

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, MARCH 10, 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, March 10, 2020. Chairman Charles Lillie convened the meeting at 7:30 p.m.

2. ROLLCALL

Present: Chairman Charles Lillie; Board Members Jason Canvasser, Kevin Hart, John Miller, Erik Morganroth; Alternate Board Member Ron Reddy

Absent: Board Members Richard Lilley, Francis Rodriguez; Alternate Board Member Jerry Attia

Administration:

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

Chairman Lillie welcomed everyone and invited Vice-Chairman Morganroth to conduct the meeting for its duration.

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. Petitioners for Appeal 20-13, 1054 Saxon, were absent during roll call. To allow the petitioners time to arrive, Appeal 20-13 was rescheduled to the end of the present meeting. When the petitioners were not present by the end of the meeting, Appeal 20-13 was rescheduled again to the regular May 2020 BZA meeting. All other petitioners were present.

T# 03-13-20

3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF FEBRUARY 11, 2020

Mr. Canvasser said:

- The first line of the last paragraph on page four should have 'standard precedence in' removed.
- In the fourth line of the last paragraph on page four, 'of standard precedence' should be removed and 'the issue' should be changed to 'this issue'.
- In the last line of the last paragraph on page four, 'the zoning at this time' should be changed to 'the zoning ordinance'.
- On page seven, in the second paragraph, 'it is' should be added after 'that'.

Motion by Mr. Lillie

Seconded by Mr. Canvasser to accept the Minutes of the BZA meeting of February 11, 2020 as amended.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

T# 03-14-20

4. APPEALS

**1) 932 Chestnut
Appeal 20-11**

Assistant Building Official Morad presented the item, explaining that the owner of the property known as 932 Chestnut was requesting the following variance to construct a window well in the required front open space:

A. Chapter 126, Article 4, Section 4.30(C) 4 of the Zoning Ordinance prohibits window wells to be erected in the required front open space. A window well is proposed to be constructed in the required front open space; therefore a variance to permit the window well is requested.

Assistant Building Official Morad noted this appeal was before the board last month and was tabled until this month. The applicant has proposed a window well around an existing basement window on the front of the home. The existing home was constructed in 1976. This property is zoned R2 – Single Family Residential.

Mark Lusek of ZLM Services was present on behalf of the appeal. He said the applicant would be willing to make any aesthetic modifications the Board might request to move this appeal through. Mr. Lusek also apologized that ZLM began the work before receiving a permit, explaining that the ZLM staff member charged with researching and applying for work permits failed to realize a permit was needed.

In reply to Mr. Canvasser, Building Official Johnson said if the Board were to recommend simple changes to the appeal, they could be considered as part of this item instead of requiring the appellant to re-draw, re-file and re-present at a future date. He said that in this particular case staff could ensure that the work complies with whatever the Board ultimately approves. Building Official Johnson said the appellant would be required to submit plans after this meeting, and before beginning work, showing adherence to the updated requirements if the Board were to proceed with approving something different than the current plans.

Motion by Mr. Lillie

Seconded by Mr. Reddy with regard to Appeal 20-11, A. Chapter 126, Article 4, Section 4.30(C) 4 of the Zoning Ordinance prohibits window wells to be erected in the required front open space. A window well is proposed to be constructed in the required front open space; therefore a variance to permit the window well is requested.

Mr. Lillie moved to approve a window well subject to the following conditions: 1. That the window well extends no further than three feet, inside the well, from the house; 2. That it be covered with a grate; and, 3. That prior to continuing the work the appellant provide drawings meeting these specifications which are satisfactory to the Building Official.

Mr. Lillie explained the petitioner demonstrated a practical difficulty that would make it difficult to comply with the ordinance. He noted that granting the variance would do no injustice to the neighbors, and that the issue the petitioner is facing was not self-created.

Mr. Canvasser said he would support the motion. He said that while in general he prefers the Board not dictate design, if the Board had voted on the plans as submitted he would have voted against them. In that situation, the appellant would have had to return to the drawing board, re-file, and re-present their appeal only to likely end up with exactly the conclusion Mr. Lillie is recommending. As a result, Mr. Canvasser said it was both more fair to the petitioner and more expeditious to proceed with Mr. Lillie's recommendation in this case.

Mr. Miller said that this appeal has very unique conditions, and that this decision should not be construed to be a precedent for any future decisions.

Vice-Chairman Morganroth said he would also support the motion. He said the Board frowns on retroactively approving work, and that the standard for approval remains the same whether the work is pending or has been commenced. He said that due to

the grade falling towards the home, Mr. Lillie's recommended variance is one Vice-Chairman Morganroth would have approved prior to the work beginning, and that it will mitigate the unique issues this site faces.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

**2) 295 S. Cranbrook
Appeal 20-12**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 295 S. Cranbrook was requesting the following variance to construct a second floor addition to an existing non-conforming home:

A. Chapter 126, Article 4, Section 4.75(A)1 of the Zoning Ordinance requires that a private, attached, single-family residential garage must be setback a minimum of 5 feet from the portion of the front facade on the first floor of a principal residential building that is furthest setback from the front property line. The existing and proposed is 4.30 feet forward of the front facade. Therefore, a variance of 9.30 feet is being requested.

Assistant Building Official Zielke noted the applicant was requesting to maintain the existing garage that was constructed 1959. This property is zoned R1 – Single Family Residential.

Frank Mastroianni was present as the owner of 295 S. Cranbrook. He reviewed his letter to the Board describing the reasons for the requested variance.

The Board asked Assistant Building Official Zielke fact-finding questions, but there was no discussion by the Board or from the public regarding this appeal.

Motion by Mr. Miller

Seconded by Mr. Lillie with regard to Appeal 20-12, A. Chapter 126, Article 4, Section 4.75(A)1 of the Zoning Ordinance requires that a private, attached, single-family residential garage must be setback a minimum of 5 feet from the portion of the front facade on the first floor of a principal residential building that is furthest setback from the front property line. The existing and proposed is 4.30 feet forward of the front facade. Therefore, a variance of 9.30 feet is being requested.

Mr. Miller said he moved to approve because strict compliance with the ordinance would present a hardship. He also noted that the majority of the homes on the block of 295 S. Cranbrook have garages similarly positioned to the one this appeal proposes. Mr. Miller continued that approving this variance would do substantial justice to the neighboring properties and that the circumstances are not self-created because they

were built prior to the current ordinance requirements. For these reasons, Mr. Miller said the Board should grant the variance and tie it to the plans as submitted.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

**3) 1054 Saxon
Appeal 20-13**

Petitioners were absent during roll call. To allow the petitioners time to arrive, Appeal 20-13 was rescheduled to the end of the present meeting. When the petitioners were not present by the end of the meeting, Appeal 20-13 was tabled to the regular May 2020 BZA meeting.

Motion by Mr. Lillie

Seconded by Mr. Canvasser to table consideration of Appeal 20-13, 1054 Saxon, to the May 2020 BZA meeting.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

**4) 1063 W. Southlawn
Appeal 20-14**

Assistant Building Official Morad presented the item, explaining the owner of the property known as 1063 W. Southlawn was requesting the following variances to construct a two-story rear addition along with renovations to an existing non-conforming home:

A. Chapter 126, Article 2, Section 2.08 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 32.51 feet. The existing and proposed is 29.77 feet. Therefore a 2.74 foot variance is being requested.

B. Chapter 126, Article 4, Section 4.75(A)(1) of the Zoning Ordinance requires attached garages that face the street must be setback a minimum of 5.00 feet from the portion of the front facade on the first floor of the principal building that is furthest setback from the front property line. The existing and proposed garage is 15.25 feet in front of the furthest front facade. Therefore a variance of 20.25 feet is being requested.

C. Chapter 126, Article 4, Section 4.75(A)(2) of the Zoning Ordinance requires attached garages that face the street may not have garage doors exceed 9.00 feet in

width. The existing and proposed is 16.00 foot. Therefore a variance to maintain the existing garage is being requested.

Assistant Building Official Morad noted the applicant was seeking variances to construct a two story rear addition to the existing home that was constructed in 1948. This property is zoned R2 – Single Family Residential.

Assistant Building Official Morad confirmed for Vice-Chairman Morganroth that this project only requires variances due to the three existing non-conformities. Assistant Building Official Morad also confirmed that none of the existing non-conformities would be expanded by these variances.

Zach Ostroff, designer, was present on behalf of the appeal. He reviewed owner Charles Atkins' letter detailing the reasons for the requested variances. Mr. Ostroff explained the garage could not be made into two nine foot doors because doing so would require eighteen inches between the doors and would thus leave only two to three inches clearance between the doors of the vehicles and the outer sides of the garage. Mr. Ostroff said expanding the garage was considered, but that since it would require additional variances and due to budgetary constraints the owner decided to pursue leaving the garage as is.

Motion by Mr. Canvasser

Seconded by Mr. Hart with regard to Appeal 20-14, A. Chapter 126, Article 2, Section 2.08 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 32.51 feet. The existing and proposed is 29.77 feet. Therefore a 2.74 foot variance is being requested. B. Chapter 126, Article 4, Section 4.75(A)(1) of the Zoning Ordinance requires attached garages that face the street must be setback a minimum of 5.00 feet from the portion of the front facade on the first floor of the principal building that is furthest setback from the front property line. The existing and proposed garage is 15.25 feet in front of the furthest front facade. Therefore a variance of 20.25 feet is being requested. C. Chapter 126, Article 4, Section 4.75(A)(2) of the Zoning Ordinance requires attached garages that face the street may not have garage doors exceed 9.00 feet in width. The existing and proposed is 16.00 foot. Therefore a variance to maintain the existing is being requested.

Mr. Canvasser moved to approve all three variances as advertised and to tie them to the plans as submitted. He said that strict compliance with the ordinance would unreasonably restrict the property owner from using the property for a permitted purpose, the variance would do substantial justice to the neighbors, the unique circumstances here include a pre-existing non-conforming use which would not be enlarged by the variance, and the problem was not self-created.

Vice-Chairman Morganroth said he would move to support the motion. He noted that the Board discussed with the appellant if there were any ways to further mitigate the non-conformities with the garage but that it was determined there were not any feasible alternatives.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

**5) 725 Tottenham
Appeal 20-15**

Mr. Hart notified the Board that he has had professional involvement with this appeal and that he would be recusing himself from the appeal's discussion as a result.

Mr. Hart left the room at 8:26 p.m.

Vice-Chairman Morganroth noted for the record that the appellant was offered the opportunity to move the hearing of Appeal 20-15 to the next available BZA meeting since four affirmative votes would be required to approve these variances and with Mr. Hart's recusal there were only five Board members present. The applicant told the Board they were comfortable proceeding with this evening's scheduled hearing of the appeal.

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 725 Tottenham was requesting the following variances to construct a second floor addition to an existing non-conforming home:

A. Chapter 126, Article 2, Section 2.06.2 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 36.80 feet. The existing and proposed is 31.60 feet. Therefore a 5.20 foot variance is being requested.

B. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum total side yard setbacks are 14.0 feet or 25% of the lot width whichever is greater. The required total is 16.25 feet. The existing and proposed total is 14.25 feet. Therefore, a variance of 2.00 feet is being requested.

C. Chapter 126, Article 4, Section 4.75(A)(1) of the Zoning Ordinance requires attached garages that face the street must be setback a minimum of 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The existing and proposed garage is 8.40 feet in front of the furthest front facade. Therefore a variance of 13.40 feet is being requested.

D. Chapter 126, Article 4, Section 4.75(A)(2) of the Zoning Ordinance requires attached garages that face the street may not have garage doors exceed 9.00 feet in width. The existing and proposed is 16.00 foot. Therefore a variance to maintain the existing is being requested.

Assistant Building Official Zielke noted the applicant was requesting variances to maintain the existing non conformities of the home that was constructed in 1954. This property is zoned R1 – Single Family Residential.

Mr. Canvasser observed that Variance D for this appeal was the same as Variance C in Appeal 20-14, and said the same question applied as to whether the installation of two nine foot garage doors had been considered.

Assistant Building Official Zielke said that the garage in the current appeal was even smaller than the garage in Appeal 20-14, meaning that the installation of two nine foot garage doors would be even more infeasible.

John VanBrouck, architect, was present on behalf of the appeal. Mr. VanBrouck reviewed his letter to the Board describing the reasons for the requested variance.

Motion by Mr. Reddy

Seconded by Mr. Canvasser with regard to Appeal 20-15, A. Chapter 126, Article 2, Section 2.06.2 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 36.80 feet. The existing and proposed is 31.60 feet. Therefore a 5.20 foot variance is being requested. B. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum total side yard setbacks are 14.0 feet or 25% of the lot width whichever is greater. The required total is 16.25 feet. The existing and proposed total is 14.25 feet. Therefore, a variance of 2.00 feet is being requested. C. Chapter 126, Article 4, Section 4.75(A)(1) of the Zoning Ordinance requires attached garages that face the street must be setback a minimum of 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The existing and proposed garage is 8.40 feet in front of the furthest front facade. Therefore a variance of 13.40 feet is being requested. D. Chapter 126, Article 4, Section 4.75(A)(2) of the Zoning Ordinance requires attached garages that face the street may not have garage doors exceed 9.00 feet in width. The existing and proposed is 16.00 foot. Therefore a variance to maintain the existing is being requested.

Mr. Reddy moved to approve all four of the variances requested, and to tie their approval to the plans as submitted. He said this is an example of an owner trying to improve a home while navigating existing non-conformities. Mr. Reddy stated that strict adherence to the ordinance would preclude the owner from using the house in the way he desires and would present an undue hardship.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Reddy, Canvasser, Lillie, Miller, Morganroth

Nays: None

Mr. Hart returned to the meeting at 8:34 p.m.

**6) 487 Willits
Appeal 20-03**

Assistant Building Official Morad presented the item, explaining that the owner of the property known as 487 Willits was requesting the following variance to reconstruct an existing non-conforming accessory structure:

A. Chapter 126, Article 4, Section 4.03(D) of the Zoning Ordinance requires accessory structures shall not be closer than 10.00 feet to the principal building located on the same lot. The existing and proposed is 4.40 feet. Therefore a variance of 5.60 feet is being requested.

Assistant Building Official Morad noted the applicant was requesting this variance to reconstruct an existing accessory structure from 1910. The placement of it in relation to the existing home does not meet the current zoning ordinance. This location is historic and the reconstruction was approved by the HDC on November 6, 2019. This property is zoned R3 – Single Family Residential.

Thomas Holleman, designer, was present on behalf of the appeal. He reviewed owner Susan Martin's letter detailing the reasons for the requested variance.

Motion by Mr. Miller

Seconded by Mr. Canvasser with regard to Appeal 20-03, A. Chapter 126, Article 4, Section 4.03(D) of the Zoning Ordinance requires accessory structures shall not be closer than 10.00 feet to the principal building located on the same lot. The existing and proposed is 4.40 feet. Therefore a variance of 5.60 feet is being requested.

Mr. Miller said strict compliance with the ordinance would be unnecessarily burdensome in this case due to the historic nature of the accessory structure and the unusual conditions of the property. Mr. Miller observed that the pre-existing non-conformities mean the need for a variance is not self-created. For those reasons, Mr. Miller moved to approve the variance request and to tie it to the plans as submitted.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

**7) 1062 Cole
Appeal 20-16**

Assistant Building Official Zielke presented the item, explaining the owner of the property known as 1602 Cole was requesting the following variances to construct a detached garage:

A. Chapter 126, Article 4, Section 4.03(B) of the Zoning Ordinance requires accessory buildings may occupy a portion of the rear open space. They shall be at least 3 feet from any lot line. The proposed is 1.10 feet. Therefore a variance of 2.90 feet is being requested.

B. Chapter 126, Article 4, Section 4.03(G) of the Zoning Ordinance requires that the maximum building height for accessory structures in R3 District is 14.50 feet to the mid-point. The proposed mid-point is 16.38 feet. Therefore a variance of 1.88 feet is being requested.

C. Chapter 126, Article 4, Section 4.03(H) of the Zoning Ordinance requires The maximum area of the first floor of any accessory structure or accessory structures in combination shall not exceed 10% of the lot area or 500 square feet in R3, whichever is less. Chapter 126, Article 4, Section 4.30(C)6 of the zoning ordinance allows a bonus of an additional 75 square feet of area for the use of an interior fixed and stationary staircase. This will allow a maximum area of 575 square feet for the accessory structure. The proposed is 604.80 square feet. Therefore a variance of 29.80 square feet is being requested.

D. Chapter 126, Article 4, Section 4.30(C)2 of the Zoning Ordinance requires Roof overhangs, cornices, eaves, gutters, lintels, planter boxes, chimneys, bay windows and similar projections may extend or project into a required open space not more than 2 inches for each 1 foot of width of such required open space. The open space of 1.10 feet as per variance request A, allows an allowable projection of 2.20 inches. The proposed projection is 12.00 inches. Therefore a variance of 9.80 inches is being requested.

Assistant Building Official Zielke noted this property is zoned R3 – Single Family Residential.

Craig Ludwig, owner, was present on behalf of the appeal. MSG Ludwig reviewed his letter detailing the reasons for the requested variances. MSG Ludwig apologized for not seeking a work permit before beginning the work, explaining he was unaware that one was required. He said that if his property had a driveway off Cole he would likely be able to mitigate some of the requested variances, but his property's driveway is off Tory, necessitating some of the variance requests.

Mr. Lillie asked MSG Ludwig if he had considered reorienting his garage so it faces either north or south, with the garage a bit closer to the street, which would eliminate the setback issue. MSG Ludwig could then come in off of Tory and turn in his driveway to pull into his garage.

MSG Ludwig said there was a well head to the south that would prevent Mr. Lillie's suggestion from working, and that he hoped to add an attached garage to his home in the future which would prevent the current garage from being oriented towards the north.

Motion by Mr. Lillie

Seconded by Mr. Miller with regard to Appeal 20-16, A. Chapter 126, Article 4, Section 4.03(B) of the Zoning Ordinance requires accessory buildings may occupy a portion

of the rear open space. They shall be at least 3 feet from any lot line. The proposed is 1.10 feet. Therefore a variance of 2.90 feet is being requested.

Referring to variance request A only for Appeal 20-16, Mr. Lillie moved to deny the request. Mr. Lillie acknowledged the unusual shape of the lot, but said it would not be unduly burdensome for the appellant to comply with the ordinance for the sideyard setback.

Mr. Reddy said that in light of the fact that MSG Ludwig already poured a substantial amount of concrete, not granting Variance A could impose a high enough cost on MSG Ludwig that he may not be able to move forward with his project. For that reason Mr. Reddy said he would not support the motion.

Mr. Lillie stated that cost is not a determining factor as to whether there is a practical difficulty. He added that if the work had received a building permit before it was begun then the appellant would not be facing this problem.

Vice-Chairman Morganroth cautioned that if money already spent on a non-permitted project were a factor in the Board's decisions, then in the future that might encourage people to perform the work first and ask for City allowances after.

Mr. Miller observed that if the garage were redesigned to be in the zoning envelope major portions of the already poured foundation could still be saved.

Mr. Canvasser said he would support the motion as well, agreeing that money already spent on a non-permitted project cannot be a determining factor in the Board's decisions. He stated that the Board has to make its decisions as if the work had not already been performed. Mr. Canvasser said the need for Variance A is a self-created issue.

Vice-Chairman Morganroth said he would support the motion, explaining that he was unpersuaded that the garage could not be built within the zoning envelope. He stated that if an ordinance can be adhered to, and the lot allows for it, that adherence to the ordinance is required.

Motion carried, 5-1.

ROLL CALL VOTE

Yeas: Lillie, Miller, Morganroth, Canvasser, Hart

Nays: Reddy

Motion by Mr. Lillie

Seconded by Mr. Miller with regard to Appeal 20-16, C. Chapter 126, Article 4, Section 4.03(H) of the Zoning Ordinance requires The maximum area of the first floor of any accessory structure or accessory structures in combination shall not exceed 10% of the lot area or 500 square feet in R3, whichever is less. Chapter 126, Article 4, Section

4.30(C)6 of the zoning ordinance allows a bonus of an additional 75 square feet of area for the use of an interior fixed and stationary staircase. This will allow a maximum area of 575 square feet for the accessory structure. The proposed is 604.80 square feet. Therefore a variance of 29.80 square feet is being requested.

Referring to variance request C only for Appeal 20-16, Mr. Lillie moved to deny the request. Mr. Lillie said that in this case as well it would not be unduly burdensome for the petitioner to comply with the ordinance.

Mr. Miller said he was unable to find evidence that the need for Variance C was not self-created. He said he looked for unusual circumstances that would require the need for Variance C but that ultimately it came down to owner preference, which is not a factor in BZA decisions.

Motion carried, 5-1.

ROLL CALL VOTE

Yeas: Lillie, Miller, Morganroth, Canvasser, Hart

Nays: Reddy

Conversation between the Board and MSG Ludwig ensued regarding whether he would prefer the Board vote on variance requests B and D, or table them to a future meeting.

MSG Ludwig stated the most important aspect for him would be the granting of Variance B, so he could increase the height of the garage.

Vice-Chairman Morganroth explained to MSG Ludwig that it would behoove him to return with drawings that show a proposal for variance request B that also conforms to the denials of variance requests A and C. He explained that if the Board were to vote on variance requests B and D and they were denied, then MSG Ludwig could not return to the Board without substantial changes to the proposed work.

Mr. Canvasser, Mr. Lillie, and Vice-Chairman Morganroth also emphasized for MSG Ludwig that without revised drawings for variance requests B and D that taking the denial of variances A and C into account, the Board would not be able to make an informed decision.

MSG Ludwig told the Board that he would like to table consideration of variances B and D until the May 2020 BZA meeting.

Motion by Mr. Lillie

Seconded by Mr. Canvasser with regard to Appeal 20-16, B. Chapter 126, Article 4, Section 4.03(G) of the Zoning Ordinance requires that the maximum building height for accessory structures in R3 District is 14.50 feet to the mid-point. The proposed mid-point is 16.38 feet. Therefore a variance of 1.88 feet is being requested; and, D. Chapter 126, Article 4, Section 4.30(C)2 of the Zoning Ordinance requires Roof overhangs, cornices, eaves, gutters, lintels, planter boxes, chimneys, bay windows

and similar projections may extend or project into a required open space not more than 2 inches for each 1 foot of width of such required open space. The open space of 1.10 feet as per variance request A, allows an allowable projection of 2.20 inches. The proposed projection is 12.00 inches. Therefore a variance of 9.80 inches is being requested.

Mr. Lillie moved that consideration of variances B and D be tabled until the May 2020 BZA meeting subject to presentation of new drawings.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

T#03-15-20

5. CORRESPONDENCE (included in agenda)

T# 03-16-20

6. GENERAL BUSINESS

The BZA reviewed the first draft of the Birmingham Plan.

Mr. Canvasser noted the draft discusses a number of items that could increase variance requests, including incentives to encourage addition to existing homes rather than new builds, increased setbacks and other requirements, ensuring new construction better matches existing homes, and new requirements regarding accessory dwelling units (ADUs), multi-family units and cottage courts. He asked how other Board members viewed the potential increase in variance requests.

Mr. Morganroth said the proposed changes Mr. Canvasser referenced would incentivize the maintenance of non-conforming homes instead of allowing for new, conforming homes to be built.

Mr. Canvasser agreed, and said a master plan that encourages adding-on to non-conforming homes and a BZA that seeks to mitigate the need for variances could increase the contradictions in City policy.

Mr. Hart said that if the Building Department had some limited flexibility in applying ordinances to homes with historical value, those specific cases may not need to be heard by the BZA. He suggested some criteria could be formed in order to know when that would be appropriate.

Building Official Johnson said the master planning team may not have considered the issue of non-conformities in proposing some of the items Mr. Canvasser originally listed. He said that the BZA could recommend the master planning team consider the issue when considering incentives.

Mr. Morganroth asked if the master planning team should be made aware of issues that frequently arise as variance requests with an eye towards suggesting potential ordinance improvements.

Building Official Johnson said the master planning team was unlikely to get into that level of detail, but that it might be beneficial if the BZA periodically reviewed ordinances that commonly yield variance requests to see if the ordinances could be modified or improved.

In reply to Mr. Canvasser, Building Official Johnson confirmed that one of the aims of the master planning process is to minimize or eliminate conflicts between various overlay districts.

Mr. Miller commented that the City's previous master plan did well to advance the City's goals, and that the current master planning process seems to be headed in a similarly positive direction. In reply to Mr. Canvasser's initial query, Mr. Miller said a potential change in the number of variance requests would not be of concern to him as he sees making those decisions to be the Board's charge. He said he did agree with some of Mr. Canvasser's concerns, but that generally he was optimistic about the master planning process so far.

Mr. Reddy said he would like to see what zoning best practices the master planning team would recommend for incorporation into the master plan.

Building Official Johnson suggested Mr. Reddy raise that request at one of the ongoing master planning conversations the Planning Board is hosting since the consultants working on the master plan will be present at those meetings and would be able to address the question of best practices.

T# 03-17-20

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

Margaret Peterson said she had concerns about what she described as the large, aesthetically uniform homes she sees going up around Birmingham.

Mr. Lillie explained to Ms. Peterson that the BZA does not deal with the ascetics of building houses and most of them do not require variances. He said Ms. Peterson would be better advised to direct her concerns to the City's Planning Board as part of the master plan discussion process as the Planning Board is specifically looking to hear that kind of feedback.

Building Official Johnson told Ms. Peterson that the following evening, March 11, 2020 at 7:30 p.m., the Planning Board would be having a master plan discussion in the City Commission room and he encouraged her to attend and share her views.

Ms. Peterson said she also appreciated how carefully and sensitively the Board members communicated with the appellants, and thanked them for that.

T# 03-18-20

8. ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 10:03 p.m.



Bruce R. Johnson, Building Official