

**Birmingham Board Of Zoning Appeals Proceedings
Tuesday, August 10, 2021
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, August 10, 2021. Vice-Chair Jason Canvasser convened the meeting at 7:30 p.m.

2. Rollcall

Present: Vice-Chair Jason Canvasser; Board Members Kevin Hart, John Miller, Francis Rodriguez, Richard Lilley, Erik Morganroth (attended virtually, located in Birmingham MI); Alternate Board Member Ron Reddy

Absent: Chair Charles Lillie; Alternate Board Member Erin Rodenhouse

Administration:

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

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# 08-43-21

3. Approval Of The Minutes Of The BZA Meeting Of June 8, 2021 and July 13, 2021

Motion by Mr. Miller

Seconded by Mr. Rodriguez to accept the Minutes of the BZA meeting of June 8, 2021 as submitted.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Hart, Morganroth, Canvasser, Rodriguez, Miller

Nays: None

Abstain: Reddy, Lilley

With Vice-Chair Canvasser and Messrs. Hart, Miller, and Rodriguez abstaining due to their absences from the July 13, 2021 meeting the Board did not have a quorum for a vote on the July 13, 2021 minutes.

The July 13, 2021 minutes will be voted on along with the August 10, 2021 minutes at the September 2021 meeting.

T# 08-44-21

4. Appeals

**1) 689 Westwood
Appeal 21-29**

ABO Zielke presented the item, explaining that the owner of the property known as 689 Westwood was requesting the following variance to construct an addition to an existing non-conforming single-family home:

A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum total side yard setback are 14.00 feet or 25% of the total lot width whichever is larger. The required is 22.47 feet. The proposed is 18.82 feet. Therefore a variance of 3.65 feet was being requested.

ABO Zielke continued that the applicant was denied their initial request by the Board in May 2021, asked that their request be tabled at the July 2021 meeting, and was now requesting a lesser variance to construct an addition to the home. This property is zoned R1– Single Family Residential.

Mari MacKenzie, owner, and Glenda Meads, architect, reviewed the letter describing why this variance was being sought. The letter was included in the evening’s agenda packet.

In discussion a number of Board members expressed concern that granting this variance might adversely impact the neighbor to the north. Because the submitted documents did not provide the distance between the neighbor to the north and that neighbor’s northern neighbor, the Board could not say whether granting this variance might prevent 689 Westwood’s northern neighbor from building to the maximum width allowed on their lot in the future if desired.

After discussion, Staff stated the City would help the appellant get the requisite information and return for future review if desired by the Board.

Motion by Mr. Reddy

Seconded by Mr. Miller with regard to Appeal 21-29, A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum total side yard setback are 14.00 feet or 25% of the total lot width whichever is larger. The required is 22.47 feet. The proposed is 18.82 feet. Therefore a variance of 3.65 feet was being requested.

Mr. Reddy moved to adjourn Appeal 21-29 to the September 2021 meeting, citing the need for additional information in order for the Board to complete its review.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

BO Johnson advised the Board to retain their documents for Appeal 21-29.

**2) 282 Greenwood
Appeal 21-30**

ABO Zielke presented the item, explaining that the owner of the property known as 282 Greenwood was requesting the following variances to re-construct an existing deck and impervious areas of an existing non-conforming single-family home:

A. Chapter 126, Article 4.30(C)(5) of the Zoning Ordinance allows a deck and/or steps may project into the rear open space for a maximum distance of 15.00 feet. This provision shall not reduce the required rear setback to less than 15.00 feet. The proposed it reduce the rear yard setback to 5.00 feet. Therefore a variance of 10.00 feet was being requested.

B. Chapter 126, Article 4.31(A) of the Zoning Ordinance requires that a minimum of 65% (998.53 feet) of the front open space in all single family districts shall be free of paved surfaces. The existing is 43.19% (663.50 SF) and the proposed is 56.44% (867.00 SF). Therefore a variance of 8.56% (131.53 SF) was being requested.

ABO Zielke continued that this appeal was tabled from the July 2021 meeting and that there was a change to the variance A request.

Steve Ahejew, architect, and Robert Jacobs, owner, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

After discussion between Mr. Morganroth and Mr. Ahejew, Mr. Ahejew acknowledged that either a deck without a staircase, a staircase without a deck, or a staircase with a smaller deck could be built either within the ordinance or with a smaller variance request.

In reply to Board inquiry, Mr. Ahejew stated that while a spiral staircase was considered, the owner had concerns about a spiral staircase's safety especially for aging users. He also expressed concerns about potential egress issues if no stairs were provided.

Mr. Morganroth noted the proposed plans were likely better designed than the other options, but that the circumstances on the lot did not constitute a hardship. He expressed fewer reservations regarding variance B than variance A.

Motion by Mr. Hart

Seconded by Mr. Lilley with regard to Appeal 21-30, A. Chapter 126, Article 4.30(C)(5) of the Zoning Ordinance allows a deck and/or steps may project into the rear open space for a maximum distance of 15.00 feet. This provision shall not reduce the required rear setback to less than 15.00 feet. The proposed it reduce the rear yard setback to 5.00 feet. Therefore, a variance of 10.00 feet is being requested; and, B. Chapter 126, Article 4.31(A) of the Zoning Ordinance requires that a minimum of 65% (998.53 feet) of the front open space in all single family districts shall be free of paved surfaces. The existing is 43.19% (663.50 SF) and the proposed is 56.44% (867.00 SF). Therefore a variance of 8.56% (131.53 SF) is being requested.

Mr. Hart moved to approve the variance requests and tied them to the plans as submitted. He noted that the request mitigated some of the excess lot coverage in the front of the home. He continued that the stair placement in the rear presented challenges that amounted to a practical difficulty in terms of the staircase going in front of glass. The stairs allow for proper functioning and exterior egress in the rear. He noted there would be no adverse effect on neighboring properties, that the landing would be situated lower than the retaining wall, and that the staircase would be placed not to obscure neighbors' views. He opined that substantial justice would be done to the owners and neighbors.

Mr. Miller said he found variance B reasonable, and variance A a bit more difficult to decide on. Ultimately he found that the radical topography, the retaining wall separation with the neighbor to the north, and the lack of a neighbor to the rear made this existing non conforming home unique. He stated that substantial justice would be done if the variances were permitted.

Mr. Morganroth said he would not support the motion. He expressed appreciation for the design, but said the problem was being caused by wanting a deck in the rear and a patio in the front both of which exceed what the ordinance would allow. He said that given the request for both he was unable to find a hardship.

Vice-Chair Canvasser said he would also not support the motion, noting that the appellant acknowledged that there were a number of possible configurations that

would either mitigate or eliminate the need for a variance. He also noted that once the impervious surface is removed in the front, requesting to replace it in an amount that still exceeds the ordinance becomes an issue of self-creation. He stated that strict compliance would not restrict owner from using the property for its permitted purpose.

Mr. Rodriguez concurred with Mr. Morganroth and Vice-Chair Canvasser.

Motion carried, 4-3.

ROLL CALL VOTE

Yeas: Reddy, Miller, Lilley, Hart

Nays: Morganroth, Canvasser, Rodriguez

**3) 1135 Maryland
Appeal 21-34**

ABO Zielke presented the item, explaining that the owner of the property known as 1135 Maryland was requesting the following variances to construct an addition to an existing non-conforming single-family home:

A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 43.03 feet. The existing and proposed is 40.20 feet. Therefore; a variance of 2.83 feet is being requested.

B. Chapter 126, Article 4.30(C)(1) of the Zoning Ordinance allows covered or uncovered porches and/or steps to project into the required front open space for a maximum distance of 10.00 feet. The proposed is 13.50 feet, Therefore; a variance of 3.50 feet is being requested.

ABO Zielke continued that the original home was constructed in 1941. There was an addition constructed to the home in 1996.

Chris Morgan, builder, 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 21-34, A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 43.03 feet. The existing and proposed is 40.20 feet. Therefore; a variance of 2.83 feet is being requested; and, B. Chapter 126, Article 4.30(C)(1) of the Zoning Ordinance allows covered or uncovered porches and/or steps to project into the required front open space for a maximum distance of 10.00 feet. The proposed is 13.50 feet, Therefore; a variance of 3.50 feet is being requested.

Mr. Miller moved to approve the variances and tied them to the plans as submitted. He explained that both variance requests stemmed from the existing home not being in the zoning envelope. He stated that granting the variances would do substantial justice to the neighborhood.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**4) 375 Lakepark
Appeal 21-36**

ABO Zielke presented the item, explaining that the owner of the property known as 375 Lakepark was requesting the following variances to construct an addition to an existing non-conforming single-family home:

A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 45.50 feet. The proposed is 43.60 feet. Therefore; a variance of 1.90 feet is being requested.

B. Chapter 126, Article 4.75(B)(1) of the Zoning Ordinance required that no individual dormer may exceed 8.00 feet in width as measured to the interior dimension. The existing is 16.75 feet. The proposed 11.33 feet, Therefore; a variance of 3.33 feet is being requested.

ABO Zielke continued that the original home was constructed in 1926 and had an addition in 2003. The applicant was in front of the board in July 2021 (see draft minutes from July). The applicant reworked the existing plan due to the denial of the previous appeal.

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

Motion by Mr. Reddy

Seconded by Mr. Morganroth with regard to Appeal 21-36, A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 45.50 feet. The proposed is 43.60 feet. Therefore; a variance of 1.90 feet is being requested; and, B. Chapter 126, Article 4.75(B)(1) of the Zoning Ordinance required that no individual dormer may exceed 8.00 feet in width as measured to the interior dimension. The existing is 16.75 feet. The proposed 11.33 feet, Therefore; a variance of 3.33 feet is being requested.

Mr. Reddy moved to approve the variance and tied them to the plans as submitted. He offered that asking the appellant to comply with the ordinances in this case would be unnecessarily burdensome. He noted that the home was built before the current zoning requirements. He also noted that variance request B would reduce the existing nonconformity.

Mr. Morganroth stated that the architect took the Board's prior feedback and made a porch that the ordinance allows for. He said that the widening of the front does not increase the non-conformity. He continued that due to the condition of the lot, the neighbors, and the age of the home, expanding laterally makes sense for this home. He noted that the current dormer was larger than permitted by current ordinance, and that these plans would reduce the dormer and would fix a maintenance issue at the same time. He said it would do substantial justice to the homeowner and was a reasonable request.

Mr. Miller stated that there would be no negative impacts from this plan to the neighbors or neighborhood. He said it would do substantial justice to neighborhood.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 08-45-21

5. Correspondence

Included in the agenda packet.

T# 08-46-21

6. General Business

T# 08-47-21

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

None.

T# 08-48-21

8. Adjournment

Motion by Mr. Lilley

Seconded by Vice-Chair Canvasser to adjourn the August 10, 2021 BZA meeting at 9:27 p.m.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None



Bruce R. Johnson, Building Official