

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, SEPTEMBER 17, 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, September 17, 2019. Chairman Charles Lillie convened the meeting at 7:30 p.m.

2. ROLLCALL

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

Absent: Board Member Jason Canvasser

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. All expected petitioners were present. Appeal 19-35 for 114 Lakeside was noted as postponed on the agenda.

T# 09-67-19

3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF AUGUST 13, 2019

Mr. Lillie asked that a superfluous 'to' be removed from page eight of the minutes.

Motion by Mr. Lillie

Seconded by Mr. Lilley to accept the Minutes of the BZA meeting of August 13, 2019 as amended.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

T# 09-68-19

4. APPEALS

**1) 995 Henley
Appeal 19-31**

Assistant Building Official Morad presented the item and explained the owner of the property known as 995 Henley requested the following variance to construct an attached garage to an existing non-conforming home:

A. Chapter 126, Article 4, Section 4.61 (A)(1) of the Zoning Ordinance requires that a corner lot which has on its side street an abutting interior residential lot shall have a minimum setback from the side street equal to the minimum front setback of the average of the homes within 200.00 feet in each direction. The required front yard setback is 39.94 feet. The proposed is 10.55 feet. Therefore a variance of 24.94 feet is being requested.

B. Chapter 126, Article 4, Section 4.75 (A)(1) of the Zoning Ordinance requires that a private attached, single-family residential garage shall not occupy more than 50% of a linear building width of a principal residential building that faces a street. The proposed is 52.60% (38.00 feet). Therefore a variance of 2.60% (3.78 feet) is being requested.

Assistant Building Official Morad added that the existing non-conforming home was constructed in 1952 on this irregular shaped corner lot. This property is zoned R1 – Single Family Residential.

Mr. Parsons, homeowner, spoke for the appeal. Ms. Dokes, architect, was also available to answer Board questions. Ms. Dokes confirmed the appellants tried to mitigate the need for variances through different potential configurations, but that none of the options were appropriate for what the appellants hoped to accomplish.

Mike Clement, resident at 897 Tottenham, said he supported the Parsons' appeal because the combination of a detached garage and young children is very difficult in inclement weather. He also said that, from his home, the changes the Parsons propose will look less visually imposing than the current situation. He added that when homeowners are able to do renovations the whole neighborhood tends to benefit, and for that reason he also supported the appeal.

Mr. Lillie replied the Mr. Clement that setbacks are designed to maintain the aesthetic experience of driving down the street, rather than looking across the street.

Motion by Mr. Miller

Seconded by Mr. Hart with regard to Appeal 19-31, A. Chapter 126, Article 4, Section 4.61 (A)(1) of the Zoning Ordinance requires that a corner lot which has on its side street an abutting interior residential lot shall have a minimum setback from the side street equal to the minimum front setback of the average of the homes within 200.00 feet in each direction. The required front yard setback is 39.94 feet. The proposed is 10.55 feet. Therefore a variance of 24.94 feet is being requested. B. Chapter 126, Article 4, Section 4.75 (A)(1) of the Zoning Ordinance requires that a private attached, single-family residential garage shall not occupy more than 50% of a linear building width of a principal residential building that faces a street. The proposed is 52.60% (38.00 feet). Therefore a variance of 2.60% (3.78 feet) is being requested.

Mr. Miller said the shape of the lot and positioning of the house on the lot were causing difficulties in conjunction. While he said he has concerns about granting a variance that would cause a reduction in front yard space, he said that once he visited the site he saw there was validity to the appeal. He said he would tie the demolition of the existing garage to approval of the plans because the garage is both visually prominent within the front yard and is very close to the next door house. He said that while the proposed garage would be located a bit further forward than the existing garage, he noted that most of the proposed garage would be more tucked in to the house. He said such a change would do substantial justice to the neighborhood. For these reasons he moved to approve the plans as submitted with note that the plans include the demolition of the existing garage.

Mr. Lillie said he would be opposing the motion, noting he had no problem with Variance A but disagreed with Variance B. He said that the lot shape has no bearing on the maximum square footage allowed. He said that no practical difficulty had been established for Variance B. He also said that the need for Variance B was self-created since it is not required that a family home be equipped with a two or three car garage.

Mr. Reddy said that the need for Variance B could be mitigated through a redesign of the garage since the variance requested is only 3.78 feet.

Mr. Rodriguez agreed, saying that if the motion were just to accept Variance A he would vote to approve, but that Variance B could be mitigated if not entirely removed with a redesign.

Chairman Morganroth said he would be voting against the motion for similar reasons. He said he would be willing to accept Variance A, but that Variance B is not particular to the irregular shaped lot since it is an issue of maximum square footage. He stated that Ms. Dokes also indicated that Variance B could be removed as a request with a redesign, and for that reason he would oppose the motion as well.

Mr. Hart said he would be supporting the motion, citing the fact that removing the current garage would do substantial justice to the neighborhood. He stated that the view would be better and that it would be removing a building that is 2.5 feet from the property line, which would also benefit the adjacent home.

Motion failed, 3-4.

ROLL CALL VOTE

Yeas: Miller, Hart, Lilley

Nays: Morganroth, Rodriguez, Reddy, Lillie

Mr. Lillie advised the appellants that they could come back with another appeal should they be able to configure a substantial change to their plans, since no Board Member expressed concerns about Variance A.

Mr. Miller concurred with Mr. Lillie, confirming for the appellants that the request for Variance A was well-substantiated and that Variance B was a much more difficult decision, even though he ultimately moved in its favor.

**2) 1917 Cole
Appeal 19-36**

Assistant Building Official Zielke explained the owner of the property known as 1917 Cole requested the following variances to construct a porch and a second floor addition to the existing non-conforming home:

A. Chapter 126, Article 2, Section 2.10 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 26.75 feet. The proposed is 24.82 feet. Therefore a 1.93 foot variance is being requested.

B. Chapter 126, Article 2, Section 2.10 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 14.00 feet. The existing and proposed is 11.63 feet; Therefore a 2.37 foot variance is being requested.

C. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires that the minimum side yard of 9.0 feet or 10% of the total lot width whichever is larger for one

side. The required is 9.00 feet. The existing and proposed is 8.72 feet; Therefore a 0.28 foot variance is being requested on the East.

D. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires that no side yard shall be less than 5.00 feet. The existing and proposed is 2.91 feet; Therefore a 2.09 foot variance is being requested on the West.

E. 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 14.00 feet. The existing and proposed is 13.82 feet. Therefore, a 0.18 foot variance is being requested on the East.

F. 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 14.00 feet. The existing and proposed is 11.52 feet. Therefore, a 2.48 foot variance is being requested on the West.

Assistant Building Official Zielke added that this non-conforming single story home was constructed in 1949. This property is zoned R3 – Single Family Residential.

Tom Inger, architect for the project, spoke on behalf of the appellant. He stated that the appellants sought to make room for their growing family while minimizing the cost of doing so.

Mr. Lillie noted for Mr. Inger that financial constraints do not establish a practical difficulty.

Motion by Mr. Lillie

Seconded by Mr. Reddy with regard to Appeal 19-36, A. Chapter 126, Article 2, Section 2.10 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 26.75 feet. The proposed is 24.82 feet. Therefore a 1.93 foot variance is being requested. B. Chapter 126, Article 2, Section 2.10 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 14.00 feet. The existing and proposed is 11.63 feet; Therefore a 2.37 foot variance is being requested. C. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires that the minimum side yard of 9.0 feet or 10% of the total lot width whichever is larger for one side. The required is 9.00 feet. The existing and proposed is 8.72 feet; Therefore a 0.28 foot variance is being requested on the East. D. Chapter 126, Article 2, Section 2.10 of the Zoning Ordinance requires that no side yard shall be less than 5.00 feet. The existing and proposed is 2.91 feet; Therefore a 2.09 foot variance is being requested on the West. E. 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 14.00 feet. The existing and proposed is 13.82 feet. Therefore, a 0.18 foot variance is being

requested on the East. F. 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 14.00 feet. The existing and proposed is 11.52 feet. Therefore, a 2.48 foot variance is being requested on the West.

Mr. Lillie moved to deny the variance requests. He explained that the BZA avoids increasing non-conformities. He acknowledged that the appellants may have financial constraints but reiterated that financial constraints do not establish a practical difficulty. Mr. Lillie also observed the 35 feet in the back of the home where the appellants would have different options for an addition without the need for a variance.

Mr. Hart said he would support the motion because he agreed that a practical difficulty was not established. He said that while cost cannot be a factor for a BZA decision, he also believed that the plans could be reconfigured to both minimize the need for variances and to avoid significant additional cost to the appellants. He concurred with Mr. Lillie that there was ample opportunity to avoid variances given the 35 feet in the back of the home.

Mr. Miller said that while updating a bungalow instead of building a home was personally appealing to him, and there have been situations where a home with many non-conformities was allowed to add on under very specific circumstances, the proposed front yard projection struck him as untenable to approve.

Mr. Rodriguez said he would support the motion because he would not be in favor of expanding the non-conformity.

Chairman Morganroth said he would support the motion because while the appeal cited necessary room sizes, the plan was already being proposed with an approximately 8.5 foot room in the back of the home. He noted that expanding the front of the home into the allowable projection would maintain the front bedroom at eight to nine feet and would allow for a larger room in the back of the home, where there is ample room to do so. He said he also concurred with his fellow Board Members' previous comments.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 09-69-19

5. CORRESPONDENCE

One item of correspondence was provided to the Board and the appropriate appellants at the outset of the evening's meeting.

T# 09-70-19

6. GENERAL BUSINESS (none)

T# 09-71-19

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

T# 09-72-19

8. ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:41 p.m.



Bruce R. Johnson, Building Official