

**Birmingham Board Of Zoning Appeals Proceedings**  
**Tuesday, August 13, 2024**  
**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, August 13, 2024. The meeting was convened at 6:45 p.m.

**2. Rollcall**

**Present:** Chair Erik Morganroth; Board Members Kevin Hart, Richard Lilley, John Miller, Pierre Yaldo; Alternate Board Member Carl Kona

**Absent:** Vice Chair Jason Canvasser; Board Member Ron Reddy; Alternate Board Member Donald Rogers

**Staff:** Building Official Johnson; City Transcriptionist Eichenhorn, City Attorney Marku (left 8:51 p.m.), 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**

CA Marku made a presentation to the Board and answered informational questions.

**4. Approval Of The Minutes Of The BZA Meetings Of July 9, 2024**

**T# 08-23-24**

**Motion by Mr. Lilley**

**Seconded by Mr. Kona to approve the minutes of the BZA meeting of July 9, 2024 as submitted.**

**Motion carried, 6-0.**

VOICE VOTE

Yeas: Yaldo, Morganroth, Miller, Hart, Kona, Lilley

Nays: None

**5. Appeals**

**T# 08-24-24**

**1) 611 Ruffner  
Appeal 24-14**

ABO Zielke presented the item, explaining that the owner of the property known as 611 Ruffner was requesting the following variance to construct a new home with an attached 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 east side. The proposed is 9.86 feet. Therefore, a variance of 4.14 feet is being requested.

Staff answered informational questions from the Board.

Moses Fram, appellant, 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 house met all of the setback requirements. The non-conforming adjacent property was causing the need for a variance.
- Even if the variance were not granted, only six inches could be removed from the house width-wise.
- The unique circumstances of this lot included a non-conforming neighbor, and being required to build a house narrower than 25 feet would be a harsh application of the ordinance.
- Granting this variance would result in this house and the house to the east being closer to ten feet than the required 14 feet. This house could be built closer to the 25 foot minimum width, instead of being built to 25.5 feet, to increase the space between the homes.
- Even if the width of the home were reduced, a variance would still be required.
- Granting this variance would do substantial justice to the appellant and to the community.
- It would be an unnecessary hardship to reduce the home beyond the existing setbacks. Granting the variance because they fall within the lot requirements would do substantial justice.
- The Board is tasked with weighing which option would do substantial justice to the neighborhood.
- Granting the variance would not rise to the level of causing substantial interference, lack of access for the neighbors, or the lack of the ability to enjoy their properties. Allowing the variance to go forward would benefit the neighborhood in terms of creating high-quality aesthetic development.

Public Comment

Sara Ghassan commented regarding the request. The Chair replied to Ms. Ghassan.

**Motion by Mr. Yaldo**

**Seconded by Mr. Lilley with regard to Appeal 24-14, 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 east side. The proposed is 9.86 feet. Therefore, a variance of 4.14 feet is being requested.**

**Mr. Yaldo moved to approve the variance requested and tied it to the plans as submitted. Because there were special conditions applicable to the property, building without the variance would be impractical and unreasonably difficult. Literal enforcement of the ordinance would result in an unnecessary hardship. Granting the variance would do substantial justice to the owner, the neighboring property owners, and the general public.**

**Motion carried, 6-0.**

ROLL CALL VOTE

Yeas: Yaldo, Morganroth, Miller, Hart, Kona, Lilley

Nays: None

**T# 08-25-24**

**2) 160 Baldwin  
Appeal 24-09**

ABO Zielke presented the item, explaining that the owner of the property known as 160 Baldwin was requesting the following variance to construct a new home with an attached garage:

- A. Chapter 126, Article 2, Section 2.08.2** 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 53.54 feet. The proposed is 25.00 feet. Therefore, a 28.54 feet variance is being requested.

Staff answered informational questions from the Board.

Alex Bogaerts, architect, 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:

- After removing the outlying homes from the front yard setback calculation, the setback for this home would be 25.7 feet based on the average. While there are unique circumstances on this property, the request was more than necessary.

- A site plan showing all of the houses to Maple would have been helpful. It would have aided the Board in determining how this proposal would affect the cadence of houses on the street.
- Several houses to the north of this home have front yard setbacks that are less than 25 feet.
- Clearer depictions of the building envelope would have been helpful. It also would have been helpful to have information on how the appellant attempted to mitigate the requested variance.
- There may not be a hardship for the proposed size and location of the house. Clear information has not been provided proving that a smaller home with a lesser variance could not be appropriately built.
- There may be a hardship for encroaching into the front yard setback, but it would be a matter of degree.
- The Board has not generally, historically found that the lack of a basement would merit encroachment into the front yard setback.

Given the Board's interest in further information, the appellant asked for the item to be postponed to the September 2024 meeting.

**Motion by Mr. Yaldo**

**Seconded by Mr. Kona with respect to the instant appeal, to postpone the appeal to the next regularly scheduled meeting on September 10, 2024.**

**The Chair stated that the next presentation should include the building envelope based on the current setback and the flood plain, what would be buildable in that area, and a demonstration of what a ten foot variance would look like in contrast with the present request.**

**Motion carried, 6-0.**

**ROLL CALL VOTE**

Yeas: Yaldo, Morganroth, Miller, Hart, Kona, Lilley

Nays: None

**T# 08-26-24**

**3) 1759 Holland  
Appeal 24-17**

ABO Zielke presented the item, explaining that the owner of the property known as 1759 Holland was requesting the following variance to construct a new home with a detached garage:

- A. Chapter 126, Article 2, Section 2.10.4** of the Zoning Ordinance requires that the height to the mid-point of the building with a lot of 4500.00 SF or less is 24.00 feet. The proposed is 25.58 feet. Therefore, a 1.58 foot variance is being requested.

Staff answered informational questions from the Board.

Alex Adler, designer, 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:

- It seemed like the appellant could either largely mitigate or eliminate the need for the variance.
- Adjustments to the ceiling heights, height off grade, and substructure heights could all be adjusted to reduce or eliminate the need for a variance.

**Motion by Mr. Hart**

**Seconded by Mr. Lilley with respect to Appeal 24-17, A. Chapter 126, Article 2, Section 2.10.4 of the Zoning Ordinance requires that the height to the mid-point of the building with a lot of 4500.00 SF or less is 24.00 feet.**

**Mr. Hart moved to approve the variance request and tied approval to the plans as submitted. He said the proposal met the spirit of the ordinance and that difficult circumstances on the property necessitated the variance. The dimensions were not outsized for the context and would be in keeping with the cadence of the neighborhood. Granting the variance would do substantial justice to the appellant and to the neighboring properties. Strict compliance with the ordinance would result in a hardship. Mitigating the variance would result in the loss of attic space.**

**Mr. Miller said the first floor height could be reduced to eight feet, which would mitigate the variance request by one foot. He said he could not support the present motion, but could support a modified variance incorporating that change.**

**Mr. Kona said he could not support the motion. The proposed variance would create the only home on the street with a third floor. He noted that the request could be mitigated or eliminated. He said permitting an unusually tall home would not do substantial justice to the neighbors. He noted that smaller eye joists were available and could help reduce the height, and that the floor plan could be modified as well.**

**Mr. Yaldo said that while the design was beautiful, he could not support the motion. He noted that the appellant acknowledged that many aspects of the home could be modified to at least reduce the variance request. He noted that he was also concerned about how an approval of this variance might create a precedent.**

**The Chair concurred with Messrs. Miller, Kona, and Yaldo.**

**Motion failed, 2-4.**

ROLL CALL VOTE

Yeas: Hart, Lilley

Nays: Yaldo, Morganroth, Miller, Kona

**T# 08-27-24**

**Motion by Mr. Yaldo**

**Seconded by Mr. Kona with respect to Appeal 24-17, A. Chapter 126, Article 2, Section 2.10.4 of the Zoning Ordinance requires that the height to the mid-point of the building with a lot of 4500.00 SF or less is 24.00 feet.**

**Mr. Yaldo moved to deny the variance request and urged the appellant to submit a revised plan. He said that the variance request could at least be mitigated. He noted that the appellant acknowledged that a reduced variance request could be made without unnecessarily burdening the appellant.**

**The Chair said he did not see evidence that there were any circumstances that would justify such a significant variance. He said there was not an unnecessary hardship since the plan included tall ceilings, and un- or under-utilized spaces on the second floor that could accommodate a fourth bedroom. Allowing for a home taller than the neighboring properties without a substantial hardship would not do substantial justice to the neighbors. Consequently, the Chair offered his support for the motion.**

**Motion carried, 6-0.**

ROLL CALL VOTE

Yeas: Hart, Lilley, Yaldo, Morganroth, Miller, Kona

Nays: None

**T# 08-28-24**

**4) 1141 Lake Park  
Appeal 24-18**

ABO Zielke presented the item, explaining that the owner of the property known as 1141 Lake Park was requesting the following variances to construct a second floor addition to the existing home:

- A. Chapter 126, Article 2, Section 2.06.2** 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 45.80 feet. The proposed is 43.80 feet. Therefore, a 2.00 feet variance 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 20.00 feet on the north side. The proposed is 19.60 feet. Therefore, a variance of 0.40 feet is being requested.

Staff answered informational questions from the Board.

Jeff Klatt, 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.

Board member comments were as follows:

- The garage size would increase the present non-conformity. Increasing a non-conformity is usually a challenge for the Board.

**Motion by Mr. Miller**

**Seconded by Mr. Kona with respect to Appeal 24-18, A. Chapter 126, Article 2, Section 2.06.2 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 45.80 feet. The proposed is 43.80 feet. Therefore, a 2.00 feet variance 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 20.00 feet on the north side. The proposed is 19.60 feet. Therefore, a variance of 0.40 feet is being requested.**

**Mr. Miller moved to approve the variance request and tied approval to the plans as submitted. He said that because of special conditions applicable to the property in question, strict application of the ordinance would be unreasonable due to the existing position of the home. Literal enforcement of the chapter would result in an unnecessary hardship. The proposed improvements were reasonable, and improving an older home would do substantial justice to the home and the neighborhood. He said that granting the variance would not be contrary to the spirit or purpose of the ordinance, or contrary to public health, safety, or welfare. He noted that the non-conformity would remain nearly the same. He said the addition was reasonable and well thought out.**

**Mr. Hart and the Chair said the quality of the presentation was one of the best the Board had seen in a long time. Mr. Hart said he would support the motion and that the presentation addressed the Board's concerns.**

**The Chair recommended staff use this presentation to show future appellants what information should be included in an appeal.**

**The Chair said that the skewed nature of the lot made the property unique, and that while he preferred to not expand the non-conformity the request was small enough that granting it would do substantial justice to the appellant. Final construction drawings should align with either this variance or less than this variance. He said he would support the motion.**

**Motion failed, 6-0.**

**ROLL CALL VOTE**

**Yeas: Hart, Lilley, Yaldo, Morganroth, Miller, Kona**

**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 9:34 p.m.

A handwritten signature in blue ink, appearing to read 'Bruce R. Johnson'.

Bruce R. Johnson, Building Official

A handwritten signature in black ink, appearing to read 'Laura Eichenhorn'.

Laura Eichenhorn, City Transcriptionist