

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS**  
**TUESDAY, APRIL 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, April 9, 2019. Vice-Chairman Randolph Judd convened the meeting at 7:30 p.m.

**2. ROLLCALL**

**Present:** Vice-Chairman Randolph Judd; Board Members Jason Canvasser, Kevin Hart, John Miller, Erik Morganroth, Francis Rodriguez; Alternate Board Member Richard Lilley

**Absent:** Chairman Charles Lillie; Alternate Board Member Ron Reddy

**Administration:**

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

The Vice-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.

Vice-Chairman Judd then took rollcall of the petitioners; petitioners for Appeals 1, 2, 3, 4, and 6 were present. Appeal 5, 33866 Woodward, was postponed to the May 2019 BZA meeting.

**T# 04-26-19**

**3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF MARCH 12, 2019**

**Motion by Mr. Canvasser**

**Seconded by Mr. Morganroth to accept the Minutes of the BZA meeting of March 12, 2019 as presented.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

**T# 04-27-19**

**6. APPEALS**

**1) 211 VALLEY VIEW  
Appeal 19-11**

Assistant Building Official Zielke explained that the owner(s) of the property known as 211 Valley View Lane request the following variance to construct a new single family home with an attached garage:

**A. Chapter 126, Article 2, Section 2.06** of the Zoning Ordinance requires a maximum building height of 24.00 feet for a flat roof. The proposed building height is 27.00 feet, therefore a variance of 3.00 feet is requested.

Assistant Building Official Zielke also stated that the applicant proposes to construct a new flat roof two story home with an attached garage. The existing grade on this lot slopes from the rear of the property to the front. This property is zoned R1 – Single Family Residential.

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

- The highest point for the variance being requested would be on the left side where the existing garage is located.
- The proposed changes would not require a variance if the lot were level.
- If the roof were not flat, an eave height variance would likely still be required because the sloping grade would still provide a challenge.
- The petitioner worked with the Engineering Department to create a drainage system that mitigates the sloping of the lot as much as possible.
- The area of the home above the height line includes the chimney and a parapet, which can go 30 inches above the roof height limit.
- This is a difficult lot with sloping both from the back to the front and from the left to the right. The flat roof is an attempt to mitigate the issues caused by the sloping.
- The chimney is two feet above the roof and is at the height it needs to be for code.

Vice-Chairman Judd told the evening's appellants that only one appellant representative is permitted to speak before the BZA. In the case where additional detail may be provided by an architect or contractor present, sometimes a small exception may be made.

Brad Balkwill from AZD Architects spoke on behalf of the appellant and as the designer of the home. He explained that meetings between the home's engineer and the City's Engineering Department resulted in home's proposed height in order to accommodate the City's drainage requirements. The rear of the house falls well below the zoning height requirement. A sloped roof option was explored, but it increased the mass of the house and did not alleviate the need for a variance. The main floor building height is 9 feet 6 inches on the main level. The second level height is 9 feet.

The Board had no questions for Mr. Balkwill.

Vice-Chairman Judd invited comment from the public.

Sean Kurschat of 1360 Northlawn asked the Board if Mr. Balkwill thought a hip-roof design would make ventilation of the roof more difficult than a flat-roof design for the homeowner.

Vice-Chairman Judd directed the question to Mr. Balkwill.

Mr. Balkwill stated a hip-roof could be more difficult in regards to ventilation and would still require a variance from the BZA.

John Wood of 333 Valley View said the proposed height of the house seemed reasonable, but that he was concerned with the construction traffic, blockage of the road, and potential deterioration of the road. Mr. Wood asked if the BZA has jurisdiction over those areas of concern. He also asked if there was a City ordinance stating that construction could not unduly damage a street, or an ordinance requiring that undue damage to a street by construction vehicles be repaired by the homeowner undertaking construction.

Vice-Chairman Judd asked Building Official Johnson to address Mr. Wood's question. Vice-Chairman Judd also confirmed that there is a Builder's Code of Responsibility, and asked Building Official Johnson to elaborate on that as well.

Building Official Johnson stated that the City has several construction site regulations in place. If construction vehicles damage the road the construction team is responsible for repairing the road. In addition, construction vehicles are not allowed to obstruct City streets. The City would likely treat a private road the same in terms of requirements. Residents must be able to have ingress and egress to their street. Residents may always call Birmingham's Building Department with concerns. Code Enforcement is usually able to be on-site within 15 minutes in order to address any violations or issues. The City has two full-time construction Code Enforcement Officers just dedicated to construction site maintenance who inspect all the active construction sites in the City on a daily basis.

Mr. Wood asked whether residents of streets impacted by construction have any input into the enforcement process and whether any City employees take before-and-after photos of roads. He clarified that he was not anticipating issues, but would rather be prepared with the appropriate information just in case.

Building Official Johnson reiterated that any concerns could be raised with the Building Department. He advised Mr. Wood that City employees do not photograph the roads, but that construction damage to a road is very apparent when it occurs.

Mr. Wood asked if he would be well-advised to take his own photos of the road condition.

Building Official Johnson said that Mr. Wood would be welcome to photograph any sources of concern. He said residents have previously provided photographic evidence of parties committing construction violations and that photos have been helpful in addressing the violations.

Mr. Wood thanked Building Official Johnson and the Board.

Vice-Chairman Judd emphasized the value of an involved citizenry.

**Motion by Mr. Morganroth**

**Seconded by Mr. Rodriguez with regard to Appeal 19-11, A. Chapter 126, Article 2, Section 2.06 of the Zoning Ordinance requires a maximum building height of 24.00 feet for a flat roof. The proposed building height is 27.00 feet, therefore a variance of 3.00 feet is requested.**

**Mr. Morganroth stated that the appellant demonstrated a case of practical difficulty with the piece of land as a result of the forward and side slope of the lot. He said it would be difficult to achieve the maximum height as required by ordinance. In addition, the lot poses drainage issues and lowering the house would impair proper drainage. Mr. Morganroth noted that the appellant has worked to mitigate the variance needs and that the need is not self-created because of the lot slopes.**

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

**Motion carried, 7-0.**

ROLLCALL VOTE

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

Nays: None

**T# 04-28-19**

**2) 1330 NORTHLAWN  
Appeal 19-12**

Assistant Building Official Zielke explained the owner of the property, known as 1330 Northlawn, requests the following variance to construct a new home with attached garage:

**A. Chapter 126, Article 2, Section 2.06** of the Zoning Ordinance requires that the maximum height for a flat roof is 24.00 feet. The proposed height is 25.55 feet; therefore, a variance of 1.55 feet is requested.

Assistant Official Zielke added that the applicant proposes to construct a new two story flat roof home with an attached garage. The existing grade on this lot slopes from the front to the Rouge River at the rear of property.

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

- A home without a flat roof on this lot would still require a variance for the eave height.
- The height of the front of the house adheres to code. A full walkout would require a greater variance for a two story home as it proceeds deeper into the lot from the front.

Nick Mamatas, owner of the house, addressed the Board. He reiterated that the front of the proposed house on a flat lot would adhere to City code. He explained:

- That the existing house has no conforming set-backs, and is located between 15 - 20 feet farther forward than the neighboring houses.
- On the east side, the neighboring house is within two feet of the property line. On the west side, the neighboring house is within five feet of the property line.
- Moving the new home to accommodate both the fore-aft requirements and the side setbacks is creating an issue when combined with the slope of the lot.
- The height from the first floor is 10 feet, on the second floor is nine feet. The house would not require a variance if the lot were flat.

**Motion by Mr. Miller**

**Seconded by Mr. Lilley with regard to Appeal 19-12, A. Chapter 126, Article 2, Section 2.06 of the Zoning Ordinance requires that the maximum height for a flat roof is 24.00 feet. The proposed height is 25.55 feet; therefore, a variance of 1.55 feet is requested.**

**Mr. Miller explained that the slope of the lot prevents the owner from using the lot while adhering to the zoning ordinance. The variance would do substantial justice to allow building on this lot and would have no negative impact on the adjacent homes. The problem is not self-created.**

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

**Motion carried, 7-0.**

ROLLCALL VOTE

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

Nays: None

**T# 04-29-19**

**3) 1583 RUFFNER  
Appeal 19-13**

Assistant Building Official Morad explained that the owner(s) of the property known as 1583 Ruffner request 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 both side yard setbacks for this property total 14.00 feet. The total side yard setbacks proposed is 8.46 feet; therefore, a 5.54 variance is requested.

**B. Chapter 126, Article 4, Section 4.61 (2)** of the Zoning Ordinance requires a minimum street side yard setback to be 10.00 feet. The proposed setback is 3.46 feet; therefore, a variance of 6.54 feet is requested.

**C. Chapter 126, Article 4, Section 4.61 (2)** of the Zoning Ordinance requires the attached garage to be setback 15.00 feet from the street side property line. The proposed setback is 13.10 feet; therefore, a variance of 1.90 feet is requested.

**D. 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 10.14 feet; therefore a variance of 3.86 is requested.

**E. Chapter 126, Article 4, Section 4.61 (2)** of the Zoning Ordinance requires a minimum street side yard setback to be 10.00 feet. A proposed covered porch is setback 3.46 feet with a 0.83 foot overhang; therefore, variances of 6.54 feet for the porch and 5.71 feet for the overhang are requested.

Assistant Building Official Morad also explained that the applicant was granted the above variances in September 2017 to construct an addition to a nonconforming home. The owner stated that after the work was started existing deterioration was discovered causing changes to be made to the approved plans that were not in conformance with the height standards.

The plans have been revised to be in compliance with the ordinance. However, the elevations have changes from the plans approved by the BZA in 2017. All original variances are the same except for "E" that is less than previously granted. This property is zoned R3 – Single Family Residential.

Assistant Building Official Morad explained:

- The proposed plan modifications differ from what the BZA granted the homeowner in September 2017. More needs to be done to the home since damage was discovered once construction began. The plan modifications will conform to the City's height restrictions.
- Approval may be tied to the current plans as submitted should the Board see fit.

Homeowner Victoria Miller addressed the Board. She explained the original roof was discovered to be unusable after construction began. As a result, she and her husband hope to make the house level with the planned addition.

Gregory Kolb of 1576 E. Lincoln asked if the house's proposed height would be beyond the limits of the ordinance.

Building Official Johnson told Mr. Kolb that the house's roof was originally granted a variance to be beyond the height limits of the ordinance, but that it is being proposed that the roof will be lowered to an ordinance-compliant height.

Mr. Kolb thanked the Board.

**Motion by Mr. Morganroth**

**Seconded by Mr. Rodriguez with regard to Appeal 19-13, with Articles A, B, C, D as previously approved in September 2017 due to practical difficulties, and E. Chapter 126, Article 4, Section 4.61 (2) of the Zoning Ordinance requires a minimum street side yard setback to be 10.00 feet. A proposed covered porch is setback 3.46 feet with a 0.83 foot overhang; therefore, variances of 6.54 feet for the porch and 5.71 feet for the overhang are requested.**

**Mr. Morganroth noted that Article E requests a lower variance than was originally granted in September 2017. As a result, he moved to approve all Articles as requested and tied to the new plans as submitted.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

**T# 04-30-19**

**4) 1711 BANBURY  
Appeal 19-14**

Assistant Building Official Morad explained that the existing home know as 1711 Banbury was constructed in 1949, is zoned R2 – Single Family Residential, and is nonconforming to the current front yard setback requirements. The owner of the property is requesting the following variance 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 is the average of the homes within 200 feet in each direction. The required front yard setback for this property is 30.70 feet. The existing and proposed is 29.60 feet; therefore, a variance of 1.10 feet is requested.

Assistant Building Official Morad confirmed that the existing non-conformity is being slightly mitigated by the proposed construction as a small spot in the front, which is currently cantilevered out, will be moved back.

Paul Siver, homeowner, addressed the Board. He explained that attempting to move the house back in order to comply with the variance would require the front of the house be trimmed, dug up and have additional foundation poured. He noted that he would also be mitigating the non-compliance by removing the bump-out in the front of the house.

**Motion by Mr. Canvasser**

**Seconded by Mr. Morganroth with regard to Appeal 19-14, 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 30.70 feet. The existing and proposed is 29.60 feet; therefore, a variance of 1.10 feet is requested.**

**Mr. Canvasser explained that strict compliance with the ordinance would render conformity unnecessarily burdensome. The existing home is non-conforming, the construction would not increase the non-conformity, and the existing non-conformity in the cantilevered area of the front of the home would be decreased by the proposed construction. Granting the variance would do substantial justice to the petitioner and the adjacent property owners. The problem was not self-created.**

**As a result, Mr. Canvasser moved to approve the variance and tie it to the plans as submitted.**

**Motion carried, 7-0.**

ROLLCALL VOTE

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

Nays: None

**T# 04-31-19**

**5) 453 BALDWIN  
Appeal 19-16**

Assistant Building Official Zielke explained the owner of the property known as 453 Baldwin request the following variance to construct a covered porch to the rear of an existing nonconforming home:

**A. Chapter 126, Article 4, Section 4.74(C)** of the Zoning Ordinance requires the minimum side yard setback shall be not less than 5.00 feet. The proposed covered porch setback is 3.90 feet with a 0.83 foot overhang; therefore, variances of 1.10 feet for the porch and 1.28 feet for the overhang are requested.

The applicant is proposing to construct a covered porch to the rear of the existing nonconforming home. The lot is irregular in shape reducing in width from the front to the back.

Assistant Building Official Zielke explained that he had not been out to the site.



Vice-Chairman Judd said he would like to know why the need for these variances cannot be mitigated according to the applicant.

Mr. Morganroth asked if the code differentiates between a fireplace in the home versus a fireplace in a covered porch in terms of allowing it to go into the setback.

Building Official Johnson said all the other allowable projections would come into play, so a fireplace would come into play as well since it is all in the same section of the ordinance.

Mr. Morganroth suggested that there would be other possible designs that would not require a variance.

Assistant Building Official Zielke noted that the fireplace had been pulled in from the homeowner's initial design in an attempt at mitigation. He said it may be possible to redesign it so it would not require a variance.

Mr. Morganroth asked whether the post encroaching on the window was decorative or structural.

Homeowner Bill Lichwalla addressed the Board. He said:

- The plans have been through about ten redesigns to get them to this point.
- The home was built in the 1950s and has had three additions. As a result, attempts to add the porch have encountered various design and structural issues.
- The fireplace has been pulled in as much as possible in order to honor the five-foot setback requirement. Cutting the corner off only the fireplace would not be possible. It would be necessary to cut off entire parts of the angle of the extension of the house in the back.

Vice-Chairman Judd said there are four points Mr. Lichwalla must address, with the issue of self-creation vis-à-vis being of particular importance. Vice-Chairman Judd said:

- That while Mr. Lichwalla has clearly delineated the difficulty of the project, the issue at hand seems like a prime example of a self-created hardship.
- He is hearing Mr. Lichwalla request a one-foot variance for a project that seems like a lot of trouble.

Mr. Lichwalla replied that the issues were not self-created because the house being two feet from the property line and the lot's trapezoid shape were existing circumstances at the time of purchase. He stated that he did not purchase the house knowing it was non-conforming. He opined that if the home had a conforming five-foot setback or if the lot were rectangular the proposed changes would not necessitate a variance.

Vice-Chairman Judd said the issue was still self-created, and could be remedied by not proceeding with the project or by adjusting the project to no longer require the one-foot variance.

Mr. Lichwalla confirmed for Mr. Miller that the variance request is tied to align with the window.

Mr. Miller asked if the window had been smaller or in a different location if the porch might have been a different size.

Mr. Lichwalla confirmed the porch may have been a different size under those circumstances.

Building Official Johnson told Mr. Miller that extending the porch would not negatively impact adjacent properties in terms of the required distance between the properties should those homeowners choose to build additions in the future.

Mr. Lichwalla confirmed for Mr. Miller that he considered building the porch along the line of the zoning envelope, but said it would not work because if it is not a square property it would not be possible to appropriately build a cathedral ceiling.

Vice-Chairman Judd advised that the BZA does not redesign homes for petitioners. He noted that the plans before the BZA stood as-is, and the Board would need to decide whether to vote those plans up or down.

Vice-Chairman Judd offered Mr. Lichwalla the opportunity to either continue or to withdraw and reconsider his options for the project.

Mr. Lichwalla stated he would like to proceed with the vote.

**Motion by Mr. Miller**

**Seconded by Mr. Morganroth with regard to Appeal 19-16, A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires the minimum side yard setback shall be not less than 5.00 feet. The proposed covered porch setback is 3.90 feet with a 0.83 foot overhang; therefore, variances of 1.10 feet for the porch and 1.28 feet for the overhang are requested.**

**Mr. Miller said strict compliance with the ordinance will not unreasonably prevent the petitioner from using the property for its permitted purpose. He stated that a real hardship was not demonstrated and could set a negative precedent. Mr. Miller continued that while the problem was not self-created, the circumstances of the property are not so unique or onerous that the homeowner could not build a porch; rather, the homeowner could simply not build the specific porch presented to the Board in the course of the evening's meeting. He would also be concerned about doing substantial justice, and about the precedent set if the Board were to allow the homeowner to build so close to the lot line.**

**Resultantly, Mr. Miller moved to deny Appeal 19-16 for the property known as 453 Baldwin.**

**Building Official Johnson advised Mr. Hart that approval of these plans could cause the adjacent property to the north a distance-between-structures issue should that north property want to build a detached garage in the future.**

**Motion carried, 7-0.**

ROLLCALL VOTE

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

Nays: None

**T# 04-32-19**

**5. CORRESPONDENCE** (included in agenda packet)

**T# 04-33-19**

**6. GENERAL BUSINESS**

Building Official Johnson introduced Andrew Erickson, who has been working for the Building Department since August 2018 as a Building Inspector. Mr. Ericson is transitioning into doing more plan review for the Department and working more frequently with ordinances, so Building Official Johnson had invited Mr. Ericson to sit in on a BZA meeting.

The Board welcomed Mr. Ericson.

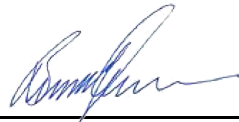
Vice-Chairman Judd reminded the Board members that Board Elections would be held at the end of the May 2019 meeting.

**T# 04-34-19**

**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 8:47 p.m.



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Bruce R. Johnson, Building Official