

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, July 9, 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, July 9, 2024. The meeting was convened at 7:30 p.m.

2. Rollcall

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

Absent: Board Member Pierre Yaldo

Staff: City Planner Blizinski (left at 8:05 p.m.), City Transcriptionist Eichenhorn, Assistant Building Official Morad, Assistant Building Official Zielke

The Chair 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.

The Chair 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 May 14, 2024

T# 07-19-24

Motion by VC Canvasser

Seconded by Mr. Lilley to approve the minutes of the BZA meeting of May 14, 2024 as submitted.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

5. Appeals

T# 07-20-24

1) 200 S Chester Appeal 24-06

CP Blizinski presented the item, explaining that the owner of the property known as 200 S Chester was requesting the following variances to install a ground sign on the corner of Martin Street and Chester Street:

- A. Article 1, Section 1.08(D), Table D** of the Sign Ordinance requires that Multiple-Family Residential Signs have a maximum area of 10 square feet. The applicant is proposing four signs totaling 32.7 square feet of signage. Therefore, a variance of 22.7 square feet is being requested.

Staff answered informational questions from the Board.

Ron Gari, representative for the applicant, 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.

Board member comments were as follows:

- The requested variance was significant.
- While an excess of signage had previously been granted, there was no apparent practical difficulty necessitating that the previous amount of signage be maintained.
- The applicant could choose to reduce their request, or could ask the Board to vote on the request. If the Board were to vote on the request, the applicant could not request another variance unless there was a significant change to the proposal.

In response to Board comment, Mr. Gari said the applicant would be willing to seek a variance for the ground sign and to withdraw the request for the portico sign.

Motion by Mr. Reddy

Seconded by Mr. Lilley with regard to Appeal 24-06, A. Article 1, Section 1.08(D), Table D of the Sign Ordinance requires that Multiple-Family Residential Signs have a maximum area of 10 square feet. The applicant is proposing signs totaling 19.5 square feet of signage. Therefore, a variance of 9.5 square feet is being requested.

Mr. Reddy moved to approve only the two inserts for the ground sign as described by the appellant. No additional signage was granted. He stated that there were circumstances peculiar to the property, including the erroneous granting of the original signage in 2017. He said the replacement of the inserts would have little impact on the pre-existing non-conformity.

Mr. Miller supported the motion, and added that the originally requested signage was rather minimal when the size of the building was taken into account. He said that granting the variance would do substantial justice to the property owner and to the neighboring properties. He opined that having the illuminated ground sign would be beneficial to the neighborhood.

VC Canvasser said he may not have supported the original variance request, and said that he appreciated the applicant's reduction of the request. He offered support for the motion.

The Chair concurred with the Vice Chair. He noted that the Board's obligation is to hew as closely to the ordinance as possible, and that granting the original, more significant request would not have been fair to other business owners in the City.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 07-21-24

**2) 1556 Emmons
Appeal 24-10**

ABO Zielke presented the item, explaining that the owner of the property known as 1556 Emmons was requesting the following variances to construct a second floor rear addition to the existing nonconforming home:

- A. 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 3.61 feet. Therefore, a variance of 1.39 feet is being requested.
- B. 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 11.10 feet. Therefore, a variance of 2.90 feet is being requested.

Staff answered informational questions from the Board.

Brian Lee, builder, reviewed the letter describing why these variances were being sought and answered informational questions from the Board. The letter was included in the evening's agenda packet.

Motion by Mr. Hart

Seconded by Mr. Miller with regard to A. Appeal 24-10, 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 3.61 feet. Therefore, a variance of 1.39 feet is being requested, and B. 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 11.10 feet. Therefore, a variance of 2.90 feet is being requested.

Mr. Hart moved to approve the variances and tied approval to the plans as submitted. He said the project was a sensible approach to a pre-existing non-conforming structure. He said the addition would be appropriately scaled to the home. He noted that this site and some other sites on Emmon were non-conforming in terms of distance between structures and the distance to the property lines. He said it would be an unnecessary hardship to force the appellant to shift the structure in order to comply with the ordinance, and said the need for the variance was not self-created.

Mr. Miller concurred, noting that the pre-existing non-conforming structure was built in 1947. He said allowing this improvement to the home would result in substantial justice to the property owner and to the neighboring properties.

The Chair supported the motion. He noted that while the Board avoids expanding a non-conformity where possible, the applicant demonstrated that all other possible approaches had been considered.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 07-22-24

**3) 1001 Fairfax
Appeal 24-13**

ABO Zielke presented the item, explaining that the owner of the property known as 1001 Fairfax was requesting the following variances to construct a rear addition to the existing non-conforming home:

- A. Chapter 126, Article 2, Section 2.06.2** 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 26.29 feet. The proposed is 23.80 feet. Therefore, a variance of 2.49 feet is being requested.
- B. 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 26.29 feet on the north side. The proposed is 23.29 feet. Therefore, a variance of 3.00 feet is being requested.

Staff answered informational questions from the Board.

Brian Neeper, architect, reviewed the letter describing why these variances were being sought and answered informational questions from the Board. The letter was included in the evening's agenda packet.

Motion by Mr. Miller

Seconded by Mr. Lilley with regard to Appeal 24-13, A. Chapter 126, Article 2, Section 2.06.2 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 26.29 feet. The proposed is 23.80 feet. Therefore, a variance of 2.49 feet is being requested, and B. 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 26.29 feet on the north side. The proposed is 23.29 feet. Therefore, a variance of 3.00 feet is being requested.

Mr. Miller moved to approve the variances and tied approval to the plans as submitted. He said this appeal was due to a small pre-existing non-conformity on a home that was built in 1936. He said this would be an improvement to an older home, and that it would result in substantial justice to the property owner and to the property owners in the area. He said that the literal enforcement of the ordinance would be an unnecessary hardship for updating this older home. He said granting the variances would not be contrary to the spirit of the zoning ordinance, that the age of the home was a unique condition, and that strictly applying the zoning ordinance would prevent the owner from using and improving the property in a reasonable way.

Mr. Miller concurred with the Chair's addition that the shape of the lot, and how the side yard would be impacted by the non-symmetrical side of the lot, were also unusual circumstances that bolstered the appellant's request.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

6. Correspondence

All correspondence was provided to the Board and the relevant applicants.

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 8:41 p.m.



Bruce R. Johnson, Building Official

Laura Eichenhorn, City Transcriptionist

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