

**Birmingham Board Of Zoning Appeals Proceedings
Tuesday, November 10, 2020
Held Remotely Via Zoom And Telephone Access**

1. Call To Order

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, November 10, 2020. Vice-Chairman Canvasser convened the meeting at 7:36 p.m.

2. Rollcall

Present: Board Members Jason Canvasser, Kevin Hart (arrived 8:30 p.m.), Richard Lilley, John Miller, Erik Morganroth; Alternate Board Members Jerry Attia, Ron Reddy (all members present at roll call were located in Birmingham, MI with the exception of Mr. Lilley, who was located in Folly Beach, SC. Since Mr. Hart arrived after roll call, his location was not ascertained.)

Absent: Chairman Charles Lillie; Board Member Francis Rodriguez

Administration:

Mike Morad, Asst. Building Official
Jeff Zielke, Asst. Building Official
Eric Brunk, IT Director
Brooks Cowan, City Planner
Laura Eichenhorn, City Transcriptionist

Vice-Chairman Canvasser explained the meeting was being held virtually due to the Covid-19 pandemic. He explained the procedures to be followed for the virtual meeting.

Vice-Chairman Canvasser described 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 Canvasser took rollcall of the petitioners. All expected petitioners were present.

T# 11-55-20

3. Approval Of The Minutes Of The BZA Meeting Of September 8, 2020

Motion by Mr. Morganroth

Seconded by Mr. Miller to accept the Minutes of the BZA meeting of September 8, 2020 as submitted.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Lilley, Morganroth, Miller, Reddy, Attia

Nays: None

Abstain: Canvasser

T# 11-56-20

4. Appeals

**1) 707 Lakeview
Appeal 20-40**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 707 Lakeview was requesting the following variances to construct a new home with an attached garage:

A. Chapter 126, Article 2, Section 2.08.4 of the Zoning Ordinance requires that the maximum building height for sloped roofs is 30.00 feet to the midpoint. The proposed is 35.30 feet. Therefore a variance of 5.30 feet is being requested.

B. Chapter 126, Article 2, Section 2.08.4 of the Zoning Ordinance requires that the maximum building height to the eave is 24.00 feet. The proposed is 30.60 feet. Therefore a variance of 6.60 feet is being requested.

ABO Zielke explained the applicant was requesting height variances to construct a new home with an attached garage. The lot slopes from the front to the rear. The southwest corner of the proposed house is the area in which the variances were being requested. This property is zoned R2 – Single Family Residential.

In reply to Mr. Morganroth, ABO Zielke confirmed that if the lot were flat the appellant would not need a variance to construct the home as proposed.

Brian Neeper, architect, reviewed the letter to the BZA describing why these two variances were being sought. The letter was included in the evening's agenda packet.

The Board had no questions for Mr. Neeper.

The public had no questions regarding the appeal.

Motion by Mr. Miller

Seconded by Mr. Morganroth with regard to Appeal 20-40, A. Chapter 126, Article 2, Section 2.08.4 of the Zoning Ordinance requires that the maximum building height for sloped roofs is 30.00 feet to the midpoint. The proposed is 35.30 feet. Therefore a variance of 5.30 feet is being requested; and B. Chapter 126, Article 2, Section 2.08.4 of the Zoning Ordinance requires that the maximum building height to the eave is 24.00 feet. The proposed is 30.60 feet. Therefore a variance of 6.60 feet is being requested.

Mr. Miller moved to approve both variances A and B and tied the approval to the plans as submitted. Mr. Miller explained that he had visited the home, and saw that the rear of the lot had a steep fall-off from the midpoint of the lot. He said due to those unusual conditions, strict compliance with the ordinance could not be expected as it would prevent the petitioner from using the property in a reasonable way. The issue is due to the terrain and is not self-created.

Motion carried, 5-1.

ROLL CALL VOTE

Yeas: Lilley, Canvasser, Morganroth, Miller, Reddy

Nays: Attia

**2) 530 Vinewood
Appeal 20-41**

ABO Zielke presented the item, explaining that the owner of the property known as 530 Vinewood was requesting the following variance to reconstruct the existing non-conforming driveway and patio:

A. Chapter 126, Article 2, Section 2.08.1 of the Zoning Ordinance requires that a single family residential lot shall have a minimum open space of 40%. The minimum open space required is 2758.40 SF (40%). The proposed is open space is 1968.00 SF (28.5%). Therefore a variance of 790.40 SF (11.50%).

ABO Zielke noted the applicant was requesting a variance to reconstruct the existing brick paver driveway and patio. This property is zoned R2 – Single Family Residential.

ABO Zielke explained the patio in the front yard was not colored yellow in the drawings because it was considered a ‘porch’ which is allowed to project 10 feet into the front yard. As a result, it does not get counted against the required open space. He also explained that one must drive past the house and loop around to enter the garage.

Marko Berishaj, son-in-law of the homeowner, reviewed the letter to the BZA describing why Ms. Santa Zaiwadeh, owner, was seeking this variance. The letter was included in the evening’s

agenda packet. Mr. Berishaj said Ms. Zaiwadeh attempted to mitigate the variance request where she could by planning not to bring the concrete of the deck back to the rear lot line.

Mr. Morganroth noted that the amount of lot coverage overage in this request was significant. He asked for information on the applicant's attempts at mitigation.

Mr. Berishaj said the patio in the rear is very small and that Ms. Zaiwadeh was making it smaller with these updates. He was not sure what other hardscape could be given up to mitigate the variance request.

There were no further questions from the Board and no questions from the public.

Motion by Mr. Reddy

Seconded by Mr. Miller with regard to Appeal 20-41, A. Chapter 126, Article 2, Section 2.08.1 of the Zoning Ordinance requires that a single family residential lot shall have a minimum open space of 40%. The minimum open space required is 2758.40 SF (40%). The proposed is open space is 1968.00 SF (28.5%). Therefore a variance of 790.40 SF (11.50%).

Mr. Reddy moved to approve the variance request and tied it to the plans as submitted. He said this request fell in the category of 'special or unique conditions or circumstances'. He ventured that the narrowness of the lot prevents the applicant from doing what one might normally do, which would be replacing the pavers with concrete while still allowing access to the garage.

Mr. Miller said the variance request was being necessitated by the unusual, existing condition of a garage facing backwards on the property. He said that even though the coverage overage in this request is significant, the circumstances are so unique that a variance approval in this case should not be seen to be creating a precedent. He stated that granting the variance would keep the lot functional and allow Ms. Zaiwadeh continued access to her garage.

Mr. Morganroth voiced his reluctant support for the motion. He explained that if the Ms. Zaiwadeh were granted half the variance she would not be able to access her garage. He noted that the lot has a particularly unusual configuration. He also noted that if the applicant had repaired the hardscape in pieces she may not have even had to appear before the BZA at all.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Reddy, Miller, Lilley, Canvasser, Morganroth, Attia

Nays: None

**3) 1292 Cole
Appeal 20-42**

ABO Zielke presented the item, explaining that the owner of the property known as 1292 Cole was requesting 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 that the minimum total distance between principle residential buildings on adjacent lots of 14.0 feet or 25% of the lot width whichever is greater. The required total is 14.00 feet. The proposed is 12.03 feet. Therefore, a variance of 1.97 feet is being requested.

ABO Zielke noted the applicant was requesting a variance to construct a new single family home with a detached garage. The house to the west is existing nonconforming on the adjoining side. This property is zoned R3 – Single Family Residential.

Alan Amchevslavsky of Amson Custom Homes LLC reviewed the letter to the BZA describing why the homeowners were seeking this variance. The letter was included in the evening's agenda packet.

There were no questions for Mr. Amchevslavsky from the Board and no questions from the public.

Motion by Mr. Lilley

Seconded by Mr. Reddy with regard to Appeal 20-42, A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires that the minimum total distance between principle residential buildings on adjacent lots of 14.0 feet or 25% of the lot width whichever is greater. The required total is 14.00 feet. The proposed is 12.03 feet. Therefore, a variance of 1.97 feet is being requested.

Mr. Lilley moved to support the petition and tied it to the plans. He noted that the new structure would meet all City ordinance requirements, and that it is the neighboring property causing the issue of non-compliance in this case.

Mr. Miller noted that the part of the neighboring home that exceeds the zoning envelope is windowless, and so granting the variance for 1292 Cole would cause no hardship for the neighbor.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Lilley, Reddy, Canvasser, Morganroth, Miller, Attia

Nays: None

**4) 35001/35075 Woodward
Appeal 20-43**

City Planner Cowan presented the item, explaining that the owner of the property known as 35001 and 35075 Woodward Avenue was requesting the following dimensional variance to allow

10 parking spaces to be placed within 20.00 feet of the building frontage along Woodward Avenue, Hamilton Row and Park Street:

A. Chapter 126, Article 3, Section 3.04(D)(5) of the Zoning Ordinance requires that off-street parking contained in the first story shall not be permitted within 20.00 feet of any building façade on a frontage line or between the façade and the frontage line. Therefore, a variance of 20 feet is being requested.

City Planner Cowan noted the subject site, 35001 - 35075 Woodward Avenue, is currently home to the Hunter House restaurant, a City owned parking lot and vacant land currently leased to the city for public parking. The property is located on the west side of Woodward (southbound), and surrounded by four streets: Maple, Park, Hamilton Row, and Woodward.

On September 23, 2020, the applicant appeared before the Planning Board for a Revised Preliminary Site Plan. The applicant had proposed a number of changes to the originally approved preliminary site plan, one of which being the addition of parking spaces to the first floor within 20 feet of the building façade on a frontage line. 10 of the 12 proposed parking spaces would be within 20 feet of the frontage line which does not satisfy the Zoning Ordinance Section 3.04(D)(5).

The Planning Board denied the proposed site plan revisions, stating that the proposed site plan did not meet the requirements of Article 7, Section 7.27(a) which states that "The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic."

Hesham Gayar, owner of Select Commercial Assets Hospitality, reviewed the letter to the BZA explaining why this variance was being sought. The letter was included in the evening's agenda packet.

In response to Vice-Chairman Canvasser, Dr. Gayar confirmed that the building could be built without the variance.

Kelly Cobb, owner of Hunter House, explained that there are deed restrictions on the use of this parcel. Those deed restrictions predate both Dr. Gayar's ownership of the property and Mr. Cobb's ownership of Hunter House. He said the deed restrictions require parking surrounding Hunter House's storefront. Hunter House has a real property interest filed with Oakland County. If Dr. Gayar's development on this lot proceeds, Hunter House will be a first floor tenant. Mr. Cobb said withholding this variance would result in an economic hardship for Hunter House.

CP Cowan said that to his knowledge the deed restrictions had no impact on the variance request. CP Cowan stated that the City aims to avoid taking any position regarding the private contractual obligations between Select Commercial Assets Hospitality and Hunter House.

There were no questions from the public regarding this appeal.

Motion by Mr. Miller

Seconded by Mr. Morganroth with regard to Appeal 20-43, A. Chapter 126, Article 3, Section 3.04(D)(5) of the Zoning Ordinance requires that off-street parking contained in the first story shall not be permitted within 20.00 feet of any building façade on a frontage line or between the façade and the frontage line. Therefore, a variance of 20 feet is being requested.

Mr. Miller moved to deny the appeal. He said he could not find evidence of an oversight or of clear practical difficulty. Mr. Miller also stated that the ordinance did not seem overly burdensome in this case, and that the desire for the variance was not caused by any unique circumstances inherent to the property.

Vice-Chairman Canvasser said that the BZA was limited in what it could do in regards to the variance request. He noted Dr. Gayar's concession that the building can be built without the variance. Vice-Chairman Canvasser continued that the request for the variance is self-created.

Mr. Morganroth noted that this appeal involves a large parcel with a lot of flexibility. Without this variance the plans still had sufficient parking, which demonstrated that there is no clear need for increased, street-level parking, especially within the setback. Additionally, the City's traffic consultant found the proposed street-level parking was likely to pose a hazard to pedestrians due to the ingress and egress locations. For these reasons, Mr. Morganroth said he would support the motion to deny.

Motion carried, 6-1.

ROLL CALL VOTE

Yeas: Lilley, Canvasser, Morganroth, Miller, Reddy, Attia

Nays: Hart

**5) 1352 Dorchester
Appeal 20-44**

ABO Zielke presented the item, explaining that the owner of the property known as 1352 Dorchester was requesting the following variance to construct an addition to the existing nonconforming home:

A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires that the minimum total distance between principle residential buildings on adjacent lots of 14.0 feet or 25% of the lot width whichever is greater. The required total is 20.00 feet. The existing/proposed is 15.30 feet on the west side. Therefore, a variance of 4.70 feet is being requested.

ABO Zielke noted the applicant was requesting a variance to construct a second floor addition over a portion of the existing home that is existing non-conforming. The existing home and the

home to the west do not meet the required distance between structures. This property is zoned R1 – Single Family Residential.

Timothy Wiater, owner, reviewed the letter to the BZA describing why he and his wife were seeking this variance. The letter was included in the evening's agenda packet. He stated that he and Ms. Wiater also provided their plans to their neighbors, the Simonettis, who expressed their full support for the project.

The Board had no questions for Mr. Wiater. There were no questions from the public.

Motion by Mr. Morganroth

Seconded by Mr. Lilley with regard to Appeal 20-44, A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires that the minimum total distance between principle residential buildings on adjacent lots of 14.0 feet or 25% of the lot width whichever is greater. The required total is 20.00 feet. The existing/proposed is 15.30 feet on the west side. Therefore, a variance of 4.70 feet is being requested.

Mr. Morganroth moved to support the request and tied it to the plans as submitted. He noted that granting the variance would not increase the non-conformity, would be reasonable for fair use of the property, and would not cause any hardship to the neighbors.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**6) 607 Hawthorne
Appeal 20-45**

ABO Zielke presented the item, explaining that the owner of the property known as 607 Hawthorne was requesting the following variance to construct an addition to the existing nonconforming home:

A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum total side yard setback is 14.0 feet or 25% of the lot width whichever is greater. The required total is 25.27 feet. The proposed is 15.97 feet. Therefore, a variance of 9.30 feet is being requested.

ABO Zielke noted the applicant was requesting a variance to construct a rear addition to the existing non-conforming home. The lot is irregular in shape which the width narrows to the rear. This property is zoned R1 – Single Family Residential.

Mr. Miller noted the stairs shown in the plans are extant and not part of the new build.

Doyle Mosher, owner, reviewed his letter to the BZA describing why he was seeking this variance. The letter was included in the evening's agenda packet. He stated that his neighbors were comfortable with the proposed plans and that the addition would not move any further towards the lot line on the Linden Park side.

The Board had no questions for Mr. Mosher. There were no questions from the public.

Motion by Mr. Miller

Seconded by Mr. Reddy with regard to Appeal 20-45, A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum total side yard setback is 14.0 feet or 25% of the lot width whichever is greater. The required total is 25.27 feet. The proposed is 15.97 feet. Therefore, a variance of 9.30 feet is being requested.

Mr. Miller moved to support the applicant's variance request and tied it to the plans as submitted. He said that it was not self-created and that it is due to the unique geometry of the property. Strict compliance would cause an unreasonable difficulty for the owner.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 11-57-20

5. Correspondence

Included in the agenda packet.

T# 11-58-20

6. General Business

None.

T# 11-59-20

7. Open To The Public For Matters Not On The Agenda

None.

T# 11-60-20

8. Adjournment

Motion by Mr. Morganroth

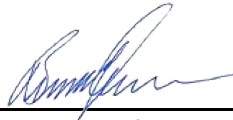
Seconded by Mr. Lilley to adjourn the November 10, 2020 BZA meeting at 9:04 p.m.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None



Bruce R. Johnson, Building Official