

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, APRIL 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, April 14, 2020. Chairman Charles Lillie convened the meeting at 7:30 p.m.

2. ROLLCALL

Present: Chairman Charles Lillie; Board Members Jason Canvasser, Kevin Hart (left at 9:11 p.m.), Richard Lilley, Erik Morganroth, Francis Rodriguez; Alternate Board Member Ron Reddy

Absent: Board Member John Miller; Alternate Board Member Jerry Attia

Administration:

Bruce Johnson, Building Official
Eric Brunk, I.T. Manager
Mike Morad, Asst. Building Official
Jeff Zielke, Asst. Building Official
Laura Eichenhorn, Transcriptionist

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. The petitioners for Appeal 20-20, 311 Frank, were absent. All other 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# 04-19-20

3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF MARCH 10, 2020

Chairman Lillie recommended the following amendments to the minutes:

- In the third full paragraph on page seven it should read that four affirmative votes, not five, would have been required.
- On page 12, in the second full paragraph up from the bottom, the word "current" should be changed to "revised".
- On page 14, in the third full paragraph up from the bottom, "cannot impact the building of those houses since most of them do not need variances" should be changed to "does not deal with the aesthetics of building houses". After that sentence an additional sentence should be added that reads, "In addition, most of them do not need variances."

Motion by Mr. Morganroth

Seconded by Mr. Canvasser to accept the Minutes of the BZA meeting of March 10, 2020 as amended.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Morganroth, Canvasser, Lillie, Hart, Reddy

Nays: None

Abstain: Lilley, Rodriguez

T# 04-20-20

4. APPEALS

1) 1974 Hazel Appeal 20-17

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 1974 Hazel, requests the following variances of the distance between structures to construct a new single family home:

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 13.80 feet. Therefore, a variance of 0.20 feet is being requested on the West 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 10.70 feet. Therefore, a variance of 3.30 feet is being requested on the East side.

Assistant Building Official Zielke noted the appellant was requesting to construct a new home on this property where the adjacent homes are existing non-conforming. This property is zoned R2 – Single Family Residential.

In reply to Chairman Lillie, Assistant Building Official Zielke stated that no variances would be required for the proposed work on 1974 Hazel if the homes to the east and west were not existing present.

Robert Bloomingdale, developer, was present on behalf of the appeal. The Board members had no questions for Mr. Bloomingdale.

Chairman Lillie invited comment from the public.

Alexis Pollock, neighbor to the west of 1974 Hazel, stated that she is in the process of remodeling her home and was adamant about not seeking variances during that process. She noted that Mr. Bloomingdale inevitably knew the dimensions of the home before purchase, and asked why he chose to purchase a home that would require a variance. She asked Mr. Bloomingdale to clarify how narrow the home would be if he did not receive the variance he was requesting.

Mr. Bloomingdale told Ms. Pollock that the home would be 23 feet wide without the variance, and 26 feet wide with the variance.

Ms. Pollock expressed the hope to Mr. Bloomingdale that he would design and build a home that is keeping in the character of the block. She expressed concern, which she said was both her neighbors' and her own, that the proposed house will be disproportionately large for the size of the lot. She said that other new homes in the neighborhood have been more imposing than the older homes still present, to the consternation of the neighbors. She said she and her neighbors are concerned that property values could decline as a result of overly large homes being built on smaller lots.

Chairman Lillie told Ms. Pollock that her concern was noted and invited other comment from the public.

A man speaking under Kathleen Riley's Zoom username stated that Mr. Bloom was unable to talk to the Board because for security reasons he was unable to use Zoom on his computer.

Kathleen Riley reported that David Bloom was attempting to comment on the issue, but that since he was dialing into the meeting by phone he was unsure of how to comment. She asked if the Board could allow Mr. Bloom to comment on the issue.

Chairman Lillie told Ms. Riley that "they just said for security reasons we cannot".

Constance Romanelli, neighbor to the east side of 1974 Hazel, said she was concerned about the three foot variance request on the east side. She said that could put 1974 Hazel within two to three feet of her garage, which is closer to the lot line than the rest of her house.

Chairman Lillie told Ms. Romanelli that according to the drawings submitted to the City her garage would be eight feet away from 1974 Hazel.

Ms. Romanelli said she had no concern about eight feet, and further said she hoped the variance would be granted to allow a good house to be built at 1974 Hazel.

Mr. Bloom was able to join the meeting to give comment. He thanked the Board for the opportunity to comment. He noted that this appeal was submitted by a builder, who is neither a resident of Birmingham or the primary resident of 1974 Hazel. Mr. Bloom noted that there were similar applications on the evening's agenda, where the appellants were not residents of the properties. Mr. Bloom continued:

- These builders purchased properties which they are now saying are unusable without variances.
- If the properties are unsuitable for for the builders' purposes, they should not have purchased the properties.
- The quality of homes in Birmingham is declining because of builders who purchase properties and then pursue variances. This practice should not be permitted.
- Builders should have to reimburse the legal fees of neighbors to such properties who have had to hire attorneys to protect their interests.

Mr. Bloomingdale replied to Ms. Pollock's earlier comments and assured the neighbors that his company is very sensitive to the streetscapes of a tight-knit neighborhood such as the Birmingham rail district. He said his company takes that into account when designing their homes.

Seeing no further comment from the public, Chairman Lillie returned discussion to the Board.

Motion by Mr. Morganroth

Seconded by Mr. Lilley with regard to Appeal 20-17, 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 13.80 feet. Therefore, a variance of 0.20 feet is being requested on the West 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 10.70 feet. Therefore, a variance of 3.30 feet is being requested on the East side.

Mr. Morganroth moved to approve the requested variances since the appellant was seeking to abide by the requirements of nine feet on one side of the home and five feet on the other side. He noted that if the homes on either side were not present then 1974 Hazel would not require a variance. He said that strict compliance would unreasonably prevent the petitioner from using the property for its purpose and that the need for the variances was not self-created because he would be building within the ordinance. He tied his approval to the plans as presented.

Mr. Lilley said he concurred with Mr. Morganroth because the proposed home would be built within the zoning requirements and that it was the homes on either side of 1974 Hazel that were not in compliance.

Chairman Lillie agreed with Mr. Morganroth's and Mr. Lilley's comments and said he would be supporting the motion.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**2) 1291 Taunton
Appeal 20-18**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 1291 Taunton requested 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 no side yard setback shall be less than 5.00 feet. The existing and proposed is 4.86 feet. Therefore, a variance of 0.14 feet is being requested.

Assistant Building Official Zielke noted the applicant was requesting to construct an addition to the existing 1948 non-conforming home. This property is zoned R2 – Single Family Residential.

Robin Ballew, architect, was present on behalf of the petition.

In reply to Mr. Morganroth, Mr. Ballew stated that while the appellant considered stepping the addition back so as not to require the variance, it was determined that it would be structurally more sound to keep the addition in-line with the current parameters. Mr. Ballew also said that the result would be more aesthetically pleasing, and thus more beneficial for the project and the community as a whole.

Motion by Mr. Rodriguez

Seconded by Mr. Reddy with regard to Appeal 20-18, A. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that no side yard setback shall be less than 5.00 feet. The existing and proposed is 4.86 feet. Therefore, a variance of 0.14 feet is being requested.

Mr. Rodriguez moved to approve the variance and tied it to the plans as submitted since a practical difficulty had been established due to the existing non-conformity and the irregular shaped lot. He said the variance appeared to be the minimum necessary since the non-conformity would not be increased. He continued that the

need for the variance was not self-created, and would not adversely affect the adjacent properties.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**3) 995 Gordon
Appeal 20-19**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 995 Gordon was requesting the following variances for the height to construct a new single family home:

A. Chapter 126, Article 2, Section 2.06.4 of the Zoning Ordinance requires that the maximum building height for the R1 zoning district is 30.00 feet to the midpoint. The proposed height is 31.81 feet. Therefore a 1.81 foot variance is being requested.

B. Chapter 126, Article 2, Section 2.06.4 of the Zoning Ordinance requires that the maximum eave height for the R1 zoning district is 24.00 feet. The proposed height is 31.81 feet. Therefore a 7.81 foot variance is being requested.

Assistant Building Official Zielke noted the applicant was requesting to construct a new home on this sloping lot. This property is zoned R2 – Single Family Residential.

Assistant Building Official Zielke confirmed that the variances would not be required if the appellant were not seeking to create a walkout in the rear of the home.

Todd Bergsman, designer, was present on behalf of the petition.

In reply to Mr. Canvasser, Mr. Bergsman said the house, excluding the walkout, could be built without the two variances. Mr. Bergsman explained that, in his experience, Birmingham ordinance was not written to accommodate sloped lots so designing and building on sloped lots has always required variances. With the home being moved further back on the lot than otherwise required in order to alleviate some of the potential parking and traffic issues on Gordon stemming from tightly-packed homes, the appellant would stand to lose some of the square footage of the rear yard. The appellant is seeking these variances in order to mitigate that loss of square footage in the rear yard.

In reply to Mr. Morganroth, Mr. Bergsman said the plans for the home were trying to accommodate traffic congestion issues on Gordon by providing more parking for the homeowner and creating a home more in the spirit of what the zoning ordinances require for the front yard setback. He said the ordinance would currently allow the home to be about ten feet closer to Gordon than the neighbors' homes, and that the appellant is trying to better align their home

with the neighbors which is what creates the variance need. Mr. Bergsman said the need is not self-created for that reason.

Mr. Morganroth said that he understood why the appellant wanted the walkout, and conceded that if it were his home he would want it as well. That said, Mr. Morganroth said that the Board makes its decisions based on set definitions of practical difficulty, and preference is not one of the criteria. He stated that having to install a retaining wall in the rear of the home to create the walkout indicates self-creation of the need for the variance.

Mr. Bergsman said that homes can always be designed to adhere exactly to the ordinance, but that he believes the homeowner was bringing a reasonable request to the BZA. He said that the ordinances cannot always take into account all circumstances, and that sometimes strict compliance with the ordinance is unfair to the homeowner, which Mr. Bergsman said he believed was the case here.

Motion by Mr. Morganroth

Seconded by Mr. Canvasser with regard to Appeal 20-19, A. Chapter 126, Article 2, Section 2.06.4 of the Zoning Ordinance requires that the maximum building height for the R1 zoning district is 30.00 feet to the midpoint. The proposed height is 31.81 feet. Therefore a 1.81 foot variance is being requested. B. Chapter 126, Article 2, Section 2.06.4 of the Zoning Ordinance requires that the maximum eave height for the R1 zoning district is 24.00 feet. The proposed height is 31.81 feet. Therefore a 7.81 foot variance is being requested.

Mr. Morganroth moved to deny the variances. He said that the need for the variances was self-created, even though there were some unique circumstances of the lot and sloping in the rear of the home. He expressed appreciation that the appellants were planning to push the home further back from the street in order to accommodate the neighbors and were planning to build a smaller home than the lot could accommodate. Mr. Morganroth continued that in spite of those goodwill gestures on the part of the appellant, self-creation is one of the most significant criteria the Board must consider in these appeals, and the need for the retaining walls and the additional height in the eave are self-created.

Mr. Canvasser echoed Mr. Morganroth's comments, saying that while he greatly respected the well-done and reasonable plans submitted to the Board, the Board had to determine whether the need for the requested variances was self-created. He said the need for the variances was self-created since Mr. Bergsman acknowledged that the same home could be built without a walkout. Mr. Canvasser stated that the BZA is not a body of lawmakers, and that if the ordinance does not appropriately deal with lots with this type of slope there are other options available to the appellant to address that issue. He explained that the BZA is tasked with enforcing the ordinance as written, and with applying tests to see whether or not a request complies.

Mr. Rodriguez said he would support the motion as well. He said that even while the plans were well-designed, the presentation was well done, and there was evidence

of attempted mitigation, he still found that the need for the variances was self-created.

Mr. Hart said he would not be supporting the motion. He said the substantial drop in the topography in the rear of the home created a sufficiently unique circumstance to find that the need for the variances was not self-created. He noted that Assistant Building Official Zielke said during his presentation that a variance would still be needed in the rear yard area even without a walkout. He said there would be no adverse affect on neighboring properties if the variance were granted, and that granting the variances would result in substantial justice for all parties concerned. Mr. Hart specifically commended Mr. Bergsman on his work to make the home appropriate within the context of the neighborhood.

Motion carried, 5-2.

ROLL CALL VOTE

Yeas: Morganroth, Canvasser, Lillie, Rodriguez, Reddy

Nays: Hart, Lilley

**4) 311 Frank
Appeal 20-20**

The appellant had joined the proceedings during the course of the meeting.

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 311 Frank requested the following variance to construct a new single family home with a detached garage:

A. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that the minimum combined front and rear setback is 55.00 feet. The proposed is 49.50 feet. Therefore a 5.50 foot variance is being requested.

Assistant Building Official Zielke noted the applicant was requesting to construct a new home on this corner lot. This property is zoned R3 – Single Family Residential.

Brian Neeper, architect, was present on behalf of the petition. He reviewed the reasons for the variance request as detailed in his letter dated March 10, 2020 and included in the evening's agenda packet.

John Staran, attorney, was present representing Kathleen and Chris McCarthy, the owners of 335 E. Frank, the historic home next door to 311 Frank. Mr. Staran stated he was speaking in opposition to the variance request because no practical difficulty has been demonstrated. Mr. Staran noted that an ordinance-conforming home is currently located on the lot.

Mr. Bloom stated that the McCarthys have been longtime Birmingham residents, and their preferences should be prioritized over a builder's. He also noted that Mr. Neeper has built a

number of quality homes in Birmingham, which means that Mr. Neeper is familiar with Birmingham ordinance requirements. Mr. Bloom asserted that if Mr. Neeper is not able to build on the lot the kind of home he would like to build he should not have purchased the lot in the first place.

Motion by Mr. Canvasser

Seconded by Mr. Reddy with regard to Appeal 20-20, A. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that the minimum combined front and rear setback is 55.00 feet. The proposed is 49.50 feet. Therefore a 5.50 foot variance is being requested.

Mr. Canvasser moved to deny the variance request because he found the need for the variance to be self-created. He noted that the lot has no unique factors and that the lot could accommodate a 2700 square foot home that would conform to ordinance. While Mr. Canvasser acknowledged that a smaller-than-requested home may not be the appellant's preference, Mr. Canvasser said that did not rise to the level of creating a practical difficulty.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T#04-21-20

5. CORRESPONDENCE (included in agenda)

T# 04-22-20

6. GENERAL BUSINESS

T# 04-23-20

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

T# 04-24-20

8. ADJOURNMENT

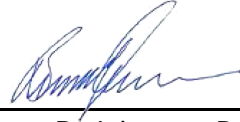
Motion by Mr. Morganroth

Seconded by Mr. Rodriguez to adjourn the April 14, 2020 BZA meeting at 9:12 p.m.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Morganroth, Rodriguez, Canvasser, Reddy, Lilley, Lillie
Nays: None



Bruce R. Johnson, Building Official