

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, March 9, 2021
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, March 9, 2021. Chair Charles Lillie convened the meeting at 7:30 p.m.

2. Rollcall

Present: Chair Charles Lillie; Board Members Jason Canvasser, Richard Lilley, John Miller, Erik Morganroth, Francis Rodriguez; Alternate Board Member Ron Reddy (all located in Birmingham, MI except Richard Lilley who was in St. Augustine Beach, FL.)

Absent: Board Member Kevin Hart; Alternate Board Member Erin Rodenhouse

Administration:

Bruce Johnson, Building Official
Laura Eichenhorn, City Transcriptionist
Mike Morad, Assistant Building Official
Jeff Zielke, Assistant Building Official

Chair Lillie explained the meeting was being held virtually due to the Covid-19 pandemic. He explained the procedures to be followed for the virtual meeting. He then assigned duties for running the evening's meeting to Vice-Chair Canvasser.

Vice-Chair Canvasser described 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-Chair Canvasser took rollcall of the petitioners. All petitioners were present.

T# 03-13-21

3. Approval Of The Minutes Of The BZA Meeting Of February 9, 2021

Mr. Lillie said that 'or' should be changed to 'of' in the second paragraph of the motion for Appeal 21-04. In the last paragraph on page eight, he said 'practical difficulty' should be changed to 'hardship'.

Motion by Mr. Morganroth

Seconded by Mr. Lilley to accept the Minutes of the BZA meeting of February 9, 2021 as amended.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 03-14-21

4. Appeals

**1) 691 Bloomfield Ct
Appeal 21-09**

ABO Zielke presented the item, explaining that the owner of the property known as 691 Bloomfield Court was requesting the following variance to construct a pool and patio in the required side open space:

A. Chapter 126, Article 4, Section 4.03(A) of the Zoning Ordinance requires that no accessory buildings or structures shall be erected in the required side open space. The proposed pool and patio is to be located in the east side open space. Therefore, a variance to permit a pool and patio is being requested.

Matt Moser, builder, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

Chris Fullerton, neighbor, said he was concerned about how noise from the use of the pool would impact his enjoyment of his property.

Mr. Lillie clarified for Mr. Fullerton that if there were a little more space in 691 Bloomfield's rear yard, the appellant could install the pool there. He noted that would result in the pool being much closer to Mr. Fullerton's property than the current appeal would.

Motion by Mr. Miller

Seconded by Mr. Morganroth with regard to Appeal 21-09, A. Chapter 126, Article 4, Section 4.03(A) of the Zoning Ordinance requires that no accessory buildings or structures shall be erected in the required side open space. The proposed pool and

patio is to be located in the east side open space. Therefore, a variance to permit a pool and patio is being requested.

Mr. Miller moved to deny the appeal because he said it was self-created. He said putting the pool in the side yard would negatively affect the neighbors and would not do substantial justice to the other property owners.

Mr. Morganroth said that denying the appellant the ability to put a pool in their sideyard setback does not amount to denying the appellant the enjoyment of their property. While he understood the desire for a pool, he noted that the BZA routinely enforces the ordinance that denies structures in the sideyard setback. He said for these reasons he would be supporting the motion.

Mr. Lillie concurred with Messrs. Miller's and Morganroth's comments. He noted that the noise from a pool in the side yard would echo between the neighboring houses whereas a pool in the rear yard would have acoustics less impactful to the neighbors.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**2) 269 E. Southlawn
Appeal 21-10**

ABO Zielke presented the item, explaining that the owner of the property known as 269 E. Southlawn was requesting the following variances to construct a second floor addition to an existing non-conforming home:

A. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that the minimum combined total side yard setback for residential lots are 14.0 feet or 25% of the lot width whichever is greater. The required total is 14.00 feet. The proposed is 12.82 feet. Therefore, a variance of 1.18 feet is being requested.

B. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that no side yard setback for residential lots shall be less than 5.00 feet. The proposed is 4.49 feet. Therefore, a variance of 0.51 feet is being requested.

John DePorre, representative for the appellant, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

Mr. Morganroth asked Mr. DePorre if bringing in the second floor had been considered as an attempt to minimize the requested variance.

Mr. DePorre confirmed it had. He explained that bringing in the second floor would create a flat section of the first floor roof that would be prone to leakage. He said bringing in the second floor would also not be feasible in terms of how it would negatively impact the size of the bedrooms and the master bathroom.

Motion by Mr. Reddy

Seconded by Mr. Lilley with regard to Appeal 21-10, A. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that the minimum combined total side yard setback for residential lots are 14.0 feet or 25% of the lot width whichever is greater. The required total is 14.00 feet. The proposed is 12.82 feet. Therefore, a variance of 1.18 feet is being requested and B. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that no side yard setback for residential lots shall be less than 5.00 feet. The proposed is 4.49 feet. Therefore, a variance of 0.51 feet is being requested.

Mr. Reddy moved to approve the appeal because the home was built prior to the City's current zoning requirements were in effect. He noted that the the appeal also did not expand the current non-conformity with the ordinance.

Mr. Miller said he would vote to approve the motion. He noted that this house and the next three houses to the west are misaligned on the lots because they were built prior to the current zoning ordinances and that is what caused the difficulty for the owner of 269 E. Southlawn.

Mr. Rodriguez concurred with Messrs. Reddy and Miller. He noted the motion should be tied to the plans as submitted.

Mr. Reddy and Mr. Lilley clarified that their motion should be tied to the plans as submitted.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**3) 2440 Fairway
Appeal 21-11**

ABO Zielke presented the item, explaining that the owner of the property known as 2440 Fairway was requesting the following variances to construct a second floor addition to an existing non-conforming home with an attached garage:

A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average of the homes within 200.00 feet in each

direction. The required total is 41.46 feet. The proposed is 31.82 feet. Therefore, a variance of 9.64 feet is being requested.

B. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum combined total side yard setback for residential lots are 14.0 feet or 25% of the lot width whichever is greater. The required total is 28.64 feet. The proposed is 15.25 feet. Therefore, a variance of 13.39 feet is being requested.

C. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that no side yard setback for residential lots shall be less than 5.00 feet. The proposed is 4.50 feet. Therefore, a variance of 0.50 feet is being requested.

D. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires that the minimum total distance between principle residential buildings on adjacent lots be 14.0 feet or 25% of the lot width whichever is greater. The required total is 28.64 feet. The proposed is 14.25 feet on the west side. Therefore, a variance of 14.39 feet is being requested.

E. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires that the minimum total distance between principle residential buildings on adjacent lots be 14.0 feet or 25% of the lot width whichever is greater. The required total is 28.64 feet. The proposed is 14.91 feet on the east side. Therefore, a variance of 13.73 feet is being requested.

F. Chapter 126, Article 4, Section 4.30(C)1 of the Zoning Ordinance permits porches to project into the required front open space for a maximum distance of 10.00 feet. The proposed is 17.26 feet. Therefore, a variance of 7.26 feet is being requested.

In reply to Mr. Miller, ABO Zielke confirmed that the need for the variances largely resulted from the existing non-conformities of the house's placement on the lot. ABO Zielke also confirmed that the average front yard setback came from the houses on either side of 2440 Fairway even though the house to the west has its side yard facing Fairway.

Mr. Lillie noted that the point of averaging the front yard setbacks in the ordinance is to maintain sightlines. Since Fairway is curved, granting Variance A would not affect the front yard sightlines in this case.

Mirela and Adrian Bazaj, co-appellants, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

Motion by Mr. Miller

Seconded by Mr. Lilley with regard to Appeal 21-11, A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average of the homes within 200.00 feet in each direction. The required total is 41.46 feet. The proposed is 31.82 feet. Therefore, a variance of 9.64 feet is being requested; B. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum combined total side yard setback for residential lots are 14.0 feet or 25%

of the lot width whichever is greater. The required total is 28.64 feet. The proposed is 15.25 feet. Therefore, a variance of 13.39 feet is being requested; C. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that no side yard setback for residential lots shall be less than 5.00 feet. The proposed is 4.50 feet. Therefore, a variance of 0.50 feet is being requested; D. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires that the minimum total distance between principle residential buildings on adjacent lots be 14.0 feet or 25% of the lot width whichever is greater. The required total is 28.64 feet. The proposed is 14.25 feet on the west side. Therefore, a variance of 14.39 feet is being requested; E. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires that the minimum total distance between principle residential buildings on adjacent lots be 14.0 feet or 25% of the lot width whichever is greater. The required total is 28.64 feet. The proposed is 14.91 feet on the east side. Therefore, a variance of 13.73 feet is being requested; and, F. Chapter 126, Article 4, Section 4.30(C)1 of the Zoning Ordinance permits porches to project into the required front open space for a maximum distance of 10.00 feet. The proposed is 17.26 feet. Therefore, a variance of 7.26 feet is being requested.

Mr. Miller motioned to approve Variances A, B, C, D, E and F as proposed. He said strict compliance with the ordinance would be excessively burdensome in this case, and that the issues faced by the appellants in this case are not self-created. He said that the need for the variances was caused by the irregularly-shaped lot, and the position of the house on the lot. Mr. Miller opined that adding a front porch would also do substantial justice to the neighboring property owners. He tied the approval to the plans as submitted.

Noting the appellants' reduction of the variance request for the porch from the possible 10 feet to approximately seven feet, Mr. Lillie said he would support the motion. He noted the reduction mitigated the porch's encroachment into the front open space.

Mr. Morganroth said the fact that Fairway is curved mitigated the impact of the porch's encroachment into the front yard. He also concurred with Mr. Lillie's comments.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**4) 1404 E Lincoln
Appeal 21-12**

ABO Zielke presented the item, explaining that the owner of the property known as 1404 E Lincoln was requesting the following variance to construct a second floor addition to an existing non-conforming home:

A. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that no side yard setback for residential lots shall be less than 5.00 feet. The proposed is 4.75 feet. Therefore, a variance of 0.25 feet is being requested.

Rami Essak, appellant, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet. He confirmed the addition would get no closer to the lot line than the requested 4.75 feet, even though that meant the addition would have to taper in.

Donna Klein, resident of E. Lincoln, expressed her strong support for the appeal. She said increasing the house to two stories would benefit the neighborhood. She also said she was glad that the existing bungalow would be maintained and renovated rather than being demolished and replaced.

Motion by Mr. Lilley

Seconded by Mr. Miller with regard to Appeal 21-12, A. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that no side yard setback for residential lots shall be less than 5.00 feet. The proposed is 4.75 feet. Therefore, a variance of 0.25 feet is being requested.

Mr. Lilley moved to approve the variance request as long as the side setback is maintained at the requested 4.75 feet. He noted that the home was built prior to the current ordinance requirements and so the issue is an existing non-conformity. He said the request was not unreasonable, and asked that the approval of the variance be tied to the plans as submitted.

Mr. Lillie said he would support the motion but that the plans would have to be adjusted slightly in order to maintain the 4.75 foot side setback requirement.

Building Official Johnson said the motion could be tied to the plans as amended during the present discussion.

Per Building Official Jonson's recommendation, Mr. Lilley asked that approval of the variance be tied to the plans as amended, reiterating that 4.75 foot side yard setback must not be decreased.

Mr. Miller maintained his second of the motion.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

5) 998 S Glenhurst

Appeal 21-13

ABO Zielke presented the item, explaining that the owner of the property known as 998 S. Glenhurst, was requesting 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 that the minimum total distance between principle residential buildings on adjacent lots be 14.0 feet or 25% of the lot width whichever is greater. The required total is 20.00 feet. The proposed is 16.30 feet on the north side. Therefore, a variance of 3.70 feet is being requested.

B. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires that the minimum total distance between principle residential buildings on adjacent lots be 14.0 feet or 25% of the lot width whichever is greater. The required total is 20.00 feet. The proposed is 17.55 feet on the south side. Therefore, a variance of 2.45 feet is being requested.

Ahmed Abdullah, appellant, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

Motion by Mr. Morganroth

Seconded by Mr. Rodriguez with regard to Appeal 21-13, A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires that the minimum total distance between principle residential buildings on adjacent lots be 14.0 feet or 25% of the lot width whichever is greater. The required total is 20.00 feet. The proposed is 16.30 feet on the north side. Therefore, a variance of 3.70 feet is being requested and B. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires that the minimum total distance between principle residential buildings on adjacent lots be 14.0 feet or 25% of the lot width whichever is greater. The required total is 20.00 feet. The proposed is 17.55 feet on the south side. Therefore, a variance of 2.45 feet is being requested.

Mr. Morganroth moved to approve both variances. He said the appellant demonstrated that he met the required side setbacks for his own lot and that it is the non-conforming homes to the north and the south that cause the need for the variances. Mr. Abdullah also is reducing the existing non-conformity on the north side, bringing that side setback from the current seven feet to the required ten feet. Mr. Morganroth said granting the variances would do substantial justice to the home owner and would have no negative impact on the adjacent properties. He tied the approval to the plans as submitted.

Mr. Reddy said he could not support the motion. He said the issue was self-created since the builder knew the lot's dimensions and the dimensional ordinance requirements when he bought the home.

Mr. Lillie said he would support the motion. He said the BZA generally does not penalize an appellant who meets all the ordinance requirements for their property if the need for the variance is caused by adjacent non-conforming properties.

Mr. Rodriguez concurred with Mr. Lillie and reiterated the appellant's mitigation of the non-conformity on the north side of his property.

Motion carried, 6-1.

ROLL CALL VOTE

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

Nays: Reddy

**6) 1859 Yorkshire
Appeal 21-14**

ABO Zielke presented the item, explaining that the owner of the property known as 1859 Yorkshire was requesting the following variance to construct a detached garage in the required front open space:

A. Chapter 126, Article 4, Section 4.03(A) of the Zoning Ordinance requires that no accessory buildings or structures shall be erected in the required front open space. The proposed detached garage is to be located in the front open space. Therefore, a variance to permit a detached structure in the front open space is being requested.

B. Chapter 126, Article 4, Section 4.03(H) of the Zoning Ordinance requires that 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 600 square feet in R1, whichever is less. The required total is 600 square feet. The proposed is 1039 square feet. Therefore, a variance of 439.00 square feet is requested.

ABO Zielke stated that the appellant did discuss installing the garage behind the home but did not pursue it due to some noise and safety concerns.

Ben Motyl, appellant, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

Sara and Justin Evoe, across the street neighbors of 1859 Yorkshire, voiced their support for the requested variances. Mr. Evoe said the wooded area between the neighborhood and the railroad tracks had been substantially thinned out over the last four years, and that granting the variance would restore some of the sound barrier previously enjoyed by homes in the neighborhood.

Mary and Michael Jarman, neighbors to the west of 1859 Yorkshire, also voice their support for the requested variances. Mr. Jarman echoed the Evoe's comments, and said the Motyls' proposed work would also give the neighbors some visual reprieve from the railroad tracks. Mr. Jarman

continued that requiring the Motyls to put their driveway between their house and the Jarmans' would be difficult since the Jarmans' driveway is four feet above the Motyls' lot's grade.

Motion by Mr. Lillie

Seconded by Mr. Rodriguez with regard to Appeal 21-14, A. Chapter 126, Article 4, Section 4.03(A) of the Zoning Ordinance requires that no accessory buildings or structures shall be erected in the required front open space. The proposed detached garage is to be located in the front open space. Therefore, a variance to permit a detached structure in the front open space is being requested.

Mr. Lillie moved to grant Appeal A and to tie it to the amended drawings. He said the lot's shape and adjacency to the railroad tracks make the lot unique. Making the appellants comply with the ordinance in this case would be unduly burdensome, whereas granting the variance would benefit the neighboring properties. He noted the need for the variance was not self-created. Mr. Lillie said it would be the first time the BZA permitted a garage in the front of the home, but the circumstances were so unique that the variance was justified.

Mr. Miller said he would support the appeal while noting that it created no precedent for allowing a garage in the front of a home. He said that the unique circumstances of the home, combined with a sensitive and well thought out plan for addressing them, were leading him to vote to approve. Mr. Miller stated that it is very unusual that adding a garage to the front of the home would do substantial justice to the neighbors but that here that was the case.

Vice-Chair Canvasser said he would also support the motion for the same reasons given by other Board members.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

Nota bene: Variance B was withdrawn at the request of the appellant, therefore not action was taken.

T# 03-15-21

5. Correspondence

Included in the agenda packet.

T# 03-16-21

6. General Business

None.

T# 03-17-21

7. Open To The Public For Matters Not On The Agenda

T# 03-18-21

8. Adjournment

Motion by Mr. Lilley

Seconded by Mr. Lillie to adjourn the March 9, 2021 BZA meeting at 9:22 p.m.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None



Bruce R. Johnson, Building Official