

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, JUNE 9, 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, June 9, 2020. Chairman Charles Lillie convened the meeting at 7:30 p.m.

2. ROLLCALL

Present: Chairman Charles Lillie; Board Members Jason Canvasser, Kevin Hart (arrival acknowledged by the Chair at 7:52 p.m.), Richard Lilley, John Miller, Erik Morganroth, Francis Rodriguez

Absent: Alternate Board Members Jerry Attia; Ron Reddy

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# 06-31-20

3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF MAY 12, 2020

Motion by Mr. Morganroth

Seconded by Mr. Lilley to accept the Minutes of the BZA meeting of May 12, 2020 as submitted.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

T# 06-32-20

4. APPEALS

**1) 501 S. Eton
Appeal 20-22**

City Planner Cowan presented the item, explaining that the owner of the property known as 501 S. Eton requests 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. In 1974, the Zoning Ordinance was amended to require food services to provide 1 parking space per 75 square feet of floor area, therefore creating a legal conformity for the subject property.

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

The Xhomaqis, owners, Jerome Pesick, attorney, and Jawan Matti, architect, were present on behalf of the petition. Mr. Pesick spoke on behalf of the petition.

Mr. Pesick stated that while the Xhomaqis still have an informal parking agreement with Norman LePage, owner of Griffin Claw, the two parties had not been able to reach a formal parking agreement since the appellants' appearance at the May 2020 BZA meeting. Mr. Pesick said that Mr. LePage remains in favor of the Whistle Stop's proposed updates.

On behalf of the appeal Mr. Pesick also reached out to Dominic Mocerri, owner of the Irongate Apartments, who expressed his resounding support for the proposed project and offered to share any of their available on street parking with the Whistle Stop. Mr. Pesick stated that the City's Building Department indicated that that kind of shared parking arrangement would not be permitted.

In reply to the Chair, Mr. Pesick said the Xhomaqis estimate that about 50% of their customers walk to the diner in the summer. Mr. Pesick also noted that Mr. Mocerri said in an email that the Whistle Stop's proximity to the Irongate Apartments is a draw for potential tenants, which he said further proves that there is substantial appeal for nearby residents to walk to the diner.

Rick Rattner, attorney for Mr. LePage, stated that Mr. LePage would strongly urge the BZA to grant the requested variance to the appellants. Mr. Rattner said that the Xhomaqis have been great neighbors to the Griffin Claw and that can continue. According to Mr. Rattner, current circumstances prevent Mr. LePage from doing more than being a vocal supporter of the appeal and continuing the informal parking arrangement. Mr. Rattner stated that granting the variances would be in support of the health, safety and welfare of the rail district residents and Birmingham residents overall.

Motion by Mr. Rodriguez

Seconded by Mr. Canvasser 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. Rodriguez moved to grant Appeal 20-22 and to tie it to the plans as submitted. He said that a practical difficulty was established and that the need for the variance is not self created. He said the variance was necessary due to the unique size, shape, and characteristics of the property, as well as its relation to the neighboring properties. Mr. Rodriguez said granting the variance would do substantial justice to the public.

Mr. Canvasser said he agreed with Mr. Rodriguez. He asked Mr. Pesick and Mr. Rattner to keep dialogue open regarding the possibility of a more formal shared parking agreement in the future.

Chairman Lillie said he would be voting against the motion due to concerns about insufficient parking.

Mr. Hart said he would be voting in favor of the motion. He said the appellant had amply demonstrated practical difficulty. Mr. Hart also noted that since the restaurant is frequented by pedestrians, he was less concerned about potential parking issues. He commended the Xhomaqis for wanting to update their space both for the comfort of their employees and to achieve ADA compliance.

Motion carried, 5-2.

ROLL CALL VOTE

Yeas: Rodriguez, Canvasser, Hart, Lilley, Miller

Nays: Lillie, Morganroth

**2) 1602 Cole
Appeal 20-16**

Assistant Building Official Zielke presented the item, explaining that 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(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 15.50 feet. Therefore a variance of 1.00 feet is being requested.

B. Chapter 126, Article 4, Section 4.03(J) of the Zoning Ordinance requires that dormers on accessory structures are limited to 50% or less of the width of the roof per elevation or a 10.00 foot interior dimension, whichever is greater. The proposed dormer width on the east side is 100% of the width of the roof, therefore a variance of 50% of the width is being requested.

Assistant Building Official Zielke noted the applicant was in front of the board in March 2020 for variances for this proposed detached garage. This appeal was tabled at that time so the appellant could rework the design. This property is zoned R3 – Single Family Residential.

Craig Ludwig reviewed the letter to the BZA, as included in the evening's agenda packet, outlining his request for the variances.

Motion by Mr. Canvasser

Seconded by Mr. Rodriguez with regard to Appeal 20-16, A. 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 15.50 feet. Therefore a variance of 1.00 feet is being requested. B. Chapter 126, Article 4, Section 4.03(J) of the Zoning Ordinance requires that dormers on accessory structures are limited to 50% or less of the width of the roof per elevation or a 10.00 foot interior dimension, whichever is greater. The proposed dormer width on the east side is 100% of the width of the roof, therefore a variance of 50% of the width is being requested.

Mr. Canvasser moved to deny the requested variances. He said the need for the variances was self-created and that strict compliance with the ordinance would not unreasonably limit the petitioner's use of the property.

Mr. Morganroth acknowledged MSG Ludwig's efforts to mitigate the extent of the variance requests. He also expressed admiration for the design of the proposed garage, saying he could understand why MSG Ludwig would pursue it. Mr. Morganroth stated that while he admired the design, the BZA must grant or deny variances according to whether the need for the variances is self-created. Mr. Morganroth said he agreed with Mr. Canvasser that the need for the variances was self-created in this case, and said for that reason he was obligated to support the motion.

Mr. Miller expressed agreement with the previous statements that the issue was self-created.

Motion carried, 6-1.

ROLL CALL VOTE

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

Nays: Hart

**3) 1884 W Melton
Appeal 20-27**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 1884 W Melton, requests the following variances to construct a new single family home with an attached 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 20.00 feet. The proposed is 15.72 feet. Therefore, a variance of 4.28 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 20.00 feet. The proposed is 16.06 feet. Therefore, a variance of 3.94 feet is being requested on the East side.

Assistant Building Official Zielke noted the applicant was proposing to construct a new home with an attached garage. The site meets the zoning requirements with the exception of the requested variances mentioned above. This property is zoned R2 – Single Family Residential.

Patrick Raye, builder, and Alex Karchon, owner, were present on behalf of the appeal.

Mr. Karchon stated that the lot width of 1854 Melton is 107 feet.

Steve Gunderson, across-the-street neighbor of 1884 W Melton, stated that he was in full support of the proposal and said he thought it would benefit the neighborhood.

Motion by Mr. Rodriguez

Seconded by Mr. Morganroth 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 20.00 feet. The proposed is 15.72 feet. Therefore, a variance of 4.28 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 20.00 feet. The proposed is 16.06 feet. Therefore, a variance of 3.94 feet is being requested on the East side.

Mr. Rodriguez moved to approve both variances and to tie them to the plans as submitted. He stated that the petitioner established practical difficulty and noted that the property has unique circumstances due to the non-conforming homes to both the east and the west. Mr. Rodriguez also noted the need for the variance is not self-created.

Mr. Miller observed that granting the appeal would actually increase conformity in the neighborhood. He said he would support the motion.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**4) 1165 Hillside
Appeal 20-28**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 1165 Hillside, requests the following variances 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 53.20 feet. The proposed is 41.20 feet. Therefore a 12.00 foot variance is being requested.

B. Chapter 126, Article 4, Section 4.75(A)(1) of the Zoning Ordinance requires that a private, attached, single-family residential garages must be setback a minimum 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 proposed is the garage is 2.33 feet in front of the furthest façade. Therefore a variance of 7.33 feet is being requested.

Assistant Building Official Zielke noted the applicant proposed to construct a new home with an attached and detached garage on this irregular shaped corner lot. This property is zoned R1 – Single Family Residential.

Chairman Lillie expressed his belief that the Board needed more information to discuss this appeal. He said that normally when there is a setback issue the Board receives a drawing of the distances of the homes from the street. He said that while often there is uniformity, occasionally there is one home with a vastly different front setback which could throw off the front setbacks for the street.

Mr. Miller agreed.

Mr. Morganroth agreed, and added that the Board should also receive a drawing of the building envelope to see what is available in terms of space on the lot.

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

Mr. Morganroth said it was conceivably possible to get the information he needed from the pending discussion.

Mr. Miller said that while it would not be impossible to proceed, he noted that there would likely be controversy regarding this house from other residents in the neighborhood. He said without a drawing that shows the house in relation to the other houses on the street the Board's determination would be more difficult to reach.

Mr. Hart said that without more detailed drawings it would be very difficult to support this appeal. He noted that there are unique circumstances to the lot and that it would benefit the appellant for those to be rendered more clearly.

Motion by Mr. Miller

Seconded by Mr. Morganroth with regard to Appeal 20-28, 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 53.20 feet. The proposed is 41.20 feet. Therefore a 12.00 foot variance is being requested. B. Chapter 126, Article 4, Section 4.75(A)(1) of the Zoning Ordinance requires that a private, attached, single-family residential garages must be setback a minimum 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 proposed is the garage is 2.33 feet in front of the furthest façade. Therefore a variance of 7.33 feet is being requested.

Mr. Miller moved to table Appeal 20-28 until the July 2020 regular BZA meeting. He requested that the appellant submit an expanded site plan that shows the homes up to Lincoln and the homes across the street for the Board's review.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**5) 515 Westwood
Appeal 20-29**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 515 Westwood, requests the following variances to construct an addition the existing nonconforming home:

A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires a minimum rear yard setback is 30.00 feet. The proposed is 23.13 feet. Therefore, a variance of 6.87 feet is being requested.

B. 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 17.06 feet, therefore a variance is 5.50 feet.

Assistant Building Official Zielke noted the applicant was requesting variances to construct an addition to the existing home that was granted variances in 2014 and 2005. The variance that was granted in 2005 was not constructed, which this proposed variance is similar in nature that requested. This property is zoned R1 – Single Family Residential.

Ron Stern, builder, and Michael Dresden, owner, were present on behalf of the petition.

Mr. Stern reviewed the letter to the BZA, as included in the evening's agenda packet, outlining his request for the variances.

Motion by Mr. Morganroth

Seconded by Mr. Canvasser with regard to Appeal 20-29, A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires a minimum rear yard setback is 30.00 feet. The proposed is 23.13 feet. Therefore, a variance of 6.87 feet is being requested. B. 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 17.06 feet, therefore a variance is 5.50 feet.

Mr. Morganroth moved to deny the variance requests. He said that while he understood the desire for the variances the need for it was self-created. He said that the proposed spaces in the plans are generous, and that some of those spaces could be reduced to achieve additional mitigation.

Chairman Lillie said he would support the motion to deny. He noted that the BZA is traditionally very judicious about not giving variances for the rear setback. He acknowledged that there was a variance granted allowing building into the rear setback in 2005, but opined that said variance would not have been granted had all regular members of the BZA been present for the vote that night.

Mr. Miller said he looked for another justification for these variances beyond self-creation and said he was unable to find one. He said for that reason he would support the motion.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**6) 1055 Larchlea
Appeal 20-30**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 1055 Larchlea was requesting the following variance to expand the impervious surface in the required front open space:

A. Chapter 126, Article 4, Section 4.31(A)(1) of the Zoning Ordinance requires a minimum of 65% of the front open space in all single-family districts shall be free of paved surfaces. The required is 65%(2120.00 sf) The proposed is 59%(1932.00 sf). Therefore, a variance of 6.00%(188.00sf) is being requested.

Assistant Building Official Zielke noted the applicant was requesting additional paving in the required front yard. The home was issued a permit in 2018 and is currently still under construction. This property is zoned R1 – Single Family Residential.

Matt Whetstone, landscape architect, reviewed the letter to the BZA, as included in the evening's agenda packet, outlining his request for the variance.

In reply to Mr. Morganroth, Mr. Whetstone confirmed that granting the variances would make the turn into the driveway a bit easier and would allow the resident the exit their vehicle onto hardscape instead of onto grass. He said he hoped the Board would be amenable to granting the variances since while the front yard would exceed the allowed amount of hardscape, the plans overall would provide for more open space than the ordinance requires. He conceded that while these would be improvements for the resident, they could not be described as hardships.

Nitin Paranjpe, resident to the south of 1055 Larchlea, said that gravel from Larchlea gets washed down the hill and ends up on Lincoln. He said it is making ruts on the streets where City property meets the road. Mr. Paranjpe said granting a variance to allow for an increase in hardscape only for resident preference would be unreasonable. He continued that the City should limit the resident of 1055 Larchlea to the ordinance-allowed amount of hardscape in order to prevent water from running into Mr. Paranjpe's yard. People turning from Larchlea onto Lincoln sometimes skid in their vehicles due to the accumulation of gravel at the bottom of the hill, which he said causes a safety issue as well.

Motion by Mr. Rodriguez

Seconded by Mr. Lilley with regard to Appeal 20-30, A. Chapter 126, Article 4, Section 4.31(A)(1) of the Zoning Ordinance requires a minimum of 65% of the front open space in all single-family districts shall be free of paved surfaces. The required is 65%(2120.00 sf) The proposed is 59% (1932.00 sf). Therefore, a variance of 6.00% (188.00sf) is being requested.

Mr. Rodriguez moved to deny the requested variance. He cited Mr. Whetstone's acknowledgment that there was no practical difficulty that would necessitate the variance. Mr. Rodriguez said the need was self-created.

Mr. Miller also cited Mr. Whetstone's statement that the variance request was a result of preference and not of hardship. He said that once that is stated the Board has no other choice than to deny the request.

Chairman Lillie said he agreed. He noted that even if Mr. Whetstone had not made the statement there was no proof that a practical difficulty was motivating this request.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 06-33-20

5. CORRESPONDENCE (included in agenda)

T# 06-34-20

6. GENERAL BUSINESS

T# 06-35-20

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

T# 06-36-20

8. ADJOURNMENT

Motion by Mr. Canvasser

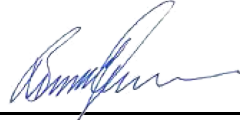
Seconded by Mr. Lilley to adjourn the June 9, 2020 BZA meeting at 9:44 p.m.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None



Bruce R. Johnson, Building Official