

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS**  
**TUESDAY, JULY 9, 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, July 9, 2019. Chairman Charles Lillie convened the meeting at 7:28 p.m.

**2. ROLLCALL**

**Present:** Chairman Charles Lillie; Board Members Jason Canvasser, Kevin Hart, Richard Lilley, 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

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

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 then took rollcall of the petitioners, noting that Appeal 19-26, 528 Park, was postponed prior to the evening's meeting. All expected petitioners were present.

**T# 07-55-19**

**3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF JUNE 11, 2019**

Mr. Lilley stated that he was a permanent member of the BZA at the June 11, 2019 meeting, remains so, and asked that the June 11, 2019 minutes be updated to reflect that.

Mr. Rodriguez noted that he, and not Mr. Canvasser, seconded the carrying motion regarding Appeal 19-25, 187 Euclid, located at the bottom of page 11 of the minutes.

Mr. Canvasser concurred with Mr. Rodriguez.

**Motion by Mr. Morganroth**

**Seconded by Mr. Lilley to accept the Minutes of the BZA meeting of June 11, 2019 as amended.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

**T# 07-56-19**

**4. APPEALS**

**1) 633 Vinewood  
Appeal 19-27**

Assistant Building Official Zielke explained the owner of the property known as 633 Vinewood is requesting the following variances to construct a first and second floor addition to the existing non-conforming home:

**A. Chapter 126, Article 2, Section 2.08** of the Zoning Ordinance requires a minimum front yard setback to be the average of the homes within 200.00 feet in each direction. The required front yard setback is 28.71 feet. The existing and proposed is 24.85 feet; therefore a variance of 3.86 feet is being requested.

**B. Chapter 126, Article 4, Section 4.75 (A)(1)** of the Zoning Ordinance requires attached garages shall not occupy more than 50% of a linear building width of a principal residential building that faces a street. The maximum allowed is (50%) or 13.10 feet. The existing and proposed is (73.3%) or 19.20 feet; Therefore a variance of (23.3%) or 6.10 feet is being requested.

**C. 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 20.50 feet in front of the proposed furthest front facade. Therefore, a variance of 25.50 feet is requested.

**D. Chapter 126, Article 4, Section 4.75 A (2)** of the Zoning Ordinance requires that garage doors on an attached garage which are facing a street may not exceed 9.00 feet in width. The existing and proposed is 16.00 feet; Therefore a variance to maintain the existing 16.00 foot garage door is being requested.

Assistant Building Official Zielke added the applicant proposes to construct a second and first floor addition to the existing non-conforming home. The existing two story home was constructed in 1971. The property is zoned R2 – Single Family Residential.

Assistant Building Official Zielke explained:

- The proposed second story addition over the garage complies with the front setback requirement. The garage's roof structure would be modified to a flat roof.
- Nothing to be added to the home requires a variance. All variances being requested are to address the existing non-conformities of the property.

Building Official Johnson explained that if the applicant were just seeking to update their garage doors, they would not need a variance. Since additional non-conforming construction is being proposed, however, the garage door updates must also be considered as part of the application.

Valerie Shinkle, owner, present the application to the BZA.

Mr. Lillie noted the Shinkles submitted two additional sets of plans with their application that propose construction which would be in compliance with ordinance.

Ms. Shinkle confirmed, saying that the two additional plans were submitted to demonstrate the appellants' efforts at exploring conforming options. She stated that the two additional plans would not be ideal for a variety of reasons.

Mr. Canvasser told Ms. Shinkle that the BZA aims to avoid increasing existing non-conforming structures. He asked Ms. Shinkle to describe any efforts at mitigation the appellants took.

Ms. Shinkle said that bringing the living space forward in the front of the home to the setback limit would give the home the appearance of increased conformity with current ordinance. She explained that the proposed additions were only brought forward to the limit of the setbacks, and not into the existing non-conforming space.

**Motion by Mr. Lillie**

**Seconded by Mr. Morganroth with regard to Appeal 19-27, A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires a minimum front yard setback to be the average of the homes within 200.00 feet in each direction. The required front yard setback is 28.71 feet. The existing and proposed is 24.85 feet; therefore a variance of 3.86 feet is being requested; B. Chapter 126, Article 4, Section 4.75 (A)(1) of the Zoning Ordinance requires attached garages shall not occupy more than 50% of a linear building width of a principal residential building that faces a street. The maximum allowed is (50%) or 13.10 feet. The existing and proposed is (73.3%) or 19.20 feet; Therefore a variance of (23.3%) or 6.10 feet is being requested; C.**

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Mr. Lillie said he would move to approve the variance request tied to the plans as advertised. He stated the BZA tends not to grant unnecessary variances and tends not to increase existing non-conformity. Since the addition adheres to current ordinance there is no increase in non-conformity and requiring the appellants to comply with the ordinance would be unduly burdensome. He said that granting the variances does justice to the neighbors since the appellants are not increasing the non-conformity and that the need for variances was not self-created since the house complied with City ordinance at the time of its construction.

Mr. Lilley said he would support the motion as well.

Mr. Rodriguez said he would be supporting the motion, and thanked the appellants for what he termed one of the most helpful presentations submitted for review.

Mr. Morganroth concurred with Mr. Rodriguez's assessment of the quality of the appellants' submittal, and said he wished they were all submitted that way. He continued that the issue seemed like a bit of a grey area since there are ways for the appellants to achieve some of their goals while decreasing their non-conformity. He agreed that bringing the living space forward would increase the appearance of conformity with ordinance. He said requiring the appellants to create garage doors with a maximum of 9 feet would be unduly burdensome. For these reasons Mr. Morganroth said he would be supporting the motion.

Mr. Miller agreed that extending the living space in front of the garage would decrease the appearance of non-compliance and would increase 633 Vinewood's harmony with the rest of the neighborhood. He said that for these reasons he would be supporting the motion.

Mr. Hart said this application is a classic example of the difference between the letter of the law and the spirit of the law. He noted the proposed changes are in line with the intent of the ordinance, which is to visually emphasize living space in the front of houses and de-emphasize the appearance of garages. He said it was a good presentation and a good solution to the problem.

Chairman Canvasser stressed this decision sets no precedent vis-a-vis existing non-conforming structures in general. He said that each situation needs to be looked at on its own merits, and stated the BZA had done that with this application. He

**commended the appellants on the presentation which showed substantial mitigation efforts and substantial efforts to comply with ordinance in all other respects. For these reasons Chairman Canvasser said he would be supporting the motion.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**T# 07-57-19**

**5. CORRESPONDENCE** (None)

**T# 07-58-19**

**6. GENERAL BUSINESS** (None)

**T# 07-59-19**

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

**T# 07-60-19**

**8. ADJOURNMENT**

No further business being evident, the board members passed a motion to adjourn at 8:02 p.m.



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Bruce R. Johnson, Building Official