

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, AUGUST 11, 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, August 11, 2020. Vice-Chairman Canvasser convened the meeting at 7:35 p.m.

2. ROLLCALL

Present: Chairman Charles Lillie; Board Members Jason Canvasser, Kevin Hart (was disconnected at 8:52 p.m.), Richard Lilley, John Miller, Erik Morganroth; Alternate Board Member Ron Reddy

Absent: Board Member Francis Rodriguez; Alternate Board Member Jerry Attia

Administration:

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

Chairman Lillie 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 Lillie took rollcall of the petitioners. All petitioners were present. Chairman Lillie explained the meeting was being held virtually due to the Covid-19 pandemic. He explained the procedures that would be followed for the virtual meeting.

T# 08-43-20

3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF JULY 14, 2020

Mr. Lilley noted that on the top of page five, Ms. Meads' name should be written as 'Glenda Meads' and not 'Glenda Means'.

Chairman Lillie opined that on page ten, sixth paragraph down, 'the petition' should be changed to 'the petitioner'. On page 11, second paragraph, first line he noted that 'he Commission' should be changed to 'the Commission'.

Motion by Mr. Lilley

Seconded by Mr. Canvasser to accept the Minutes of the BZA meeting of July 14, 2020 as amended.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 08-44-20

4. APPEALS

**1) 1535 Maryland
Appeal 20-35**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 1535 Maryland, was requesting the following variance to construct a detached garage:

A. Chapter 126, Article 4, Section 4.03(B) of the Zoning Ordinance requires that an accessory building shall not be permitted closer to a principal building on an adjoining lot than the sum of the minimum required side setbacks. The minimum total side yard setbacks are 14.0 feet or 25% of the lot width whichever is greater. The required total is 18.25 feet. The proposed total is 12.00 feet. Therefore, a variance of 6.25 feet is being requested.

Assistant Building Official Zielke noted the applicant was requesting a variance to construct a detached garage to replace the existing one. This property is zoned R2 – Single Family Residential.

Thomas Friesen, 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.

In reply to Mr. Morganroth, Building Official Johnson confirmed that the Friesens were approved for a demolition permit by the City. Building Official Johnson said it was only concurrent with the demolition that the Building Department noticed the issue between the proposed garage and the existing house to the south.

A member of the public, residing at 31360 Pierce, said he was in favor of the Board granting the variance request since the setback issue was not discovered until the demolition was completed.

Motion by Mr. Morganroth

Seconded by Mr. Canvasser with regard to Appeal 20-35, A. Chapter 126, Article 4, Section 4.03(B) of the Zoning Ordinance requires that an accessory building shall not be permitted closer to a principal building on an adjoining lot than the sum of the minimum required side setbacks. The minimum total side yard setbacks are 14.0 feet or 25% of the lot width whichever is greater. The required total is 18.25 feet. The proposed total is 12.00 feet. Therefore, a variance of 6.25 feet is being requested.

Mr. Morganroth moved to approve the variance and tied it to the plans as submitted. Had the demolition not occurred, Mr. Morganroth stated he would have found a request to expand the garage reasonable because the wall was an existing non-conformity. He noted that the proposed garage would not be expanding a non-conformity. Mr. Morganroth said that the right to full use of the property includes the right to have a garage. The issue was not self-created since the Friesens followed all proper City procedures for acquiring their permit and the setback issue was only noticed by the Building Department after the demolition. Mr. Morganroth also cited Mr. Friesen's statement that he would have just remodeled the garage had he known there was a setback issue.

Mr. Miller concurred with Mr. Morganroth's assessment. He added that the variance would do substantial justice to both the property owner and the owners of the adjacent properties.

Chairman Lillie said he would also support the motion. He said the circumstances were unique in that the utility easement takes up part of the rear yard and that the two adjoining properties were not the same width.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**2) 220 Northlawn
Appeal 20-36**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 220 Northlawn, was requesting the following variances to construct an addition to an existing nonconforming home:

A. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that the minimum rear yard setback to be 30.00 feet. The proposed is 16.19 feet. Therefore a variance of 13.81 feet is being requested.

B. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that the minimum combined front and rear setback is to be 55.00 feet. The proposed is 45.74 feet. Therefore a variance of 9.26 feet is being requested.

Assistant Building Official Zielke noted the applicant was requesting variances to construct an addition to the existing non-conforming home. This property is zoned R2 – Single Family Residential.

Thomas Farida, owner, reviewed his letter to the BZA describing why he was seeking these variances. The letter was included in the evening's agenda packet.

Mr. Morganroth noted that the two non-conforming walls of the home would not be altered proposed plans. He observed that the applicant would require permission to do any work on his home because of the two non-conforming walls, even when the non-conforming walls remain unchanged.

Mr. Farida confirmed that to be the case.

Motion by Mr. Miller

Seconded by Mr. Morganroth with regard to Appeal 20-36, A. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that the minimum rear yard setback to be 30.00 feet. The proposed is 16.19 feet. Therefore a variance of 13.81 feet is being requested, and B. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that the minimum combined front and rear setback is to be 55.00 feet. The proposed is 45.74 feet. Therefore a variance of 9.26 feet is being requested.

Mr. Miller moved to approve the appeal and tied it to the plans as submitted. He stated that the variances were only required because of the home's existing non-conformity, and that the non-conformity would not be increased by the granting of the variances. He said he found the request to be very reasonable, saying that the changes would be nearly impossible to notice from either the front or the rear of the home.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**3) 515 Westwood
Appeal 20-37**

Chairman Lillie asked the Board whether this appeal was sufficiently different from the appeal heard regarding this property in June 2020.

Motion by Mr. Canvasser

Seconded by Mr. Miller to proceed with the review of Appeal 20-37 during the present meeting.

Mr. Canvasser noted that the June 2020 appeal for this property had two requested variances. He noted that this appeal only had one requested variance. He said the deletion of one of the variance requests was sufficient enough to comprise a material difference between the June 2020 appeal and the current one.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 515 Westwood was requesting the following variance to construct an addition the existing nonconforming 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 for the zoning district in which such building is located. The required side yard setback is 22.56 feet. The proposed is 16.38 feet, therefore a variance is 6.18 feet.

Assistant Building Official Zielke noted the applicant was requesting a variance to construct an addition to the existing home. Variances were granted for additions in 2014 and 2005. The addition in 2005 was not constructed. The applicant was in front of the BZA in June 2020 and received a denial at that time. The proposed variance was revised. This property is zoned R1 – Single Family Residential.

Ron Stern, of Bob Stern Builders, spoke on behalf of property owners Michael and Heather Dresden. Mr. Stern reviewed his letter to the BZA describing why the owners were seeking this variance. The letter was included in the evening's agenda packet.

Zachary Dauch, neighbor at 533 Westwood, said he and his wife were in favor of the proposed changes to 515 Westwood. They said the changes were a natural fit to the neighborhood and would cause no difficulties to them as the neighbors.

Motion by Mr. Miller

Seconded by Mr. Lilley with regard to Appeal 20-37, 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 for the zoning district in which such building is located. The required side yard setback is 22.56 feet. The proposed is 16.38 feet, therefore a variance is 6.18 feet.

Mr. Miller moved to approve Appeal 20-37 and tied it to the plans as submitted. He said his concern when this property first came before the Board in June 2020 was that the proposed expansion would go into both the front and rear yards. He said he did not believe that proposal to be appropriate. Mr. Miller said that the present proposal, in contrast, would increase 515 Westwood's conformity with the majority of the rest of the neighborhood. He said granting the variance would do substantial justice not only to this lot but to the rest of the neighborhood.

Mr. Canvasser said he concurred with the motion. He added that the lot is somewhat irregular, which makes adherence to the ordinance even more difficult for the property owners.

Mr. Reddy said that the unique circumstances of the lot across the street from 515 Westwood show that the matter is not self-created. He agreed that the appeal should be granted.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 08-45-20

5. CORRESPONDENCE

Chairman Lillie stated that the Board received a letter dated August 5, 2020 from a Mr. Fisher residing on Hillside who said that neither he nor his neighbors were able to virtually raise their hands at the July 2020 BZA meeting.

Chairman Lillie said he was unsure why Mr. Fisher would not have been able to comment since other members of the public were able to comment during the same meeting. He also advised Mr. Fisher that the Board had been in receipt of his letter stating his objection to the proposed plans for 1165 Hillside.

Mr. Fisher stated that he and his neighbor both tried to access the July 2020 meeting via a number of different methods. He stated that he was in favor of the home being built and wanted improvement in the neighborhood. Mr. Fisher said he thought the variance for the front yard setback could have and should have been further mitigated so as not to disrupt the alignment of the fronts of the homes on the street.

Chairman Lillie said he thought the Board's discussion during the July 2020 meeting of the proposed variance for 1165 Hillside took Mr. Fisher's concerns into consideration. He explained that since the matter had been decided by the Board the only further recourse available to Mr. Fisher would be to take the matter to court, should he want to do that.

Mr. Fisher said he would not be interested in pursuing it in court, and said his main concern at this point was the fact that neither he nor his neighbor could comment on the appeal during the July 2020 meeting.

Chairman Lillie thanked Mr. Fisher for bringing it to the Board's attention, and said it is important to the Board to make sure that the technology they are using is functioning properly.

Mr. Morganroth said he wondered if all attendees understood there is a difference between physically raising one's hand and electronically raising one's hand through the Zoom platform.

Chairman Lillie said there could be a misunderstanding regarding the 'raise hand' function, but also noted that he gives instructions at the beginning of each meeting on how to electronically raise one's hand within Zoom.

T# 08-46-20

6. GENERAL BUSINESS

T# 08-47-20

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

T# 08-48-20

8. ADJOURNMENT

Motion by Mr. Lilley

Seconded by Mr. Morganroth to adjourn the August 11, 2020 BZA meeting at 8:55 p.m.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None



Bruce R. Johnson, Building Official