

**Birmingham Board Of Zoning Appeals Proceedings  
Tuesday, April 13, 2021  
Held Remotely Via Zoom And Telephone Access**

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**1. Call To Order**

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, April 13, 2021. Chair Charles Lillie convened the meeting at 7:30 p.m.

**2. Rollcall**

**Present:** Chair Charles Lillie; Board Members Jason Canvasser, Kevin Hart, Richard Lilley, John Miller, Erik Morganroth; Alternate Board Member Ron Reddy (all located in Birmingham, MI.)

**Absent:** Board Member Francis Rodriguez; 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 Morganroth.

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

**T# 04-19-21**

**3. Approval Of The Minutes Of The BZA Meeting Of March 9, 2021**

Mr. Canvasser said that on page ten "Variance B was withdrawn at the request of the applicant and therefore no vote was taken." should replace the entire paragraph beginning "Nota bene:".

Mr. Miller complimented the prose of the second paragraph on page six.

**Motion by Mr. Lilley  
Seconded by Mr. Canvasser to accept the Minutes of the BZA meeting of March 9,  
2021 as amended.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**T# 04-20-21**

**4. Appeals**

**1) 159 Baldwin  
Appeal 21-17**

ABO Zielke presented the item, explaining that the owner of the property known as 159 Baldwin was requesting the following variances to construct a new single family home with an attached 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 44.30 feet. The proposed is 11.00 feet. Therefore, a 33.30 foot variance is being requested.

**B. Chapter 126, Article 2, Section 2.08** of the Zoning Ordinance requires the maximum eave height of a structure is 24.00 feet. The proposed eave height is 25.10 feet. Therefore, a 1.10 foot variance is being requested.

**C. Chapter 126, Article 4, Section 4.30(C)(5)** of the Zoning Ordinance limits porches and decks to one story in height in the rear open space. The proposed deck is to be constructed over one story in height and to project 1.50 feet into the rear open space. Therefore, a 1.50 foot variance is being requested.

ABO Zielke continued that the applicant was previously in front of the Board in August 2019 for identical variance requests. ABO Zielke explained that due to the pandemic and the time it took to receive the necessary permit from EGLE, the expiration date of the granted variances had been reached. As a result of the August 2019 variances' expiration, the applicant was again before the

Board to request the same variances to construct a new single family home with an attached garage on this irregular shaped lot with sloping grades and flood plain challenges.

Brian Halprin, architect, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

ABO Zielke brought up the August 2019 minutes so the Board could review their previous discussion and decision.

Vice-Chair Morganroth asked Mr. Halprin questions about minimizing the proposed deck's size.

Building Official Johnson interceded in the discussion, noting that the proposed deck referenced in Variance C encroached into the rear open space but not the required rear setback.

ABO Zielke agreed that the proposed deck did not enter into the rear setback. He noted that if the proposed deck were counted towards the lot coverage it would still not bring the total lot coverage over the 30% maximum.

Building Official Johnson said that in light of those facts Variance C was not necessary.

The Board removed Variance C from consideration.

**Motion by Mr. Miller**

**Seconded by Mr. Lillie with regard to Appeal 21-17, 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 44.30 feet. The proposed is 11.00 feet. Therefore, a 33.30 foot variance is being requested; and, B. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires the maximum eave height of a structure is 24.00 feet. The proposed eave height is 25.10 feet. Therefore, a 1.10 foot variance is being requested.**

**Mr. Miller moved to approve both requested variances. He stated that strict compliance with the ordinance would unreasonably prevent the petitioner from using the property for the permitted purpose due to the very unique lot. He noted that the street is slightly curved at the front, that the lot has an extreme slope, that the shape of the lot is not rectangular, and that the Rouge River runs through the lot. He stated that the need for the variances requested are due to the unique circumstances of the property, and not self created.**

**Mr. Miller continued, noting that the proposed home would be in approximately same location as the existing home. He observed that the existing garage is well forward of the front of the house, and that the house currently lacks much of a front stoop or porch. The proposed home, in contrast, locates the garage ten feet back from the front of the home and has a 26-foot long colonnaded porch. He said these proposed changes would significantly improve both the front of the home and the neighborhood. He noted that moving the garage back would mitigate an extant non-**

**conformity. Based on these findings, Mr. Miller moved to approve and tied to plans as submitted.**

**Mr. Lillie concurred with Mr. Miller. He reiterated that compliance with the ordinance in this case would be unduly burdensome, that the existing house is more non-conforming than the proposed one, and that the need for the requested variances was not self-created.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

Mr. Halprin thanked the Board.

**T# 04-21-21**

## **5. Correspondence**

Included in the agenda packet.

**T# 04-22-21**

## **6. General Business**

None.

**T# 04-23-21**

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

None.

**T# 04-24-21**

## **8. Adjournment**

**Motion by Mr. Lilley**

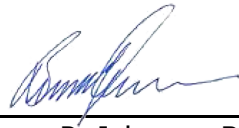
**Seconded by Mr. Canvasser to adjourn the April 13, 2021 BZA meeting at 8:03 p.m.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None



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Bruce R. Johnson, Building Official