolished and rebuilt in the future it will be incumbent upon the neighbor to the south to also request a variance. Given this, Vice-Chairman Judd wondered why the City would not require strict observance of the required setback.

Assistant Building Official Zielke confirmed that the home to the south of the petitioner's house is in conformance with the zoning ordinances.

Ghassan Abdelnour, architect from GAV Associates, Inc., spoke on behalf of the petitioner. He explained that they are trying to maximize the design of the house while meeting the zoning requirements. Mr. Abdelnour said they would likely be willing to move the home the aforementioned .83 feet if the BZA deems it necessary. Because of the size of the lot, Mr. Abdelnour explained they were trying to gain a bit of width at the entrance since the home will already be long and narrow.

Chairman Lillie asked if the petitioner could remove one foot from the north side of the home.

Mr. Abdelnour said it would make the design of the home more difficult because the north side is where they have many important features such as the entrance, the living room, the fireplace, and the stairs.

Mr. Morganroth cited the Board's exploration of whether a non-conforming neighboring house was causing the problem for the petitioner, and found that not to be the case. Given that, the Board cannot grant a variance that will cause a problem for the neighbors in the future. He continued that there is a repositioning of the home that will mitigate some of the variance request, and the variance request is only located in one part of the home.

Mr. Abdelnour said they are asking for the variance, and if the Board wishes to decline the request then the petitioner will continue attempting additional conformation to the zoning ordinance.

Chairman Lillie explained that the petitioner can either request that the Board table the matter to allow the petitioner time to come into conformance, or that the Board could vote on the matter, which would result in the need for a re-application should the current petition be turned down.

Upon consultation with the owner, Mr. Abdelnour requested that the Board table the matter.

**Motion by Mr. Morganroth
Seconded by Vice-Chairman Judd to adjourn this matter until the Board's next
regularly scheduled meeting.**

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

T# 03-19-19

**3) 280 N. OLD WOODWARD
Appeal 19-07**

City Planner Cowan explained that the owner(s) of the property known as 280 N. Old Woodward requested the following variance to allow an office use within the first 20.00 feet of the first floor tenant space where retail is required:

A. Chapter 126, Article 3, Section 3.04(C)(6) of the Zoning Ordinance requires buildings that have frontage along the required retail frontages, as specified on the Regulating Plan, to consist of retail with a minimum depth of 20.00 feet from the

frontage line within the first story. Therefore, a use variance to allow a non-retail use, as defined by Article 9, Section 9.02, is requested.

City Planner Cowan explained that the subject property is located along Birmingham's Retail Frontage Line. The building is located on N. Old Woodward and Oakland, and buildings on Oakland are not part of Birmingham's Retail Frontage Line. Buildings with frontage along this boundary are required to have retail use as defined by the City's Zoning Ordinance within the first 20 feet of building depth along the boundary. The proposed use for suite 100 of 280 N Old Woodward is a new business incubator open to the general public that provides space to conduct business and host meetings for short term rental without a lease. The 20 foot retail zone required by the Zoning Ordinance is proposed to be used as accessory common space which includes a kitchen, tables, and chairs. This property is zoned B4, D4 Overlay.

Vice-Chairman Judd summarized that the petitioner is advocating for their services to be understood as a product in order to be conforming to the retail requirement of the location, and this Board as well as City staff have advised the petitioner that the services being offered do not fall under the definition of retail.

City Planner Cowan confirmed Vice-Chairman Judd's summary.

Mr. Miller clarified that the petitioner has already been told by the City that their proposed use is non-conforming, which means the petitioner is seeking a use variance which requires the demonstration of a practical difficulty.

Robert Davis represented the petitioner. In making the petitioner's case, he explained:

- There have been some revisions to how the use was presented in the narrative which he will present tonight.
- Tom Kosik, Manager And Director of Leasing for JFK Investment Company, which owns the building at 280 N. Old Woodward and Emil Jakupovic, Managing Member for WorkCo, which is the proposed tenant for the space, were also in attendance.
- JFK Investment has owned the building since 1991. Fidelity was a long-term tenant in the corner space at 280 N. Old Woodward and the property owner was given notice of Fidelity's intention to vacate the space in December 2017. Since December 2016, the property owner has been attempting to market that space to a retail tenant. Fidelity had wall-to-wall offices in the space. The time period to be grandfathered in as an exception to the retail requirement with a new tenant has lapsed.
- Because there is no access and the sidewalk is below the grade of the first floor, the property owner has not been able to fill the first twenty feet of the vacancy with a retail tenant as required. The slope of the sidewalk increases as one heads towards Oakland and creating an entrance door there would be almost virtually impossible.
- WorkCo was the only continuingly active interested party. As a result, the property owner is requesting a use variance.
- The proposed use would be as close to retail as a use can be, and likely much closer to actual retail than many other nominally retail uses that have been allowed in the City.

- Under the statute a variance may be granted if “the spirit of the ordinance is observed”, and the property owner believes the proposed use observes the spirit of the ordinance. In addition, the property owner asserts public safety would be secured and substantial justice would be done via the granting of the ordinance.
- Three-quarters of the vacant space’s frontage is on Oakland. This means that only the frontage on N. Old Woodward would be designated for retail, and it has been too small a space to attract an interested retail tenant.
- The proposed tenant would create a space where there is a reception, coffee, and people mingling. No offices or rooms for rent would be located within the first twenty feet of the window, and that would be a condition of the lease. An individual or group looking to rent temporary office space for meetings or conferences would be able to rent the use of a room through the reception, which would be the point of purchase. The individual or the group in question could rent the rooms on a one-time or reoccurring basis. Through this, the first twenty feet is only being used to sell the room rental options.
- The re-draft of the design has removed any cubicles from the first twenty feet of the space. Resultantly, the first twenty feet would be very attractive to young adults starting off in the business world. There are similar-concept businesses in Ypsilanti, redeveloped areas of Detroit, and in Royal Oak. The space serves as an incubator for businesses, and the property owner asserts that this encourage young entrepreneurs to locate their new businesses in Birmingham.
- This is as retail-oriented as engineering firms, IT support companies, medical services, marketing firms, and real estate companies. There would also be signage to support the sale of these office and conference room rentals.
- The ordinance bars the property owner’s reasonable use of the property with respect to that twenty feet of required retail. The plight is unique to the property since only one quarter of the frontage is subject to the retail requirements. The proposed tenant is ready to invest \$750,000 in renovations alone to encourage people to come in off the street and rent space, which will substantially enhance the character of the neighborhood. The difficulty is not self-created because the property owner tried to rent the space in earnest.
- The property owner requests that conditions be placed on the variance, including tying the variance to this specific tenancy, that the property owner would maintain the first twenty feet of the frontage throughout the existence of the variance, and that no company or entity can control more than 20% of the first twenty feet of the space whether by lease or otherwise. The hours would be 8 a.m. to 7 p.m. Monday through Friday.

Chairman Lillie stated that the Board does not grant variances when the reason given is that the property owner has not yet been able to find a suitable retail tenant. Several property owners have sought variances under those terms and have not been granted one. There is nothing particularly onerous in the City’s requiring that this space be rented to a retail tenant.

Mr. Davis confirmed for Mr. Morganroth that the property owner could rent all but the first twenty feet of required retail frontage to the proposed tenant, with no variance required, and

the business could proceed as proposed. The property owner would then be free to continue searching for a tenant for the retail space.

In order to demonstrate a hardship, Mr. Canvasser explained the property must not be able to be used for the permitted purpose. Building Official Johnson confirmed for Mr. Canvasser that the small entrance to the property could sufficiently serve as a retail entrance. Mr. Canvasser then asked Mr. Davis if there was any reason that a coffee shop or apparel shop could not occupy that first twenty feet.

Mr. Davis told Mr. Canvasser that there is no reason that one of those types of businesses could not be in that space. Mr. Davis asked, however, how his proposal is substantially different from a coffee shop or a clothing store. He acknowledged that the proposal is not strictly adhering to the ordinance, but that it may sufficiently preserve the spirit of the ordinance.

Mr. Canvasser clarified that the Board is not tasked with interpreting the ordinance's application this evening, since this has already been done. Rather, the question is whether a use variance will be granted for a use the City has already determined is non-compliant with the ordinance.

Mr. Davis asserted that the ordinance questions whether reasonable use is prevented, not all use. Accordingly, Mr. Davis opined that the standard is whether retail in the space would be unreasonably difficult, not whether retail in the space would be impossible. He added that the Board does have the authority to apply conditions to a variance that could avoid setting a negative precedent, and to bring the use into as close harmony with the requirements of the ordinance as possible.

Mr. Hart asked for confirmation that other retail office services would be available in the space, including copying, faxing, and receipt of mail. Mr. Davis confirmed that would be so. Mr. Hart suggested that if the plan could emphasize these features further, it could prove valuable to people within the City. He said it would remain to be seen if the City would deem that use closer to retail.

Chairman Lillie replied to Mr. Hart saying that in his opinion these changes would still not bring the proposed use into compliance.

Vice-Chairman Judd drew Mr. Davis' attention to the fact that the last time the petitioner was before the Board numerous suggestions were made as to how to make this proposal conforming. Instead of implementing those proposals, the petitioner returned with largely the same proposal. Vice-Chairman Judd said there is a way to make this proposal conforming.

Chairman Lillie noted that the Commission has been trying to reduce the number of non-conforming businesses in the retail district, and that the Board granting a use variance for this would be going explicitly against the Commission's goals.

Mr. Davis indicated that he would be interested in tabling the matter in order to try to come more into compliance.

Mr. Miller asked Mr. Davis to consider including weekend hours and the fact that a retail tenant could take up more space than the minimum required twenty feet during the adjournment.

Motion by Mr. Morganroth

Seconded by Vice-Chairman Judd to adjourn this matter until the Board's next available meeting, per the applicant's request.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

T# 03-20-19

**4) 1684 W. LINCOLN
Appeal 19-08**

Building Official Johnson explained that the owner(s) of the property, known as 1684 W. Lincoln request the following variance to construct an addition to an existing non-conforming home:

A. Chapter 126, Article 4, Section 4.61(1) of the Zoning Ordinance requires a corner lot which has on the 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. The required street side yard setback for this property is 26.50 feet. The proposed setback is 14.50 feet; therefore, a variance of 12.00 feet is requested.

The applicant was granted a variance back in October of 2018 for this work. However, it has been noted that the actual variance amount is 0.79-feet more than initially granted. The same variance is being requested to construct the addition with the corrected variance amount necessary. This property is zoned R1.

Building Official Johnson confirmed that the issue is about the position of the existing house, not the new constructed.

Kelly Genzlinger was present as one of the petitioners and the Board had no questions for Ms. Genzlinger.

Motion by Mr. Rodriguez

Seconded by Mr. Canvasser with regard to Appeal 19-08, A. Chapter 126, Article 4, Section 4.61(1) of the Zoning Ordinance requires a corner lot which has on the 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. The required street side yard setback for this property is 26.50 feet. The proposed setback is 14.50 feet; therefore, a variance of 12.00 feet is requested.

Mr. Rodriguez said a practical difficulty was previously established and was not self-created by the petitioner, so he moved to approve the variance. He added there are unique circumstances to the property including the location of the non-conforming existing home, granting the variance will not adversely affect the adjacent properties, and the variance as proposed is the minimum necessary.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

T# 03-21-19

**5) 1592 E. LINCOLN
Appeal 19-09**

Assistant Building Official Morad explained the owner(s) of the property known as 1592 E. Lincoln request the following variances to construct a second floor and rear addition to an existing non-conforming home:

A. Chapter 126, Article 4, Section 4.61(A)(2) of the Zoning Ordinance requires that a corner lot where there is no abutting interior residential lot on such side street, the minimum side street setback shall be 10.00 feet for the permitted principal building. The required distance on the side street is 10.00 feet. The existing and proposed distance is 9.65 feet; therefore, a variance of 0.35 feet is requested.

B. Chapter 126, Article 4, Section 4.74 (C) of the Zoning Ordinance requires the minimum distance between structures on adjacent lots to be 14.00 feet or 25% of the total lot width, whichever is greater. The required distance between is 14.00 feet. The proposed distance between on the west side is 10.04 feet; therefore, a variance of 3.60 feet is requested.

The applicant is proposing to construct a second floor addition on the existing nonconforming foot print and add a small rear addition to the home. The existing home is located in the required street facing side yard setback, along with not meeting the required distance between structures on the opposing side. The neighboring home to the south was granted variances for similar issues. The property is zoned R3.

Dennis Cowan, attorney with Plunkett Cooney, represented the petitioner. He thanked Staff for their work on the application. Mr. Cowan explained that the plans originally called for three variances, but the petitioner worked to mitigate the issues and bring the request down to the two variances.

Gregory Kolb of 1576 E. Lincoln spoke as a neighbor of the petitioner, saying that Mr. Shroeder is a great neighbor and that he supports the variance being granted.

Motion by Mr. Miller

Seconded by Mr. Canvasser with regard to Appeal 19-09, A. Chapter 126, Article 4, Section 4.61(A)(2) of the Zoning Ordinance requires that a corner lot where there is no abutting interior residential lot on such side street, the minimum side street setback shall be 10.00 feet for the permitted principal building. The required distance on the side street is 10.00 feet. The existing and proposed distance is 9.65 feet; therefore, a variance of 0.35 feet is requested.; and for B. Chapter 126, Article 4, Section 4.74 (C) of the Zoning Ordinance requires the minimum distance between structures on adjacent lots to be 14.00 feet or 25% of the total lot width, whichever is greater. The required distance between is 14.00 feet. The proposed distance between on the west side is 10.04 feet; therefore, a variance of 3.60 feet is requested.

Mr. Miller said the difficulty is due to the slightly skewed lot and the existing setting of the existing house. These circumstances cause absolute conformity to be burdensome, and would not cause any adverse impact on the neighbors. Resultantly, Mr. Miller moved to approve and tie the approval to the plans as submitted.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

T# 03-22-19

**6) 1810 HUMPHREY
Appeal 19-10**

Assistant Building Official Morad explained the owner(s) of the property known as 1810 Humphrey request the following variances to construct a second floor and rear addition to an existing non-conforming home:

A. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires a minimum front yard setback is the average of the homes within 200 feet in each direction. The required front yard setback for this property is 27.58 feet. The existing and proposed is 25.00 feet; therefore, a variance of 2.58 feet is requested.

B. Chapter 126, Article 4, Section 4.61(A)(2) of the Zoning Ordinance requires that a corner lot where there is no abutting interior residential lot on such side street, the minimum side street setback shall be 10.00 feet for the permitted principal building. The required distance on the side street is 10.00 feet. The existing and proposed distance is 9.55 feet; therefore, a variance of 0.45 feet is requested.

The applicant proposes to construct a second floor addition on an existing nonconforming footprint, along with a rear addition to the home. The existing home is partially located in the required front yard setback and the street facing side yard. This property is zoned R2.

Assistant Building Official Morad confirmed the porch and the attached garage conform.

Peter Frauenheim of PAFCO Building represented the petitioner. The Board had no questions for the petitioner.

Motion by Mr. Morganroth

Seconded by Mr. Canvasser with regard to Appeal 19-10, A. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires a minimum front yard setback is the average of the homes within 200 feet in each direction. The required front yard setback for this property is 27.58 feet. The existing and proposed is 25.00 feet; therefore, a variance of 2.58 feet is requested.; and for B. Chapter 126, Article 4, Section 4.61(A)(2) of the Zoning Ordinance requires that a corner lot where there is no abutting interior residential lot on such side street, the minimum side street setback shall be 10.00 feet for the permitted principal building. The required distance on the side street is 10.00 feet. The existing and proposed distance is 9.55 feet; therefore, a variance of 0.45 feet is requested.

Mr. Morganroth explained the applicant is staying within the existing non-conformity of the house. There is no structural way to mitigate the issue by pulling the second floor in. The issue is not self-created and will do justice to the neighboring properties due to the improvements.

Motion carried, 7-0.

ROLLCALL VOTE

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

Nays: None

T# 03-23-19

5. CORRESPONDENCE (discussed earlier in the meeting)

T# 03-24-19

6. GENERAL BUSINESS

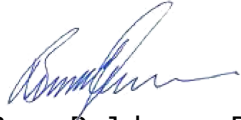
Chairman Lillie said he intended to call for elections at the May 2019 meeting.

T# 03-25-19

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

8. ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 9:07 p.m.

A handwritten signature in blue ink, appearing to read "Bruce R. Johnson", written in a cursive style.

Bruce R. Johnson, Building Official