

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, MAY 14, 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, May 14, 2019. Chairman Charles Lillie convened the meeting at 7:30 p.m.

2. ROLLCALL

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

Absent: Board Member Francis Rodriguez

Administration:

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

Chairman Lillie spoke in memory of former BZA Vice-Chairman Randolph Judd, who passed away on April 11, 2019. Chairman Lillie reviewed Mr. Judd’s work for the City and said Mr. Judd would be sorely missed by the BZA and by the City of Birmingham.

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 expected petitioners were present. 280 North Old Woodward was postponed as noted in the evening’s agenda.

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

Motion by Mr. Morganroth

Seconded by Mr. Lilley to accept the Minutes of the BZA meeting of April 9, 2019 as presented.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

T# 05-36-19

6. APPEALS

1) 2010 COLE STE 100

Appeal 19-11

City Planner Cowan explained the owner(s) of the property known as 2010 Cole Street, Suite 100 request the following variances to install a tenant sign:

A. Chapter 86, Article 1, Section 1.05(K)(4)(a) of the Sign Ordinance requires wall signs to only be permitted on a designated first floor sign band.

City Planner Cowan further explained that the applicant is proposing a wall sign below the sign band of the building at 2010 Cole Street for Braam's Custom Cabinets. The current dimensions of the proposed sign location extends 31 inches below the sign band, therefore the applicant will need a dimensional variance of 31 inches. Prior issues related to projection distance and the length of the raceway have since been resolved. The canopy currently located along the sign band was approved by the Planning Board on June 27th, 2018. On April 17th, 2019, the Design Review Board approved the proposed sign with the condition that the sign be placed on the sign band, which will require the removal of approximately six feet of awning. This property is zoned MX – Mixed Use Commercial.

It was confirmed that the landlord installed the the current awning.

Allen Chika, FASTSIGNS of Birmingham, spoke as the tenant's representative. He stated that the sign could neither be placed under the awning or on the front of the building in a space cut from the awning and remain visible from the road. He said the awning was decorative, and that he had recommended the landlord take the awning down prior to applying for a variance.

Motion by Mr. Miller

Seconded by Mr. Morganroth with regard to Appeal 19-11, A. Chapter 86, Article 1, Section 1.05(K)(4)(a) of the Sign Ordinance requires wall signs to only be permitted on a designated first floor sign band.

Mr. Miller said strict compliance with the ordinance would not prevent the petitioner from using the property as permitted and would only require moving the awning or cutting a piece from the awning in order to place the sign within the required signage band. He continued that the problem was self-created likely by the building owner, and would set a negative precedent for future consideration of signs and sign bands in the City.

For those reasons, Mr. Miller moved to deny the petition.

Mr. Canvasser agreed with Mr. Miller and said he was unsure why the Planning Board approved this awning, since it blocked the signage required for the various tenants. He said the Design Review Board was correct in noting the issue with the awning's approval by the Planning Board.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 05-37-19

**2) 1165 HILLSIDE
Appeal 19-17**

Assistant Building Official Zielke explained the owner of the property known as 1165 Hillside request the following variance to renovate the existing front roof line and construct an addition to an existing non-conforming home:

A. Chapter 126, Article 2, Section 2.06 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 53.40 feet. The existing and proposed is 41.30 feet; therefore, a variance of 12.10 feet is requested.

Assistant Building Official Zielke added:

- The applicant proposes to construct a new one story addition with renovations to the home and a new detached garage.
- The existing one story home was constructed in 1959 on this irregular shaped corner lot.
- This property is zoned R1 – Single Family Residential.
- The applicant was made aware that their proposed addition would add to the existing non-conformity and that the unusual lot made the process difficult.
- The applicant attempted to mitigate the non-conformity.
- The majority of the 12.10 feet variance was because of the existing non-conformity. Only 2.90 feet would be added to the existing non-conformity.

- The variance cannot be made any smaller because of the distance from the garage and it cannot be shifted back because of the rear setback.

Robert Denton, contractor, spoke on behalf of the petitioner. He stated:

- He had met with both Assistant Building Official Zielke and Building Official Johnson about this project a number of times to try and mitigate the variance.
- His clients would like to continue living in Birmingham and they have a special needs child they would like to keep in the home.
- The way the ceiling clips on the garage is not livable space without raising the existing wall.
- Even without the walk-in closet in the planned bedroom the 2.90 foot variance would be necessary to allow keep the room usable, allow the child some distance from the main part of the house, and to keep him closer to his parents. Without the closet in the bedroom there would not be room for a closet in that part of the house.

Motion by Mr. Miller

Seconded by Mr. Morganroth with regard to Appeal 19-17, A. Chapter 126, Article 2, Section 2.06 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 53.40 feet. The existing and proposed is 41.30 feet; therefore, a variance of 12.10 feet is requested.

Mr. Miller said he was initially skeptical regarding the request, but after looking at the house and its relation to its neighbors he was moving to support the appeal. He said the problem is due to the orientation of the house on the unusual lot. The proposed changes to the home would do substantial justice to the neighborhood. Maintaining strict adherence to the ordinance would be unnecessarily burdensome due to the oddly shaped lot.

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

Mr. Morganroth said he would also support the motion because the applicant made significant efforts to mitigate the need for the variance and that the oddity of the lot made it difficult to conform to the ordinance.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 05-38-19

**3) 1645 BUCKINGHAM
Appeal 19-18**

Assistant Building Official Morad explained the owner(s) of the property known as 1645 Buckingham request the following variances to construct a second floor addition to an existing nonconforming home:

A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires the total of both side yard setbacks for this property is 20.00 feet. The existing and proposed total side yard setbacks is 15.70 feet; therefore, a 4.30 variance is requested.

B. 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 20.00 feet. The existing and proposed distance is 15.80 feet, therefore a variance of 4.20 is requested.

Assistant Building Official Morad also explained that the applicant proposes to construct a new second story addition on the existing nonconforming home. The existing one story home was constructed in 1940 on this lot. This property is zoned R1 – Single Family Residential. He confirmed the applicant's plans would be staying within the existing plane of the house.

Nancy Martins, applicant, verified that the BZA received the two letter of support from her neighbors, which the BZA had. She noted that her home is the only ranch in the neighborhood so the addition would be beneficial to the neighborhood and that the home was non-compliant at purchase. She said that indenting the second floor would be unsightly.

Glenda Meads, architect for the applicant, said the bedroom would not be a usable size without the requested variances. Ms. Mead confirmed she had selected the most efficient stair design to mitigate the request as much as possible.

Motion by Mr. Canvasser

Seconded by Mr. Morganroth with regard to Appeal 19-18, A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires the total of both side yard setbacks for this property is 20.00 feet. The existing and proposed total side yard setbacks is 15.70 feet; therefore, a 4.30 variance is requested; and B. 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 20.00 feet. The existing and proposed distance is 15.80 feet, therefore a variance of 4.20 is requested.

Mr. Canvasser believes strict compliance with the ordinance would unreasonably restrict the homeowner from using the property for its permitted purpose, the variances would do substantial justice to the petitioner and to the neighboring property owners, the need for the variance is not self-created, the non-conformity will not be expanded, and a stepped-in second story would lead to an unusable bedroom.

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

Mr. Miller agreed with Mr. Canvasser and said the proposed improvements would be very positive to the home and would make the house more in-line with the surrounding neighborhood.

Mr. Hart said he would support the motion as the necessity for the variances was well demonstrated and the proposed changes would allow the house to remain in place without having to demolish the home entirely. He said it would be a tremendous enhancement to the neighborhood.

Chairman Lillie said he would also support the motion for all the aforementioned reasons.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 05-39-19

5. CORRESPONDENCE (included in agenda packet)

T# 05-40-19

6. GENERAL BUSINESS

1) Election of Chairperson and Vice Chairperson

Chairman Charles Lillie retained his position as Chair and Jason Canvasser and Erik Morganroth will co-occupy the Vice-Chair position.

T# 05-41-19

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

T# 05-42-19

8. ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:14 p.m.



Bruce R. Johnson, Building Official

