

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, MAY 12, 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, May 12, 2020. Chairman Charles Lillie convened the meeting at 7:30 p.m.

2. ROLLCALL

Present: Chairman Charles Lillie; Board Members Jason Canvasser, Richard Lilley, Erik Morganroth, Francis Rodriguez; Alternate Board Member Ron Reddy

Absent: Board Members Kevin Hart, John Miller; Alternate Board Member Jerry Attia

Administration:

Bruce Johnson, Building Official
Eric Brunk, I.T. Manager
Brooks Cowan, City Planner
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# 05-25-20

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

Chairman Lillie asked that the spelling of his last name be corrected at the bottom of page three.

**Motion by Mr. Morganroth
Seconded by Mr. Lilley to accept the Minutes of the BZA meeting of April 14, 2020 as amended.**

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

T# 05-26-20

4. APPEALS

**1) 412 Willits
Appeal 20-21**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 412 Willits was requesting the following variances to construct an addition to the existing non-conforming home:

A. Chapter 126, Article 2, Section 2.08.2 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 15.00 feet. The existing and proposed total is 10.82 feet. Therefore, a variance of 4.18 feet is being requested.

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 15.00 feet. The proposed is 11.02 feet. Therefore, a variance of 3.98 feet is being requested on the East side.

Assistant Building Official Zielke noted the home is historic and was built in 1865. The applicant was before the HDC in February 2020. This property is zoned R3 – Single Family Residential.

Jon and Lauren Stein, owners, and Brian Neeper, architect, were present on behalf of the petition. Mr. Stein and Mr. Neeper spoke on behalf of the petition.

In reply to an inquiry by Chairman Lillie, Mr. Neeper explained that there is a very shallow shed roof that protects part of the historic home to the rear. In order to allow water to flow off the roof, it would be prohibitively difficult to build an addition behind it. He said building behind the

home would also block in the existing home completely, and that the grading of the backyard is reasonably steep.

In reply to Mr. Morganroth, Mr. Neeper confirmed that the planned master bedroom would need to accommodate four to five feet of slope in the back in order to be built at grade. Mr. Neeper explained that even though that bedroom accommodates the slope, the further back the home is built the steeper the slope will be that requires accommodation.

In reply to Mr. Morganroth, Mr. Stein explained that the steep topography of the backyard and the condition of the existing rear addition were reasons why they did not want to build further into the backyard. He also explained that the plans of adding on to the east of the home would create a buffer between their home and their neighbors' atrium, which currently is a privacy issue for the Steins.

In reply to Mr. Canvasser, Mr. Stein explained that a lot across the street from their home was rezoned for office use, which will lead to a substantial increase in construction, first, and then traffic. He explained that as a result he and his wife are trying to move their living space more towards the side and rear of the home in order to maintain some distance and privacy from the bustle on the street. He said that these changes would create liveability, and said that for these reasons the need to add-on where the plans propose is not self-created.

Motion by Mr. Reddy

Seconded by Mr. Lilley with regard to Appeal 20-21, A. Chapter 126, Article 2, Section 2.08.2 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 15.00 feet. The existing and proposed total is 10.82 feet. Therefore, a variance of 4.18 feet is being requested. 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 15.00 feet. The proposed is 11.02 feet. Therefore, a variance of 3.98 feet is being requested on the East side.

Mr. Reddy moved to grant approval of both variance and to tie them to the plans as submitted. He said the historic nature of the building, the across-the-street lot's rezoning and the narrowness of the 412 Willits lot all combine to form unique circumstances. He said the Steins were seeking to maintain some liveability in a very small structure.

Mr. Morganroth said he would not support the motion because he did not see a reason why the proposed addition could not be shifted to where the existing bedroom is. He said that while doing so would interfere with a wood deck, those kinds of compromises often must be made as part of remodeling. He said that since the house already has to compensate for a four-to-five foot drop behind the home, the slope of the rear of the home would be a factor in either remodeling scenario. He said for these reasons he would approve of granting an addition that goes into the sideyard setback since it could be avoided with other building decisions.

Mr. Canvasser said he would not support the motion either. He said he agreed with Mr. Morganroth's comments and saw the issue as self-created.

Mr. Lilley explained his seconding of the motion by noting that the proposed addition is minimally sized so as not to overwhelm the home or the neighborhood. He said he supported that because it would make the house more liveable for both the current owners and the future owners. He also noted that building into the rear could mean attaching the proposed addition to the already extant addition, which may not be able to support the proposed addition properly.

Mr. Rodriguez said this case posed some difficulty for him, and that ultimately the question came down to whether the need is self-created. He said he did not hear a reason why it was not self-created, even if he did appreciate the appellant's proposed plans in terms of dealing with the noise that will stem from the new office space across the street.

Chairman Lillie said he would not support the motion either for the reasons listed by Mr. Morganroth and Mr. Canvasser. He said the appellants did not show practical difficulty, and said they could accomplish most of what they wanted by adding on to the rear of the home.

Motion failed , 2-4.

ROLL CALL VOTE

Yeas: Reddy, Lilley

Nays: Morganroth, Rodriguez, Canvasser, Lillie

**2) 501 S. Eton
Appeal 20-22**

City Planner Brooks Cowan presented the item, explaining that the owner of the property known as 501 S. Eton was requesting the following dimensional variance regarding parking requirements in the MX Zone.

A. Chapter 126, Article 4, Section 4.46(A) states that off-street parking spaces are required based on land use or land uses for the site, and that the number of spaces required per land use is detailed in Table A. Chapter 126, Article 4, Table A requires eating establishments with combined indoor-outdoor consumption to provide 1 parking space for each 75 square feet of floor area and 1 parking space per 300 square feet of commercial office or retail use. The subject property currently has a total of 21 parking spaces. 13 parking spaces are located on site while an additional 8 parking spaces in the public right-of-way were approved by City Commission in 2007. The Whistle Stop restaurant is one of three tenant spaces in the subject building, the other two spaces are currently vacant. Whistle Stop occupies 1,494 square feet and therefore requires 20 parking spaces as an

eating establishment. This requirement leaves one remaining parking space for the two vacant tenant spaces on the southern portion of the building.

The applicant is proposing to combine two tenant spaces and expand Whistle Stop into 2,554 square feet of restaurant use. Doing so would require 34 parking spaces for the eating establishment. The remaining 1,175 square foot tenant space is currently vacant, though if used for office/retail would require an additional 4 parking spaces. Assuming the aforementioned uses for the subject building, a total of 38 parking spaces would be required for the two tenant spaces. Therefore, the applicant has requested a dimensional variance of 17 parking spaces.

City Planner Cowan noted the subject property was built in 1968 and is zoned MX, Mixed Use. At the time of construction, the building was zoned (I) Industrial and had a parking requirement of 2 parking spaces + 1 square foot of parking space per 1 square foot of building space over 2,001 square feet. The building is 3,729 square feet and therefore was required to provide a total of 12 parking spaces when originally constructed. The Zoning Ordinance parking requirements have since been amended to 1 parking space per 75 square feet of restaurant use and 1 parking space per 300 square feet of office/retail use. The applicant appeared before the Planning Board on January 22nd, 2020. The Planning Board expressed their support for the project and motioned to approve the Final Site Plan and Design Review with the condition that the applicant satisfy the parking requirements through either a shared parking agreement or by obtaining a variance from the Board of Zoning Appeals.

Jerry Pesick, attorney, Jawan Matti, architect, and Valter and Elda Xhomaqi, owners, were present on behalf of the petition. Mr. Pesick spoke on behalf of the petition.

Mr. Canvasser suggested that given the ongoing parking negotiations with the Griffin Claw the variance request for the Whistle Stop was premature.

Chairman Lillie agreed with Mr. Canvasser, noting that the negotiations could either lead to there being no need for the variance or to a reduced need for a variance. He offered the petitioners two options: to have the BZA move forward and vote on the item during the present meeting, or to have the BZA adjourn the item to await the results of the negotiation with Griffin Claw.

Mr. Pesick said that Mr. LePage, owner of Griffin Claw, had indicated that he would not be able to move forward on a formalized parking agreement with the Xhomaqis presently. Mr. Pesick said he would be happy to discuss the issue with Mr. LePage once more, however, in order to return to the BZA with a final and definitive answer. Mr. Pesick said that the current informal arrangement with Mr. LePage is working quite well, and that he remains very supportive of the Whistle Stop's plans.

Chairman Lillie then asked Mr. Pesick if the petitioners would prefer a vote during the present meeting, an indefinite adjournment of the petition, or a tabling of the petition to the regularly scheduled June 2020 BZA meeting.

Mr. Pesick said he would prefer that the petition be tabled to the June 2020 meeting in order to allow for construction to be started on the Whistle Stop after that meeting whether a formal agreement is reached with Mr. LePage or whether a variance is granted.

Motion by Mr. Canvasser

Seconded by Mr. Reddy with regard to Appeal 20-22 A. Chapter 126, Article 4, Section 4.46(A) states that off-street parking spaces are required based on land use or land uses for the site, and that the number of spaces required per land use is detailed in Table A. Chapter 126, Article 4, Table A requires eating establishments with combined indoor-outdoor consumption to provide 1 parking space for each 75 square feet of floor area and 1 parking space per 300 square feet of commercial office or retail use. The subject property currently has a total of 21 parking spaces. 13 parking spaces are located on site while an additional 8 parking spaces in the public right-of-way were approved by City Commission in 2007. The Whistle Stop restaurant is one of three tenant spaces in the subject building, the other two spaces are currently vacant. Whistle Stop occupies 1,494 square feet and therefore requires 20 parking spaces as an eating establishment. This requirement leaves one remaining parking space for the two vacant tenant spaces on the southern portion of the building. The applicant is proposing to combine two tenant spaces and expand Whistle Stop into 2,554 square feet of restaurant use. Doing so would require 34 parking spaces for the eating establishment. The remaining 1,175 square foot tenant space is currently vacant, though if used for office/retail would require an additional 4 parking spaces. Assuming the aforementioned uses for the subject building, a total of 38 parking spaces would be required for the two tenant spaces. Therefore, the applicant has requested a dimensional variance of 17 parking spaces.

Mr. Canvasser moved to adjourn Appeal 20-22 until the regular June 2020 meeting of the BZA.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

**3) 1313 Lakeside
Appeal 20-24**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 1313 Lakeside was requesting the following variances 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 37.08 feet. Therefore a 7.08 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 31.21 feet. Therefore a 7.21 foot variance is being 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 Zielke explained the applicant was requesting a height variance for a portion of the proposed residence. The lot slopes from the front to the rear towards the Rouge River. This property is zoned R1 – Single Family Residential.

Kurt Couture, architectural designer, and Scott and Dana Marcus, owners, were present on behalf of the petition. Mr. Couture spoke on behalf of the petition.

In reply to Mr. Morganroth, Mr. Couture confirmed that if the second wall was ended and tied into the first wall, so that the last five to six circles were gone, the need for Variance C could be substantially mitigated.

Motion by Mr. Morganroth

Seconded by Mr. Rodriguez with regard to Appeal 20-24 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 37.08 feet. Therefore a 7.08 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 31.21 feet. Therefore a 7.21 foot variance is being 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. Morganroth moved to approve Variances A, B and C, tied to the plans as presented, with the understanding that Mr. Couture would work with City staff to minimize the extent to which the retaining wall projects into the required open front space. He said the property had unique circumstances due to the extreme drop in grade from the front to the rear and that it would be unavoidable to have a variance for height because of the degree of the drop. He said the need for the variances was not self created and that strict compliance with the ordinance would be unduly burdensome.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

**4) 1124 Smith
Appeal 20-26**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 1124 Smith, was requesting the following variance to construct a new single family home with a detached garage:

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 22.30 feet. The existing and proposed is 21.00 feet. Therefore a 1.30 foot variance is being requested.

Assistant Building Official Zielke explained the applicant was requesting to construct a new single family home with a detached garage. This case was in front of the board in 2019, for a distance between structures on west side, Case 19-39. Minutes from that meeting were included in the agenda packet. This property is zoned R3 – Single Family Residential.

Jim Vervisch, builder, was present on behalf of the appeal.

Motion by Mr. Rodriguez

Seconded by Mr. Canvasser in regards to Appeal 20-26, 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 22.30 feet. The existing and proposed is 21.00 feet. Therefore a 1.30 foot variance is being requested.

Mr. Rodriguez moved to deny the variance for lack of proof of practical difficulty. He noted that the builder also indicated that the house could be built without the variance.

Mr. Morganroth said the variance request was impossible to approve because none of the criteria for allowing a variance were met.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

**5) 1989 Webster
Appeal 20-25**

and

6) 1971 Webster

Appeal 20-27

Appeals 20-25 and 20-27 were presented together at the request of Chairman Lillie since the appeals were similar in nature and had the same appellant. They were voted on separately.

Assistant Building Official Zielke presented Appeal 20-25, explaining that the owner of the property known as 1989 Webster was requesting the following variance to construct a new single family home with a detached garage:

A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires 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 11.00 feet. Therefore, a variance of 3.00 feet is being requested on the West side.

Assistant Building Official Zielke then presented Appeal 20-27, explaining that the owner of the property known as 1971 Webster was requesting the following variance to construct a new single family home with a detached garage:

A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires 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 11.00 feet. Therefore, a variance of 3.00 feet is being requested on the East side.

Both 1989 Webster and 1971 Webster are zoned R3 - Single Family Residential. Robert Bloomingdale, founder of Bloomingdale Construction, was present on behalf of both appeals.

Motion by Mr. Morganroth

Seconded by Mr. Lilley with regard to Appeal 20-25, 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 11.00 feet. Therefore, a variance of 3.00 feet is being requested on the West side.

Mr. Morganroth explained that 1989 Webster is unique because it is a corner lot with two front setbacks, which forces this home to need a variance for distance between homes. The home is being built within the building envelope and the plans meet all the other requirements of the ordinance. He explained the need for the variance was not self-created and granting the variance would do substantial justice to the applicant. For these reasons he moved to approve the variance as advertised and to tie the variance approval to the plans as submitted.

Chairman Lillie said he would support the variance approval because on most blocks in Birmingham there is a home that runs into an issue where the garage is on the

wrong side of the lot due to the 9-5, 5-9 rule. He said that 1989 Webster is the home on the block running into that issue in this case.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

Motion by Mr. Reddy

Seconded by Mr. Canvasser with regard to Appeal 20-27, 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 11.00 feet. Therefore, a variance of 3.00 feet is being requested on the West side.

Mr. Reddy said he was moving to grant the variance and to tie it to the plans as submitted for the same reasons Mr. Morganroth moved to approve Appeal 20-25.

Chairman Lillie said he would support granting the variance for Appeal 20-27 for the same reason he supported granting the variance for Appeal 20-25. He noted that the plans also reduce the existing non-conformity of the lot.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

T#05-27-20

5. CORRESPONDENCE (included in agenda)

T# 05-28-20

6. GENERAL BUSINESS

T# 05-29-20

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

T# 05-30-20

8. ADJOURNMENT

Motion by Mr. Morganroth


Seconded by Mr. Rodriguez to adjourn the May 12, 2020 BZA meeting at 9:33 p.m.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None



Bruce R. Johnson, Building Official