

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, JANUARY 14, 2020
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, January 14, 2020. Vice-Chairman Erik Morganroth convened the meeting at 7:29 p.m.

2. ROLLCALL

Present: Board Members Jason Canvasser, Richard Lilley, John Miller, Erik Morganroth, Francis Rodriguez; Alternate Board Members Jerry Attia, Ron Reddy

Absent: Chairman Charles Lillie; Board Member Kevin Hart

Administration:

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

Vice-Chairman Morganroth 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 Morganroth took rollcall of the petitioners. All petitioners were present.

T# 01-01-20

3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF DECEMBER 10, 2019

Motion by Mr. Lilley

Seconded by Mr. Canvasser to accept the Minutes of the BZA meeting of December 10, 2019 as submitted.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

T# 01-02-20

4. APPEALS

**1) 2282 W Lincoln
Appeal 19-41**

Assistant Building Official Zielke presented the item, explaining the owner of the property known as 2282 W. Lincoln requested the following variance to improve the existing driveway:

A. Chapter 126, Article 4, Section 4.31(A)1 of the Zoning Ordinance requires a minimum of 65% of the front open space in all single family districts shall be free of paved surfaces. The required open space is 1851.20 square feet (65%). The proposed is 1642.00 square feet (58.64%). Therefore, a 209.20 square feet (6.36%) variance is being requested.

Assistant Building Official Zielke noted the site is located near the high school. An impervious permit had been issued in 2005 to rework the existing driveway into a circular driveway. This case was in front of the Board of Zoning Appeals in December and was tabled. This property is zoned R1 – Single Family Residential.

Roger Marchetti, owner, was present on behalf of the appeal.

Motion by Mr. Canvasser

Seconded by Mr. Rodriguez with regard to Appeal 19-41, A. Chapter 126, Article 4, Section 4.31(A)1 of the Zoning Ordinance requires a minimum of 65% of the front open space in all single family districts shall be free of paved surfaces. The required open space is 1851.20 square feet (65%). The proposed is 1642.00 square feet (58.64%). Therefore, a 209.20 square feet (6.36%) variance is being requested.

Noting his statement during the December 2019 BZA meeting that he would be more likely to approve this appeal if it were resubmitted with mitigation, Mr. Canvasser motioned to approve Appeal 19-41. He added that the impervious surface within the yellow area highlighted on the submitted drawings must be removed in accordance with the City's permitting process and that the approval shall be tied to the plans as submitted. He noted the challenges of the site which include the lack of street parking, the high volume of traffic due to the proximity of the high school,

and the maple tree next to the driveway that obscures sightlines entering and exiting the driveway.

Mr. Canvasser said strict compliance with the ordinance in this case would be unnecessarily burdensome, that granting the variance would do substantial justice both to the appellant and the neighboring property owners, and that the problem was not self-created.

Vice-Chairman Morganroth voiced support for the motion given its ability to increase vehicular safety near Seaholm High School and due to the unique circumstances of the property.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

**2) 670 Bennaville
Appeal 20-01**

Assistant Building Official Morad presented the item, explaining the owner of the property known as 670 Bennaville requested 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 a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 10.97 feet. Therefore, a 3.03 foot variance is being requested.

Assistant Building Official Morad noted the proposed single family home meets all setback ordinance regulations on the lot but would not meet the minimum distance between structures on the west side. This property is zoned R3 – Single Family Residential.

Richard Merlini, developer, was present on behalf of the appeal.

Mr. Attia noted that if the house moved .97 feet to the west it would increase the distance between the buildings to nearly 12 feet.

Mr. Merlini stated that parking an SUV in a 10-foot driveway is already challenging, and that reducing the driveway to nine feet would be even more prohibitive. He said 9.5 feet was the minimum width he would want to see for a driveway.

In reply to Vice-Chairman Morganroth, Mr. Merlini confirmed that he chose not to make the house a foot wider in order to mitigate the variance request.

In reply to Mr. Attia, Mr. Merlini said a 21 foot wide house on this lot would be unmarketable, and that any house on a similar lot has a width greater than 21 feet.

Vice-Chairman Morganroth stated that Mr. Merlini was correct in saying that not having nine feet on one side of the home and five feet on the other is a unique feature of this particular lot. He also said that homes in Birmingham are generally expected to be at least 25 feet in width.

Mr. Attia said he knew of a number of extant homes near this parcel with widths less than 24 feet. He noted that reducing the width of the house and moving the building a foot to the west could be a positive attempt at mitigation. He said having only 10.97 feet between two homes could negatively affect the neighbor to the west.

Katherine Rothstein, neighbor at 692 Bennaville, said it was unclear whether Mr. Merlini actually owned the lot or whether the sale was still pending since her former neighbor, Mary Martin, was listed as the owner on the appeal. Ms. Rothstein asked for clarification from the City. She said granting this variance would affect both the privacy of her home and the amount of sunlight that enters her son's bedroom window. She said that ordinances are made and enforced for the benefit of the community, and that granting this variance would negatively impact her and her family's ability to enjoy their home. She stated that Birmingham already requires less distance between homes than neighboring municipalities, and said she would not like to see it go lower than 14 feet.

Garrett Carr, neighbor at 644 Bennaville, said allowing this variance would be an inconvenience to him and would degrade both his and Ms. Rothstein's property values. Mr. Carr said that if a narrower home were built at 670 Bennaville he was confident most of his and Ms. Rothstein's concerns would be alleviated.

Mr. Attia said that the house at 644 Bennaville was narrower than the house Mr. Merlini was proposing to build at 670 Bennaville according to the drawings of both homes. Noting this, Mr. Attia asked Mr. Carr for confirmation that his home at 644 Bennaville was both advertised in the real estate market, and purchased by Mr. Carr.

Mr. Carr confirmed that he purchased 644 Bennaville as part of a real estate transaction.

Mr. Attia noted that Mr. Carr's purchase of 644 Bennaville proves that homes narrower than 25 feet are marketable in this neighborhood.

Motion by Mr. Attia

Seconded by Mr. Reddy with regard to Appeal 20-01, A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 10.97 feet. Therefore, a 3.03 foot variance is being requested.

Mr. Attia motioned to deny Appeal 20-01, stating that the home being proposed at 670 Bennaville is wider than necessary on this particular lot.

Mr. Attia explained that 644 Bennaville's width proves that strict compliance with the ordinance would not be unnecessarily burdensome for 670 Bennaville, that granting the variance would not do substantial justice to the neighboring property owners, that while there are unique issues with the lot there could still be a greater attempt at mitigation from the appellant, and that the problem is self-created since the home being proposed is wider than necessary.

Mr. Reddy concurred with Mr. Attia that this variance request should be further mitigated.

Mr. Canvasser said his decision would be helped by knowing the width of some of the neighboring homes. He explained that the BZA frequently runs into appeals of the 9-5 rule. He noted that the appellant did know the circumstances of the lot and its zoning requirements before purchase. Mr. Canvasser said he had not heard enough during the discussion to convince him that a nearly 25 foot wide house was necessary on the lot.

Vice-Chairman Morganroth said he would not support the motion to deny. He said shifting the home to the west by .97 feet could be included as a condition for approval should another motion on this matter be attempted. He said that most homes approved on narrow lots in the City are 24 feet in width or greater.

Mr. Miller said he could not support the motion to deny because it was not the petitioner's fault that his lot is squeezed by the layout of the adjacent parcels.

Motion failed, 3-4.

VOICE VOTE

Yeas: Attia, Reddy, Canvasser

Nays: Lilley, Miller, Morganroth, Rodriguez

Motion by Mr. Miller

Seconded by Mr. Lilley with regard to Appeal 20-01, A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 10.97 feet. Therefore, a 3.03 foot variance is being requested.

Mr. Miller motioned to approve Appeal 20-01 stating that strict compliance with the ordinance would cause the petitioner unreasonable burden. He said that the problem is a unique circumstance of the property and was not self-created, that there was evidence of mitigation since the home could have gone larger according to ordinance. He said he would tie approval to the plans as submitted on the condition that the variance be reduced from 3.03 feet to 2.53 feet.

Mr. Attia stated that:

- **There are driveways in the neighborhood of 670 Bennaville that are less than 9.5 feet in width.**
- **There are homes in the neighborhood of 670 Bennaville that are less than 24.3 feet in width.**
- **The neighbors on both sides of 670 Bennaville shared concerns that this variance could negatively impact their ability to enjoy their homes.**

Given these facts, he stated the Board should consider voting against this motion because the variance for this site could be further mitigated without imposing undue burden on the appellant.

Motion carried, 4-3.

VOICE VOTE

Yeas: Miller, Lilley, Morganroth, Rodriguez

Nays: Attia, Reddy, Canvasser

**3) 512 Wallace
Appeal 20-02**

Assistant Building Official Morad presented the item, explaining the owner of the property known as 512 Wallace requested the following variance to construct a new single family home with an attached garage:

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 18.16 feet. The proposed is 12.50 feet. Therefore a variance of 5.66 feet is being requested.

Assistant Building Official Morad noted the applicant is proposing to demolish an existing nonconforming home constructed in 1926 that is too close to the street side property line and then build a new home the same distance from the side property line. This property is zoned R2 – Single Family Residential.

David Foster, owner, was present on behalf of the appeal.

Brad Balkwill, architect, stated the possibility of building a narrower home with a master suite on the first floor was explored. He said the proportion and size of the rooms that would result from narrowing the home were substandard.

In reply to Mr. Attia, Mr. Balkwill stated narrowing the house and locating the master suite in the back of the house was also explored and found unsatisfactory because it would have negatively affected the kitchen and living room proportions. Mr. Balkwill said he had done other

homes in the neighborhood narrower than this home, but that those all had master suites on the second level.

Motion by Mr. Miller

Seconded by Mr. Rodriguez with regard to Appeal 20-02, 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 18.16 feet. The proposed is 12.50 feet. Therefore a variance of 5.66 feet is being requested.

Mr. Miller motioned to approve Appeal 20-02 and tied it to the plans as submitted, stating that the issue before the Board is due to the unique configuration of the corner lot at 512 Wallace. He noted that the proposed home would mitigate the non-conformity on the west side of the house, would maintain the distance the current home and its neighbor currently have between them on the east side of the house, and would maintain the 12.6 feet between the face of the home on Stanley and the street. He said these demonstrate attempts at mitigation of the need for a variance. He said conformity with the ordinance would be burdensome, and that the proposed home would do substantial justice to the neighborhood.

Vice-Chairman Morganroth stated he would support the motion because of the uniqueness of the property and because he would not otherwise be able to build a home of the same width that his neighbors could. If the home behind 512 Wallace were not perpendicular to 512 Wallace, Mr. Foster would be permitted a 10 foot front yard setback.

Motion carried, 6-1.

VOICE VOTE

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

Nays: Attia

**4) 995 Henley
Appeal 20-04**

Assistant Building Official Zielke presented the item, explaining 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 35.33 feet. The proposed is 11.04 feet. Therefore a variance of 24.29 feet is being requested.

Assistant Building Official Zielke noted the property owner was in for a variance for a similar request back in September 2019, and was denied (minutes attached). The applicant has revised the plans and is submitting another variance request. This property is zoned R1 – Single Family Residential.

Taft Parsons, owner, was present on behalf of the appeal.

Mike Clement spoke as the owner of 895 Tottenham, an adjacent property with a detached garage. Mr. Clement said he possessed one of the only other detached garages in the neighborhood, and that they pose a significant safety issue in inclement weather. He said he would like to see Mr. Parson's appeal approved for the safety of the residents of 995 Henley.

Motion by Mr. Rodriguez

Seconded by Mr. Reddy with regard to Appeal 20-04, 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 35.33 feet. The proposed is 11.04 feet. Therefore a variance of 24.29 feet is being requested.

Mr. Rodriguez motioned to approve Appeal 20-04 and tied it to the plans as submitted, including tearing down the existing detached garage. Mr. Rodriguez stated a practical difficulty had been established due to the unique shape of the corner lot. There was evidence that this would be the minimum necessary variance given that a prior requested variance was mitigated with a redesign. Mr. Rodriguez stated that granting the variance would not adversely affect the adjacent properties.

Mr. Reddy agreed that this appeal showed significant mitigation from his original appeal heard by the Board in September 2019.

Mr. Miller said a variance of 24.29 feet is reasonable due to the extremely irregular lot and because taking the garage down would do substantial justice to the neighborhood.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

**5) 675 Park
Appeal 20-06**

Assistant Building Official Morad presented the item, explaining the owner of the property known as 675 Park requested the following variances to construct a single family home:

A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires a maximum roof height of the house for an R-2 zoning district of 30.00 feet for this property. The proposed roof height is 38.38 feet; therefore a variance of 8.38 feet is requested.

B. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires a maximum eave height for the building for an R-2 zoning district of 24.00 feet for this property. The proposed eave height is 32.56 feet; therefore a variance of 8.56 feet is requested.

C. Chapter 126, Article 4, Section 4.03(A) of the Zoning Ordinance requires that no accessory structures shall be erected in the required front open space. A retaining wall is proposed to be constructed in the required front open space; therefore a variance to permit the retaining wall is requested.

Assistant Building Official Morad noted the applicant proposes to excavate a portion of the front open space and install retaining walls. This property is zoned R2 – Single Family Residential.

Brian Neeper, architect, was present on behalf of the appeal.

In reply to Mr. Neeper's claim that without the requested variances a two-story home could not be built on the lot, Vice-Chairman Morganroth observed that a two-story home, very similar to the one being proposed, could be built on the lot and could satisfy zoning requirements as long as a walkout was not included.

Mr. Neeper conceded that to be the case.

In reply to Mr. Attia, Mr. Neeper said he had explored constructing the home without the walkout. Mr. Neeper continued that:

- His design aimed to create more of a social connection between the front yard and Park Street whereas other homes on the street tend to have retaining walls or trees on their Park Street side.
- The home will have the same massing and height whether or not it has a walkout, and would be a similar height to other homes on the street.

Mr. Miller said he saw that the walkout as an attempt to make an otherwise unusable space, given the grade of the slope present, usable for the future residents of the home.

Motion by Mr. Reddy

Seconded by Mr. Attia with regard to Appeal 20-06, A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires a maximum roof height of the house for an R-2 zoning district of 30.00 feet for this property. The proposed roof height is 38.38 feet; therefore a variance of 8.38 feet is requested. B. Chapter 126, Article 2,

Section 2.08 of the Zoning Ordinance requires a maximum eave height for the building for an R-2 zoning district of 24.00 feet for this property. The proposed eave height is 32.56 feet; therefore a variance of 8.56 feet is requested. C. Chapter 126, Article 4, Section 4.03(A) of the Zoning Ordinance requires that no accessory structures shall be erected in the required front open space. A retaining wall is proposed to be constructed in the required front open space; therefore a variance to permit the retaining wall is requested.

Mr. Reddy made a motion to deny Appeal 20-06 with all three requested variances because he asserted strict compliance would not unreasonably prevent the petitioner from using the property to either build a new home or renovate the current home on the lot and that the problems are self-created.

Mr. Miller said he could not support the motion because about 25 homes in the immediate neighborhood of 675 Park have retaining walls, and so building a new home there with a retaining wall would be reasonable. He added that the zoning ordinance generally assumes a flat lot, whereas the lot in question has a significant slope. Mr. Miller said the plans attempt to deal with that topography in a reasonable way, fits in with the neighborhood, and attempts to make usable backyard space.

Vice-Chairman Morganroth said he would support the motion because the plans would otherwise create a three-story home from the vantage point of the street and would exceed the height allowances for the home, both of which no other home on the street has done. Vice-Chairman Morganroth stated there was nothing unique about this lot versus the nearby ones that would necessitate those particular features of the plan.

Motion carried, 4-3.

VOICE VOTE

Yeas: Rodriguez, Reddy, Attia, Morganroth

Nays: Miller, Canvasser, Lilley

**6) 482 Park
Appeal 20-07**

Assistant Building Official Zielke presented the item, explaining the owner of the property known as 482 Park, requests the following variances 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 a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 11.90 feet. Therefore, a 2.10 foot variance is being requested on the North side.

B. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 11.90 feet. Therefore, a 2.10 foot variance is being requested on the South side.

Assistant Building Official Zielke noted the lot was granted a similar variance in 2015 to construct a new single family home with the same requests for the distance between structures for both adjacent lots. That home was never constructed. This property is zoned R2 – Single Family Residential.

Richard Kilgman, developer, was present on behalf of the appeal.

Motion by Mr. Canvasser

Seconded by Mr. Lilley with regard to Appeal 20-07, A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 11.90 feet. Therefore, a 2.10 foot variance is being requested on the North side. B. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 11.90 feet. Therefore, a 2.10 foot variance is being requested on the South side.

Mr. Canvasser moved to approve Appeal 20-07, both variances, and tied to the plans as submitted. He noted the need for the variances was the result of the unique circumstances of the property, was not self-created, and that the appellant attempted to mitigate the need for the variances. Mr. Canvasser stated that the variances would due substantial justice to the property owner and the neighborhood and that strict compliance would be unnecessarily burdensome.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

T#01-03-20

5. CORRESPONDENCE (included in agenda)

T# 01-04-20

6. GENERAL BUSINESS

Vice-Chairman Morganroth notified the Board that the City would be willing to pay for a Zoning Appeals training for any Board member who would like to attend. The training was scheduled for January 29, 2020 from 6 p.m. to 9 p.m.

T# 01-05-20

7. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

No members of the public wished to comment.

T# 01-06-20

8. ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 9:29 p.m.



Bruce R. Johnson, Building Official