

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, AUGUST 13, 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, August 13, 2019. Chairman Charles Lillie convened the meeting at 7:30 p.m.

2. ROLLCALL

Present: Chairman Charles Lillie; Board Members Jason Canvasser, Kevin Hart (arrived 7:47 p.m.), Richard Lilley, Erik Morganroth, Francis Rodriguez; Alternate Board Member Ron Reddy

Absent: Board Member John Miller

Administration:

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

Chairman Lillie appointed Mr. Morganroth 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 took rollcall of the petitioners, noting that petitioners from 159 Baldwin and 1392 Bird were absent. Chairman Morganroth stated those appeals would be heard at the Board's next regularly scheduled meeting if the petitioners did not arrive during the course of the present meeting.

Both sets of petitioners joined as the meeting was in progress, allowing their petitions to be heard as scheduled.

T# 08-61-19

3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF JULY 9, 2019

Motion by Mr. Lilley

Seconded by Mr. Canvasser to accept the Minutes of the BZA meeting of July 9, 2019 as submitted.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

T# 08-62-19

4. APPEALS

**1) 528 Park
Appeal 19-26**

Assistant Building Official Zielke presented the item and explained the owner of the property known as 528 Park requested the following variances to construct a front addition, porch and exterior renovation to an existing non-conforming home:

A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 23.02 feet. The proposed is 16.12 feet. Therefore a 6.90 foot variance is being requested.

B. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires that no side yard shall be less than 5.00 feet. The existing and proposed is 4.00 feet; Therefore a 1.00 foot is being requested.

C. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires the maximum eave height of a structure is 24.00 feet. The proposed eave height is 34.34 feet. Therefore, a 10.34 foot variance is being requested.

Assistant Building Official Zielke added the applicant proposed constructing a front addition and porch along with an exterior renovation to the existing non-conforming home. The existing home was granted a variance in 1976 for a side yard, which is being requested to maintain and an additional variance for the existing eave height. This property is zoned R2 – Single Family

Residential. Assistant Building Official Zielke confirmed that Variances B and C represent the home's existing non-conformities.

Zack Lennon, architect, spoke on behalf of Nick Shreli, applicant and owner of the home. Mr. Lennon noted there had been attempts at mitigating the need for Variance A but that none of them were satisfactory.

Mr. Reddy noted that a resident living near 528 Park submitted a letter to the Board outlining concerns about a possible and undesired increase in noise if 528 Park is moved closer to the street. Mr. Reddy asked Mr. Lennon what consideration the applicant had given to that potential issue.

Mr. Lennon stated that one of the design goals for the home was to make the backyard the main location for socializing out of doors. Since the Shrelis would not be using the front of their home for socializing, Mr. Lennon said that noise would not likely be a cause for concern.

Mr. Lillie noted there was enough room in the backyard for the home to move back and not require Variance A.

Mr. Lennon stated that the applicant intended to conserve as much of the backyard as possible during this process, so moving the home back was not preferable for the applicant.

Chairman Morganroth invited comments from the audience.

Benjamin Gill, neighbor to 528 Park, said he was in support of the Shrelis being granted their variance. Mr. Gill said the applicant's planned house would go well with the house to the north in terms of design, that the fronts of the houses on the whole street are staggered, and that the variance requests are minimal and reasonable.

Chairman Morganroth said that, while he liked the look of the home, the Board may not grant a variance based on whether a home is aesthetically pleasing. He explained the Board may only grant variances when adherence to the ordinances would result in practical difficulty for an applicant.

Mary Jay, neighbor to 528 Park, said she would not be in support of the variances being granted. She said setbacks are maintained for a reason, and that all the homes in the neighborhood have adhered to the required setbacks. She also said there have been three or four families with children in 528 Park over the years, which indicates that the home's design is likely adequate for children. Ms. Jay agreed with the neighbor Mr. Reddy had described earlier, saying that noise issues in the neighborhood would likely increase if the applicant's variances are granted.

Chairman Morganroth clarified that potential noise issues were not in front of the Board with this appeal while acknowledging the merit Ms. Jay's concern.

Motion by Mr. Rodriguez

Seconded by Mr. Lillie with regard to Appeal 19-26, A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 23.02 feet. The proposed is 16.12 feet. Therefore a 6.90 foot variance is being requested.

Mr. Rodriguez said he would move to deny Variance A because a practical difficulty had not been established. The need for this variance was self-created, as there were no unique aspects of the property that would have required a variance. He said he did not see much effort at mitigation, and that strict compliance with the ordinance would not prevent the use of the property for its intended purpose.

Mr. Lillie seconded the motion, agreeing with Mr. Rodriguez's points and adding that to deny the variance would do justice to the neighbors.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Rodriguez, Lillie, Lilley, Canvasser, Morganroth, Reddy
Nays: None

Chairman Morganroth then asked the applicant whether he would like the Board to rule on Variances B and C presently, or whether the applicant would like to return to the Board with another design that would incorporate Variances B and C.

Mr. Shreli elected to return to the Board with a design that would incorporate Variances B and C at a later date.

The Board accepted and tabled the vote regarding Variances B and C.

**2) 683 Mohegan
Appeal 19-28**

Assistant Building Official Zielke presented the item explained the owner of the property known as 683 Mohegan requested the following variances to construct a front second floor addition to an 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 18.75 feet. The existing and proposed is 17.10 feet;

Therefore a 1.65 foot 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 18.75 feet. The existing and proposed is 18.10 feet. Therefore, a 0.65 foot variance is being requested.

C. Chapter 126, Article 4, Section 4.75 (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 existing and proposed is 4.90 feet. Therefore a 0.10 foot variance is being requested.

Assistant Building Official Zielke added that the property is zoned R1 – Single Family Residential.

Michael Willoughby, architect, was available on behalf of Mikki Gardner, applicant and owner.

Motion by Mr. Reddy

Seconded by Mr. Canvasser with regard to Appeal 19-28, 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 18.75 feet. The existing and proposed is 17.10 feet; Therefore a 1.65 foot 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 18.75 feet. The existing and proposed is 18.10 feet. Therefore, a 0.65 foot variance is being requested. C. Chapter 126, Article 4, Section 4.75 (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 existing and proposed is 4.90 feet. Therefore a 0.10 foot variance is being requested.

Mr. Reddy moved to approve the variance requests and to tie them to the plans as submitted. He said the fact that the applicant cannot install a regular overhead garage door proves the practical difficulty present.

Mr. Rodriguez agreed the variances should be approved, adding that the applicant was not seeking to expand any of the already existing non-conformities. He said the property's existing location is a unique circumstance and so the need for the variance is not self-created.

Motion carried, 7-0.

ROLL CALL VOTE

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

**3) 1060 Chesterfield
Appeal 19-29**

Assistant Building Official Morad presented the item and explained the owner of the property known as 1060 Chesterfield 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% (2414.36 SF) of the front open space in single family districts shall be free of paved surfaces. The proposed amount is 62.51% (2322.00 SF), therefore a variance of 2.48% (92.36 SF) is requested.

Assistant Building Official Morad added the applicant proposed removing and replacing the existing driveway to eliminate water issues and reduced the existing hard surface area by 1.32%. This property is zoned R1 – Single Family Residential.

John Sullivan, applicant and owner, was available. He emphasized that granting this variance would allow him to reduce the amount of hardscape present in his front yard.

Motion by Mr. Lillie

Seconded by Mr. Rodriguez with regard to Appeal 19-29, A. Chapter 126, Article 4, Section 4.31(A)(1) of the Zoning Ordinance requires a minimum of 65% (2414.36 SF) of the front open space in single family districts shall be free of paved surfaces. The proposed amount is 62.51% (2322.00 SF), therefore a variance of 2.48% (92.36 SF) is requested.

Mr. Lillie moved to grant the variance as advertised. Mr. Lillie noted that Mr. Sullivan would be reducing the existing non-conformity, that requiring him to strictly comply with the ordinance would be unduly burdensome, that it was not self-created and that it would do justice to the neighbors.

Motion carried, 7-0.

ROLL CALL VOTE

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

**4) 720-726 N Old Woodward
Appeal 19-30**

City Planner Cowan presented the item and explained the owner of the property known as 720-726 N Old Woodward, requested the following variance to construct a third floor residential space on top of a two story mixed use building.

A. Chapter 126, Article 3, Section 3.04(A)(1)(f) of the Zoning Ordinance requires that a third story shall continue in a different plane, beginning at the eave line, no greater than 45 degrees measured to the horizontal or setback 10 feet from any building façade. The applicant has proposed a third story residential space with bedrooms and terraces that occupy area within 10 feet of the eave line. Therefore a dimensional variance of 10 feet for the third floor residential space is being requested.

City Planner Cowan added that a third story is permitted in the D2 Overlay Zone if it is only used for residential space. This property is zoned O2 and D2 in the Overlay.

Mike Rutherford, architect for the project, explained that the exterior wall is a load-bearing point in the building, with the load of the roof being the main concern. He stated that there were no other load-bearing elements within the building. As a result, having the exterior wall of the third floor stepped back ten feet would be very difficult. Because of the balcony, the interior wall of the residence itself is actually stepped back from the front.

In reply to Chairman Morganroth, Mr. Rutherford stated that stepping back the third floor would be unfeasible because the existing soil of the site requires deep foundations, meaning that to add more load-bearing elements would entail destruction to much of the entire building in order to provide the foundations necessary.

Chairman Morganroth noted that it is more financially beneficial than necessary for the applicant to build a residential third floor, and wondered if the additional level could not be built in accordance with ordinance whether it was appropriate to build.

Mr. Rutherford opined that adding the residential level is in line with the City's goal of adding more residences in the downtown area.

Motion by Mr. Canvasser

Seconded by Mr. Hart with regard to Appeal 19-30, A. Chapter 126, Article 3, Section 3.04(A)(1)(f) of the Zoning Ordinance requires that a third story shall continue in a different plane, beginning at the eave line, no greater than 45 degrees measured to the horizontal or setback 10 feet from any building façade. The applicant has proposed a third story residential space with bedrooms and terraces that occupy area within 10 feet of the eave line. Therefore a dimensional variance of 10 feet for the third floor residential space is being requested.

Mr. Canvasser moved to approve the requested variance and tie it to the plans. He said strict compliance with the ordinance would unreasonably present the petitioner from using the property for the proposed third story residential space, which is an allowed purpose. Mr. Canvasser said granting the variance would do substantial justice to the petitioner and surrounding property owners, that the problem is due to

the unique load-bearing configuration of the property, and that the problem was not self-created. He said that pushing the windows back demonstrated an attempt to mitigate the non-conformity and to give the appearance of a structure that complies with the ordinance on the petitioner's part.

Mr. Lillie said he would be voting against the motion since it seemed like more of an economic matter than a practical difficulty.

Chairman Morganroth said he would also be voting against the motion because there are other buildings close by respecting the ten feet setback and he was not sure he had enough evidence that adhering to the ordinance was unfeasible.

Motion failed, 3-4.

ROLL CALL VOTE

Yeas: Canvasser, Hart, Reddy

Nays: Lilley, Lillie, Morganroth, Rodriguez

**5) 159 Baldwin
Appeal 19-32**

Assistant Building Official Zielke presented the item and explained the owner of the property known as 159 Baldwin requested the following variances to construct a new single family home with an attached garage:

A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 44.30 feet. The proposed is 11.00 feet. Therefore a 33.30 foot variance is being requested.

B. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires the maximum eave height of a structure is 24.00 feet. The proposed eave height is 25.10 feet. Therefore, a 1.10 foot variance is being requested.

C. 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 deck is to be constructed over one story in height and to project 1.50 feet into the rear open space. Therefore, a 1.5 foot variance is being requested.

Assistant Building Official Zielke added the applicant proposed constructing a new single family home with an attached garage on this plotted, irregular shaped lot with sloping grades and flood plain challenges. This property is zoned R2 – Single Family Residential.

Brian Halperin, architect, was available on behalf of the applicant. Mr. Halperin told Chairman Morganroth that five of the home's current non-conformities would be entirely mitigated by the plans.

Chairman Morganroth invited comment from the audience.

Gail Whitty, neighbor, stated she has lived next door to 159 Baldwin since 1977. She explained that she had woken up that morning to see flooding in the backyard of 159 Baldwin, and said she has seen flooding in that backyard many times before. Ms. Whitty expressed gratitude that Mr. Halperin has endeavored to ensure that her home will maintain its view of the river as the new property at 159 Baldwin is built. She said she was in support of 159 Baldwin being granted its requested variances.

Motion by Mr. Rodriguez

Seconded by Mr. Canvasser with regard to Appeal 19-32, A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 44.30 feet. The proposed is 11.00 feet. Therefore a 33.30 foot variance is being requested. B. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires the maximum eave height of a structure is 24.00 feet. The proposed eave height is 25.10 feet. Therefore, a 1.10 foot variance is being requested. C. 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 deck is to be constructed over one story in height and to project 1.50 feet into the rear open space. Therefore, a 1.5 foot variance is being requested.

Mr. Rodriguez moved to approve Variances A, B & C as submitted in the plans. He said practical difficulties were established including an irregularly shaped lot, sloping grades and flood plain issues. In addition, Mr. Rodriguez stated that the need for the variance was not self-created and that there were clear efforts at mitigation of non-conformities on the part of the applicant.

Mr. Canvasser thanked the applicant for a thorough presentation.

Chairman Morganroth said he would also support the motion, agreed with Mr. Canvasser that the presentation was well thought out and well presented, and noted the removal of five non-conformities as important efforts at mitigation.

Motion carried, 7-0.

ROLL CALL VOTE

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

6) 1392 Bird

Appeal 19-33

Assistant Building Official Morad presented the item and explained the owner of the property known as 1392 Bird 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 12.20 feet, therefore a 1.80 foot variance is being requested.

Assistant Building Official Morad added the applicant proposed constructing a new home with a detached garage. 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.

Mark O'Rourke, architect, was available on behalf of the applicant. He said the possibility of narrowing the house further to avoid the variance was explored, but was ultimately not deemed possible.

Motion by Mr. Lilley

Seconded by Mr. Lillie with regard to Appeal 19-33, 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 12.20 feet, therefore a 1.80 foot variance is being requested.

Mr. Lilley moved to approve the application and tied it to the plans. He noted that the issue is not self-created since the neighbor's house is too close to the lot line and that the rest of the proposed home conforms to code.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**7) 1370 Latham
Appeal 19-34**

Assistant Building Official Morad presented the item and explained the owner of the property known as 1370 Latham 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% (1610.70 SF) of the front open space in single family districts shall be

free of paved surfaces. The proposed amount is 51.10% (1267.00 SF), therefore a variance of 13.90% (343.70 SF) is requested.

Assistant Building Official Morad added the applicant proposed removing and replacing the existing driveway and reducing the existing hard surface area by 6.62%. This property is zoned R1 – Single Family Residential.

Roger Young, architect, was available on behalf of the applicant. He explained that the plans represent a 10% reduction in the hardscape present in the front yard, and that the front yard will also be landscaped in such a way as to obscure much of the view of the driveway from the street. Mr. Young explained that from an aesthetic standpoint the plans represent mitigation of both the current non-conformity and a reduction in the appearance of non-conformity. He explained that the driveway is being replaced as an entire update to the front yard of the home.

Motion by Mr. Hart

Seconded by Mr. Rodriguez with regard to Appeal 19-34, A. Chapter 126, Article 4, Section 4.31(A)(1) of the Zoning Ordinance requires a minimum of 65% (1610.70 SF) of the front open space in single family districts shall be free of paved surfaces. The proposed amount is 51.10% (1267.00 SF), therefore a variance of 13.90% (343.70 SF) is requested.

Mr. Hart moved to approve the application and tied it to the plans. He cited the plan's reduction in front yard hardscape coverage, improved aesthetics, and the replacements of the current two curb cuts from this house onto Latham with a single curb cut as reasons for approval.

Mr. Canvasser said that while he liked the proposed design better than the current design, he would not be voting in favor of the motion due to a lack of mitigation of the need for the variance. Acknowledging Latham is one of Birmingham's busier residential streets, he stated that it was not so busy as to merit the proposed redesign in the name of public safety either.

Mr. Reddy said he would be voting in favor of the variance because of the substantial reduction in hardscape and the planned landscape that would further reduce the appearance of non-conformity.

Mr. Rodriguez stated that reducing the hardscape by 10% was evidence of mitigation on the part of the applicant.

Mr. Lillie said he would be supporting the motion as well, due to the planned mitigation of the non-conformity and because the house could not have been built further back on the lot because of the grade, which limited the open space in the front of the applicant's home.

Chairman Morganroth noted that Latham is a street with brisk vehicular traffic. He said that while he preferred not to have someone replace their driveway and still

retain non-conformities, he acknowledged that the plans do represent a reduction in non-conformities and for that reason he would support the motion.

Motion carried, 6-1.

ROLL CALL VOTE

Yeas: Hart, Rodriguez, Lillie, Lilley, Reddy, Morganroth
Nays: Canvasser

T# 08-63-19

5. CORRESPONDENCE (None)

T# 08-64-19

6. GENERAL BUSINESS

Building Official Johnson reminded the Board members that the next meeting would fall on September 17, 2019 and the following meeting would fall on October 15, 2019. The November and December meetings will return to the Board's regularly scheduled second Tuesday of the month meetings.

Building Official Johnson additionally stated that the Commission would be filling the Board's open alternate position at the Commission's September 16, 2019 meeting.

T# 08-65-19

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

T# 08-66-19

8. ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 9:11 p.m.



Bruce R. Johnson, Building Official