

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, March 12, 2024
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, March 12, 2024. The meeting was convened at 7:30 p.m.

2. Rollcall

Present: Chair Erik Morganroth, Vice Chair Jason Canvasser; Board Members Kevin Hart, John Miller, Ron Reddy, Pierre Yaldo; Alternate Board Member Carl Kona

Absent: Board Member Richard Lilley

Staff: Building Official Johnson; City Transcriptionist Eichenhorn, Assistant Building Official Morad, Assistant Building Official Zielke

Chair Morganroth welcomed those present and reviewed the meeting's procedures. 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.

Chair Morganroth took rollcall of the petitioners. All petitioners were in attendance.

3. Announcements

Announcements may be found in the evening's agenda packet.

4. Approval Of The Minutes Of The BZA Meetings Of February 13, 2024

T# 03-10-24

Motion by Mr. Canvasser

Seconded by Mr. Reddy to approve the minutes of the BZA meeting of February 13, 2024 as submitted.

Motion carried, 6-0.

VOICE VOTE

Yeas: Reddy, Miller, Yaldo, Kona, Morganroth, Canvasser, Hart

Nays: None

5. Appeals

T# 03-11-24

1) 508 W Lincoln Appeal 24-02

ABO Zielke presented the item, explaining that the owner of the property known as 508 W Lincoln was requesting the following variance to construct a swimming pool:

A. Chapter 126, Article 4, Section 4.03(D) of the Zoning Ordinance requires that a swimming pool shall not be closer than 10.00 feet to the principal building located on the same lot. The proposed pool is 6.93 feet away from principal house. Therefore, a variance of 3.07 feet is being requested.

Staff answered informational questions from the Board.

Richard Scheck, owner, reviewed the letter describing why this variance was being sought and answered informational questions from the Board. The letter was included in the evening's agenda packet.

Public Comment

David Bloom made a comment regarding swimming pools and lot coverage.

In reply to Mr. Bloom's comment, it was noted that lot coverage was not part of the present variance request.

Motion by Mr. Miller

Seconded by Mr. Kona with regard to Appeal 24-02, A. Chapter 126, Article 4, Section 4.03(D) of the Zoning Ordinance requires that a swimming pool shall not be closer than 10.00 feet to the principal building located on the same lot. The proposed pool is 6.93 feet away from principal house. Therefore, a variance of 3.07 feet is being requested.

Mr. Miller moved to approve the variance and tied approval to the plans, stating that granting the variance would result in substantial justice to the property owner in this case, that the utilities in the yard presented a hardship, and that approval would not be contrary to the spirit of the zoning ordinance or any public health, safety, or welfare issue. He continued that the specific circumstances of the site made strict application of the ordinance unreasonable and would prevent the property owner from using the property for a permitted purpose. He said the 10 foot width of the pool was reasonable, and its proposed location next to the garage reduced a concern about the pool being too close to the house.

Mr. Hart concurred with Mr. Miller. He added that under normal circumstances, the proposed pool could be located closer to 508 W Lincoln's northern neighbor. Granting this variance, consequently, would locate the pool at a further distance from the northern neighbor, and would result in substantial justice for said neighbor as well.

Motion carried, 5-2.

ROLL CALL VOTE

Yeas: Miller, Yaldo, Kona, Canvasser, Hart

Nays: Morganroth, Reddy

T# 03-12-24

**2) 705 Davis
Appeal 24-03**

ABO Zielke presented the item, explaining that the owner of the property known as 705 Davis was requesting the following variances to construct additions to the front and rear of the existing non-conforming home:

A. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that the minimum total combined setbacks be 14 feet or 25% of the lot width, whichever is greater. The required is 14.00 feet. The proposed is 13.47 feet. Therefore, a variance of 0.53 feet is being requested.

B. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that no side yard shall be less than 5.00 feet. The existing and proposed is 4.47 feet. Therefore, a variance of 0.53 feet is being requested.

C. Chapter 126, Article 4, Section 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 total lot width, whichever is larger. The required is 14.00 feet on the west side. The existing and proposed is 13.83 feet. Therefore, a variance of 0.17 feet is being requested.

Staff answered informational questions from the Board.

Brian Neeper, architect, 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. Canvasser with regard to Appeal 24-03, A. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that the minimum total combined setbacks be 14 feet or 25% of the lot width, whichever is greater. The required is 14.00 feet. The proposed is 13.47 feet. Therefore, a variance of 0.53 feet is being requested; B. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that no side yard shall be less than 5.00 feet. The existing and proposed is 4.47 feet. Therefore, a variance of 0.53 feet is being requested; C. Chapter 126, Article 4, Section 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 total lot width, whichever is larger. The required is 14.00 feet on the west side. The existing and proposed is 13.83 feet. Therefore, a variance of 0.17 feet is being requested.

Mr. Reddy moved to approve the variances and tied approval to the plans. He noted that this was a pre-existing non-conforming home which neighbors two pre-existing non-conforming homes. He stated it would be nearly impossible for the appellant to mitigate the non-conformities and still be able to create an addition.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Reddy, Miller, Yaldo, Kona, Morganroth, Canvasser, Hart

Nays: None

T# 03-13-24

**3) 1982 Haynes
Appeal 24-04**

ABO Zielke presented the item, explaining that the owner of the property known as 1982 Haynes was requesting the following variance to construct a new home with a detached garage:

A. Chapter 126, Article 4, Section 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 total lot width, whichever is larger. The required is 14.00 feet on the west side. The proposed is 12.00 feet. Therefore, a variance of 2.00 feet is being requested.

Staff answered informational questions from the Board.

Armando Ybarra, builder, reviewed the letter describing why this variance was being sought and answered informational questions from the Board. The letter was included in the evening's agenda packet.

Motion by Mr. Kona

Seconded by Mr. Reddy with regard to Appeal 24-04, A. Chapter 126, Article 4, Section 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 total lot width, whichever is larger. The required is 14.00 feet on the west side. The proposed is 12.00 feet. Therefore, a variance of 2.00 feet is being requested.

Mr. Kona moved to approve the variance and tied approval to the plans, noting that the non-conformities in the neighboring lot was creating a hardship for the owner of 1982 Haynes. He said this variance would improve the situation between the two properties, would result in substantial justice for both property owners, and would not be contrary to the spirit of the ordinance.

The Chair noted that the proposed home could be two feet wider, and that the appellant was choosing not to build to the maximum allowable width in order to minimize the variance.

Motion carried, 7-0.

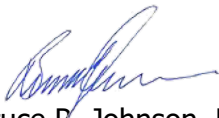
ROLL CALL VOTE

Yeas: Reddy, Miller, Yaldo, Kona, Morganroth, Canvasser, Hart

Nays: None

- 6. Correspondence**
- 7. General Business**
- 8. Open To The Public For Matters Not On The Agenda**
- 9. Adjournment**

No further business being evident, the Board motioned to adjourn at 8:16 p.m.



Bruce R. Johnson, Building Official



Laura Eichenhorn, City Transcriptionist