**Birmingham Board Of Zoning Appeals Proceedings**
**Tuesday, December 14, 2021**
**City Commission Room**
**151 Martin Street, Birmingham, Michigan**

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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, December 14, 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; Alternate Board Members Ron Reddy, Erin Rodenhouse

**Absent:** Board Members Kevin Hart, Francis Rodriguez

**Administration:**
Bruce Johnson, Building Official
Leah Blizinski, City Planner
Brooks Cowan, Senior Planner
Laura Eichenhorn, City Transcriptionist
Mike Morad, Assistant Building Official
Jeff Zielke, Assistant Building Official

Chair Lillie welcomed those present, reviewed the meeting's procedures, and 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# 12-67-21**

## 3. Announcements

The highly transmissible COVID-19 Delta variant is spreading throughout the nation at an alarming rate. As a result, the CDC is recommending that vaccinated and unvaccinated personnel wear a facemask indoors while in public if you live or work in a substantial or high transmission area. Oakland County is now at the HIGH level of community transmission for COVID-19. The City has reinstated mask requirements for all employees while indoors. The mask requirement also applies to all board and commission members as well as the public attending public meetings.

## 4. Approval Of The Minutes Of The BZA Meetings Of November 9, 2021

In the first full paragraph on page six, in the second line, Mr. Lillie recommended 'zoned' be changed to 'determined'. He recommended the same change be made in the third full paragraph on page six in the second-to-last line.

**Motion by Mr. Lillie**
**Seconded by Mr. Reddy to accept the Minutes of the BZA meeting of November 9, 2021 as amended.**

**Motion carried, 7-0.**

ROLL CALL VOTE
Yeas: Morganroth, Lillie, Reddy, Rodenhouse, Canvasser, Miller, Lilley
Nays: None

**T# 12-68-21**

## 5. Appeals

### 1) 1679 Dorchester
### Appeal 21-51

ABO Zielke presented the item, explaining that the owner of the property known as 1679 Dorchester was requesting the following variances to construct a second floor addition to an existing nonconforming single-family home:

> **A. Chapter 126, Article 2.06.2** of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width whichever is larger. The required is 22.13 feet. The existing and proposed is 18.50 feet. Therefore; a variance of 3.63 feet is being requested.
>
> **B. Chapter 126, Article 4.61(A)(2)** of the Zoning Ordinance states that a corner lot where there is no abutting interior residential lot on such side street, the minimum side street setback shall be 10.00 feet from the permitted principal building. The existing and proposed is 9.00 feet. Therefore; a variance of 1.00 feet is being requested.

**C. Chapter 126, Article 4.75(A)(1)** of the Zoning Ordinance requires that a private attached, single-family residential garage shall not occupy more than 50% (15.40 feet) of a linear building width of a principal residential building that faces a street. The existing and proposed on the east side occupies 91.56% (28.20 feet). Therefore; a variance of 41.56% (12.80 feet) is being requested.

**D. Chapter 126, Article 4.75(A)(1)** of the Zoning Ordinance requires that a private attached, single-family residential garage must be setback a minimum of 5.00 feet from the portion of the front façade on the first floor of a principal residential building that is furthest setback from the front property line. The existing and proposed is in line with the garage (0.00 feet). Therefore; a variance of 5.00 feet is being requested.

Patrick Mallon, owner, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

The Board had no questions for the appellant.

**Motion by Mr. Reddy**
**Seconded by Mr. Miller with regard to Appeal 21-51, A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width whichever is larger. The required is 22.13 feet. The existing and proposed is 18.50 feet. Therefore; a variance of 3.63 feet is being requested; B. Chapter 126, Article 4.61(A)(2) of the Zoning Ordinance states that a corner lot where there is no abutting interior residential lot on such side street, the minimum side street setback shall be 10.00 feet from the permitted principal building. The existing and proposed is 9.00 feet. Therefore; a variance of 1.00 feet is being requested; C. Chapter 126, Article 4.75(A)(1) of the Zoning Ordinance requires that a private attached, single-family residential garage shall not occupy more than 50% (15.40 feet) of a linear building width of a principal residential building that faces a street. The existing and proposed on the east side occupies 91.56% (28.20 feet). Therefore; a variance of 41.56% (12.80 feet) is being requested; and, D. Chapter 126, Article 4.75(A)(1) of the Zoning Ordinance requires that a private attached, single-family residential garage must be setback a minimum of 5.00 feet from the portion of the front façade on the first floor of a principal residential building that is furthest setback from the front property line. The existing and proposed is in line with the garage (0.00 feet). Therefore; a variance of 5.00 feet is being requested.**

**Mr. Reddy moved to approve the four variances and to tie the approval to the plans as submitted. He noted that the home was existing non-conforming. He stated that denying the variances in this case would render conformity unnecessarily burdensome because the owner is trying to keep the addition within the existing footprint of the home. He also stated that home being on a corner lot in this case made the circumstances somewhat unique.**

**Mr. Miller noted that that there would be no impact on a neighboring property owner because there is no neighbor adjacent to the corner where the proposed addition would be located.**

**Mr. Lillie said he would support the motion since the house is existing non-conforming and the need for the variances was not self-created.**

**Motion carried, 7-0.**

ROLL CALL VOTE
Yeas: Reddy, Miller, Lilley, Morganroth, Lillie, Rodenhouse, Canvasser
Nays: None

## 2) 999 Twin Oaks
## Appeal 21-52

Vice-Chair Canvasser noted he was a very distant relation of one of the appellants. He said he believed there was no basis for recusal but wanted to allow the Board and public the opportunity to comment if they saw fit.

Seeing no comment, Vice-Chair Canvasser invited ABO Zielke to present.

ABO Zielke presented the item, explaining that the owner of the property known as 999 Twin Oaks was requesting the following variance to construct an addition to an existing 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 19.85 feet. The proposed is 15.30 feet. Therefore; a variance of 4.55 feet is being requested.

Paul Canvasser, owner, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to Mr. Morganroth, Mr. Canvasser stated that extending the home back towards the Rouge River had been explored but had been decided against because it would still result in rooms and halls narrower than desired. Mr. Canvasser stated that many potential options for an addition had been reviewed over the years and that the submitted one was the most beneficial to the homeowners.

**Motion by Mr. Miller**
**Seconded by Ms. Rodenhouse with regard to Appeal 21-52, 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 19.85 feet. The proposed is 15.30 feet. Therefore; a variance of 4.55 feet is being requested.**

**Mr. Miller moved to approve the variance and tied it to the plans as submitted. He said the request was reasonable giving the unusual slope and shape of the lot. He said granting the variance would have no adverse impact on the neighbors. Mr. Miller expressed that conformity to the ordinance in this case would be unduly burdensome.**

**Motion carried, 7-0.**

ROLL CALL VOTE
Yeas: Miller, Rodenhouse, Reddy, Lilley, Morganroth, Lillie, Canvasser
Nays: None

### 3) 227 Northlawn
### Appeal 21-54

ABO Zielke presented the item, explaining that the owner of the property known as 227 Northlawn was requesting the following variances to construct a new single-family home with a detached garage and an A/C unit in the side yard:

> **A. Chapter 126, Article 4, Section 4.03(A)** of the Zoning Ordinance requires that no accessory structures shall be located in the required side open space. The minimum required side open space is 5.00 feet. The proposed is 2.00 feet. Therefore a variance of 3.00 feet is being requested.
>
> **B. Chapter 126, Article 4.74(C)** of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width whichever is larger. The required is 14.00 feet. The proposed is 12.50 feet. Therefore; a variance of 1.50 feet is being requested.

Gayle McGregor, attorney, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to Board comment, Ms. McGregor added:

- The appellant did not apply for a variance for a generator and that there were no plans to hardwire for a generator;
- The only matters at hand were the distance between houses and locating the air conditioner in the side yard;
- There is a DTE easement that runs along the rear of the property, behind the garage, which requires that everything be pushed towards Henrietta;
- Because 227 Northlawn is a small corner lot with two front yard setbacks, the only available room for using the outdoor space is between the house and the garage; and,
- The air conditioner will have screening built around it and will not be visible from the street.

In reply to Mr. Lillie, Jeff Klatt, architect, stated that the proposed house was fairly modest in size for a new home and met all the ordinance requirements with the exception of the two modest variances being requested.

Mr. Morganroth explained he was reasonably comfortable with Variance B since the askew positioning of the house makes it hard to meet the requirement and the house would meet the required sideyard setback. He explained he was less persuaded regarding Variance A, stating that the appellant could likely find an ordinance-compliant location for the air conditioner.

Mr. Klatt contended that the air conditioner would be more pleasant for the appellant and their neighbors if located in the proposed location.

Mr. Morganroth explained that reasoning did not rise to the level of a hardship or practical difficulty.

Mr. Reddy stated his house has similar circumstances and that he has located the air conditioner in the rear, as required. He said he was more comfortable with Variance B as well since the neighbor to the south of the appellant is existing non-conforming.

Ms. McGregor reiterated that the two front yard setbacks on this corner lot makes it difficult to place mechanicals.

**Motion by Mr. Lillie**
**Seconded by Mr. Morganroth with regard to Appeal 21-54, B. Chapter 126, Article 4.74(C) of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width whichever is larger. The required is 14.00 feet. The proposed is 12.50 feet. Therefore; a variance of 1.50 feet is being requested.**

**Mr. Lillie moved to grant Variance B and tied it to the plans as submitted. He said the petitioner demonstrated a practical difficulty by complying with the ordinances, and that it was the neighbors' existing non-conforming home that was causing the issue. He noted that if the neighbors' home were not there, the appellant would not need a variance for the minimum distance between principal residential buildings on adjacent lots. Mr. Lillie noted that the need for Variance B was not self-created.**

**Motion carried, 7-0.**

ROLL CALL VOTE
Yeas: Lillie, Morganroth, Miller, Canvasser, Rodenhouse, Reddy, Lilley
Nays: None

**Motion by Mr. Lillie**
**Seconded by Mr. Morganroth with regard to Appeal 21-54, A. Chapter 126, Article 4, Section 4.03(A) of the Zoning Ordinance requires that no accessory structures shall be located in the required side open space. The minimum required side open space is 5.00 feet. The proposed is 2.00 feet. Therefore a variance of 3.00 feet is being requested.**

**Mr. Lillie moved to deny Variance A. He stated that the appellant did not demonstrate that compliance with the ordinance would be unduly burdensome. He stated that Variance A would do no justice to the neighbors by locating the air conditioner in the side open space. He held that the desire for Variance A was self-created since the construction would be brand new and could be designed to comply with the ordinance.**

**Mr. Miller said he would not support the motion due to the unique circumstances of the lot. He stated that air conditioners in the side yard seemed to be common in this section of the neighborhood and so Variance B seemed reasonable. He noted that 227 Northlawn's easement and corner location results in a very small rear yard, meaning that requiring the air conditioner to be in the rear yard is more onerous than appropriate.**

**Vice-Chair Canvasser concurred with Mr. Lillie in regards to self-creation and said he would support the motion.**

**Motion carried, 6-1.**

ROLL CALL VOTE
Yeas: Lillie, Morganroth, Canvasser, Rodenhouse, Reddy, Lilley
Nays: Miller

Mr. Morganroth noted that while pool equipment, a pool, and a generator were shown on the site plans they were not presented or considered as part of Appeal 21-54. He stated for the record that approval of Variance A should not be construed as approval of any of these items.

### 4) 34745 Woodward
### Appeal 21-55

SP Cowan presented the item, explaining that the owner of the property known as 34745 Woodward was requesting either the following appeal or the following variance to renovate the property and update the operations of a car wash use known as Jax Kar Wash (Jax):

> **A. Chapter 126, Article 4, Section 4.54(C)(3)** of the Zoning Ordinance requires a 32 inch capped masonry screen wall to be placed along the front or side of any parking facility that abuts a street, alley, passage, or mixed passage. On October 13th, 2021, the Planning Board approved the applicant's site plan application with the condition that the applicant submit revised plans with sufficient screening that meets Article 4, Section 4.54 of the Zoning Ordinance. The applicant is requesting an appeal of the Planning Board's decision with the condition that the applicant satisfy all screening requirements of Article 4, Section 4.54.

OR

**B. Chapter 126, Article 4, Section 4.54(C)(3)** of the Zoning Ordinance requires a 32 inch capped masonry screen wall be placed along the front or side of any parking facility that abuts a street, alley, passage, or mixed passage. The applicant is proposing a site plan with a parking facility consisting of 47.75 feet of unscreened frontage along Woodward Avenue. Therefore, a dimensional variance of 47.75 feet is being requested.

In reply to Board inquiry, SP Cowan noted that 'parking facility' is not defined in the ordinance. He stated that 'parking' is defined as an area used for the parking of motor vehicles.

In reply to Ms. Rodenhouse, SP Cowan stated that screening is required for a 'parking facility', not just 'parking', per the ordinance in Chapter 126, Article 4, Section 4.54(C)(3).

BO Johnson stated that parking area total is defined as the actual parking area and the area of the access drives, and a parking lot interior is defined as all area within the perimeter of a parking lot which is including planting islands, curb areas, corner lots, parking spaces, and all interior driveways and aisles except those with no parking spaces located on either side.

Vice-Chair Canvasser noted that in cases of Building interpretations or rulings of other boards, the appellant must show that the official or board demonstrated an abuse of discretion, or that the official or board acted in an arbitrary or capricious manner. He noted that standard would apply to Appeal A, and would require four affirmative votes to pass.

Bradley Scobel, attorney, explained why the appellant was seeking either the appeal or the variance. He stated:

- The appellant does not believe that the area in question meets the definition of a 'parking facility' as defined in the ordinance, and that there the Planning Board's requirement of a screen wall on Woodward amounted to an abuse of discretion;
- The appellant is concerned that a screen wall on Woodward would be hit by drivers, would prevent egress of vehicles in an emergency, and would also prevent the operator from effectively plowing snow from the lot;
- Having to install a screen wall on Woodward would be so prohibitive to operations that the appellant would instead withdraw all planned updates;
- If the Board denies Variance A, granting Variance B would still be appropriate because it would increase the safety of the entire site;
- There have been no pedestrian-vehicle safety issues in in the history of Jax's operations resulting from cars turning left onto of Woodward and then left onto Brown to re-enter the Jax lot;
- There have been no pedestrian-vehicle safety issues there because it is not a commonly traversed area by pedestrians and because the vehicle attendants look out for any potential safety issues;
- The planned updates will increase the safety of the site overall;
- The area in question adjacent to Woodward would be more appropriately described as a service aisle or a drive lane, and does not amount to a parking facility as intended by the ordinance because there is no parking on either side;

- The Speedway fuel station across the street has similar conditions in terms vehicles parking for three to four minutes to use an amenity and leaving and does not have a screen wall;
- The current conditions at the Jax site do amount to a parking facility along Woodward, but under the proposed plan the conditions would not; and,
- A drawing was submitted to the City indicating that wall that the appellant is requesting a variance from, and was provided to the Board members, but was not included in the evening's agenda packet.

BO Johnson advised the Board that if Speedway were to be opened today any of the parking areas would likely be subject to the ordinance's screen wall requirements.

In reply to Vice-Chair Canvasser, Mr. Scobel confirmed that in the absence of a definition of terms in the ordinance it would be appropriate to use the dictionary definition of the terms. He stated that he did not find a dictionary definition of 'parking facility' which is used in the ordinance. He stated he did look up a definition of an aisle or lane.

Ms. Rodenhouse explained that since this requires an interpretation of a zoning ordinance it would be most appropriate to conduct a de novo review, looking at the language of the ordinance itself without giving any deference to the Planning Board. Interpretation of an ordinance follows the same procedure as interpreting a statute. The BZA's role is to ascertain the intent of the legislative body, per case law. The first step is to give the words in question their plain meaning. The ordinance does not state precisely what a parking facility is, but does state that screening would only be required for a parking facility. The definition of a 'facility' as provided by Random House-Webster's Unabridged Dictionary, 2nd ed., is 'something designed, built, installed to serve a specific function, affording a convenience or service'. She noted that in this case that convenience or service would be parking, and the area in question would have to have been designed, built and installed to provide parking. She stated that the area in question was designed, built, and installed for vacuuming, not for parking.

Ms. Rodenhouse concluded that there was no ambiguity for the review process to be followed in this instance. She stated that ambiguity only exists if a statute creates irreconcilable conflict with another provision, or is equally susceptible to more than one meaning. She said neither of those two cases apply in this instance since the area in question is not a facility for parking.

Vice-Chair Canvasser replied that the BZA is a Zoning Board, not a Court of Appeals. He stated the Board would be reviewing for an abuse of discretion, not a de novo review of the ordinance.

Ms. Rodenhouse noted that a misinterpretation of the statute on the part of the Planning Board would be an error of law, and an error of law is necessarily an abuse of discretion. She contended that construing any place where one parks as a 'parking facility' would be an error of law, which consequently would be an abuse of discretion.

In reply to Mr. Lillie, Jason Milen, owner and operator of Jax, explained that currently when snow is plowed from the lot it gets pushed into the right of way by Woodward.

Mr. Lillie asked if the Shell fuel station at 33588 Woodward had screen walls for its parking since the business had done updates a few years prior.

Vice-Chair Canvasser said he thought he recalled some amount of wall on 33588 Woodward's lot, but could not recall exactly where it was located.

**Motion by Ms. Rodenhouse**
**Seconded by Mr. Miller with regard to Appeal 21-55, A. Chapter 126, Article 4, Section 4.54(C)(3) of the Zoning Ordinance requires a 32 inch capped masonry screen wall to be placed along the front or side of any parking facility that abuts a street, alley, passage, or mixed passage. On October 13th, 2021, the Planning Board approved the applicant's site plan application with the condition that the applicant submit revised plans with sufficient screening that meets Article 4, Section 4.54 of the Zoning Ordinance. The applicant is requesting an appeal of the Planning Board's decision with the condition that the applicant satisfy all screening requirements of Article 4, Section 4.54.**

**Ms. Rodenhouse moved that the Planning Board erred as a matter of law in their interpretation. She reiterated her previous comments explaining how the Planning Board erred as a matter of law and therefore demonstrated an abuse of discretion. She added that not finding this area to be a 'parking facility' harmonizes with the rest of the ordinance since in Article 10, Section 26.397 building permits are required for a 'parking facility', meaning it is a built structure, and in Article 9, Section 110.137(C) it is indicated that a 'parking facility' is something which could require an attendant.**

**Mr. Lilley concurred with Ms. Rodenhouse.**

**Mr. Reddy stated that since there is no ordinance definition of a 'parking facility' he concurred with Ms. Rodenhouse's explanation.**

**Mr. Lillie said one of the questions was how long one must park in order to define an area as a parking area.**

**Vice-Chair Canvasser said he would not support motion. He said Ms. Rodenhouse's motion was well-articulated and well-reasoned. He said he hoped that the Commission would consider defining and reviewing the use of 'parking facility' in the ordinance as a result of this discussion. He noted that the area in question would be having drivers park their vehicles to use the vacuums. He said that while he may not think the Planning Board's interpretation of this area as a 'parking facility' was the best interpretation available, he felt that the Planning Board had a justifiable basis in doing interpreting it as such. Consequently, he said he believed the BZA could not say that the Planning Board unequivocally demonstrated an abuse of discretion, or that the Planning Board acted in an arbitrary or capricious manner.**

**Mr. Morganroth concurred with Vice-Chair Canvasser. He added that the vehicles are parked in the area in question and that the drivers exit their vehicles. He said he did**

**not see an error that rises to the level of the BZA having to repeal the Planning Board's findings. He said that while a court of law might be able to do so, he did not find an abuse of discretion or arbitrary or capricious actions in the Planning Board's decision.**

**In reply to Mr. Reddy, Vice-Chair Canvasser restated that the appellant must show that the official or board demonstrated an abuse of discretion, or that the official or board acted in an arbitrary or capricious manner.**

**Ms. Rodenhouse said she wanted it absolutely clear on the record that an abuse of discretion happens when an error of the law is made. An error of law is to improperly apply the rules of statutory construction. In this case, the plain definition of 'facility' tells the BZA what the ordinance means. As per the previously-given definition of 'facility', this area was not designed to serve the specific function of parking. Therefore the Planning Board committed an abuse of discretion by reading something into the word 'facility' that is not part of the definition. She said she wanted that reiterated for purposes that go beyond the evening's hearing.**

**Vice-Chair Canvasser noted that the appellant did not provide a definition of 'facility', and stated that it was not the Board's job to make the argument for the appellant.**

**Mr. Morganroth said the definition of 'parking' as provided in the Oxford English Dictionary is 'bringing a vehicle one is driving to a halt to leave it temporarily, typically in a parking lot or by the side of the road'. He said that the definition leaves the Planning Board's conclusion ambiguous enough that the BZA cannot find that the Planning Board demonstrated an abuse of discretion or acted in an arbitrary or capricious manner.**

**Mr. Lillie noted that the area in question is being designed for vehicles to be turned off and exited.**

**Motion failed, 3-4.**

ROLL CALL VOTE
Yeas: Rodenhouse, Miller, Lilley
Nays: Morganroth, Reddy, Canvasser, Lillie

Vice-Chair Canvasser invited Mr. Scobel to explain the rationale behind requesting Variance B.

Mr. Scobel noted that there is screen wall and landscaping planned for the corner of Brown and Woodward which would sufficiently block any view of the area in question from the perspective of a vehicle heading south on Woodward at 50 miles per hour. He said vehicles are most likely to be stationary on Brown while waiting for the traffic light to turn onto Woodward, which is why Jax agreed to put a screen wall on Brown.

He continued that Jax cannot operate with the screen wall on Woodward, and therefore would not be able to complete the project. Since the project would increase the safety of the site, requiring the screen wall on Woodward would result in the site's safety remaining as-is.

Mr. Scobel concluded by saying that granting the variance, and therefore allowing the updates to proceed, would do substantial justice to the property owner, neighbors and wider community.

Mr. Morganroth asked if the appellant had considered an approximately 18 foot iron gate that would bridge the corner of the Brown Street wall and the portion that touches the wall of Jax that could be opened for snow clearing or emergency egress. He noted that would require a variance for materials but not for a complete absence of a wall.

Mr. Scobel said it had not been discussed. He noted that while the Planning Board required that the area adjacent to Woodward be screened, they did not require that the south side of the building, where there is a parking area, be screened. He said the Planning Board was inconsistent in their application of the ordinance and whether they had the authority to change them.

Vice-Chair Canvasser said that if the present variance under consideration was denied, that the appellant could return with a mitigated variance request if they saw fit. He said the conversation should not veer into possible ways of mitigating the variance at this point.

In reply to Vice-Chair Canvasser, Mr. Scobel said the need for the variance was not self-created since the owner did not create the shape of the building or the way it was situated on the lot. He noted that the requirements for operation have also changed since the business opened about seventy years ago, which is not self-created. He said the only way to modernize the site is to be granted the variance.

Mr. Miller asked why the 47.75 foot variance request could not be reduced.

Mr. Scobel reiterated his contention that any reduction in the variance request would prevent egress of vehicles in an emergency and would also prevent the operator from effectively plowing snow from the lot.

Mr. Miller said he was not fully persuaded that snow removal would require the full 47.75 foot variance. He said he understood the other concern.

In reply to Mr. Lillie, Mr. Scobel noted that the appellant submitted a study from a safety engineer that confirmed the plans would not require a screen wall in order to avoid confusing southbound traffic on Woodward with the headlights of vehicles on the Jax lot.

Mr. Reddy said that without some fencing in the space along Woodward he did not see how Jax could direct vehicles into the appropriate lanes.

It was noted that any change like that would have to return to the Planning Board for review.

Mr. Scobel said the appellant did not want to return to the Planning Board for review.

**Motion by Mr. Reddy**
**Seconded by Mr. Miller with regard to Appeal 21-55, B. Chapter 126, Article 4, Section 4.54(C)(3) of the Zoning Ordinance requires a 32 inch capped masonry screen wall be placed along the front or side of any parking facility that abuts a street, alley, passage, or mixed passage. The applicant is proposing a site plan with a parking facility consisting of 47.75 feet of unscreened frontage along Woodward Avenue. Therefore, a dimensional variance of 47.75 feet is being requested.**

**Mr. Reddy moved to deny Variance B. He stated that strict compliance with the ordinance would not unreasonably prevent the appellant from using his property, that compliance with the ordinance was not unnecessarily burdensome, and that the need for the variance was self-created since the owner could mitigate the request by adding a fence and still operate the property as intended.**

**Mr. Miller supported the motion, saying that the length of the variance request was likely double what it needs to be. He said he had no quarrel with the appellant's concern, but rather with the extent of the request.**

**Mr. Morganroth said he would like to see a compromise that results in some amount or kind of wall along Woodward but also allows the appellant to undertake the planned updates to the business. He said he understood how the updates would be beneficial to both the safety and operations of the business.**

**Mr. Lillie concurred with Messrs. Miller and Morganroth.**

**Ms. Rodenhouse said she would not support the motion because she did not believe a screen wall along Woodward was required by the plain language of the ordinance. She said she believed the City has given this business the run-around and created an unreasonable restraint on the property. She noted the process has taken two years to get to this point. She noted that now the appellant will have to either appeal or reformulate their plans.**

**Motion carried, 5-2.**

ROLL CALL VOTE
Yeas: Reddy, Miller, Morganroth, Canvasser, Lillie
Nays: Rodenhouse, Lilley

**T# 12-69-21**

## 6. Correspondence

All correspondence was included in the agenda packet.

**T# 12-70-21**

## 7. General Business

BO Johnson reminded the Board that this was the last month that Board members would be able to participate via Zoom. Starting in January 2022, appellants, Staff and the public could participate via Zoom but Board members must appear in person.

**T# 12-71-21**

## 8. Open To The Public For Matters Not On The Agenda

None.

**T# 12-72-21**

## 8. Adjournment

**Motion by Mr. Lillie**
**Seconded by Vice-Chair Canvasser to adjourn the December 14, 2021 BZA meeting at 10:15 p.m.**

**Motion carried, 7-0.**

ROLL CALL VOTE
Yeas: Lillie, Canvasser, Rodenhouse, Reddy, Lilley, Morganroth, Miller
Nays: None

Bruce R. Johnson, Building Official