

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, September 10, 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, September 10, 2024. The meeting was convened at 7:30 p.m.

2. Rollcall

Present: Chair Erik Morganroth, Vice Chair Jason Canvasser; Board Members Richard Lilley, John Miller, Board Member Ron Reddy, Pierre Yaldo; Alternate Board Members Carl Kona, Donald Rogers (not voting)

Absent: Board Member Kevin Hart

Staff: Building Official Johnson; City Transcriptionist Eichenhorn, City Attorney Marku (left 8:29 p.m.), Assistant Building Official Zielke

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

3. Announcements

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 Board welcomed new alternate Board member Donald Rogers.

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

T# 09-29-24

Motion by Lilley

Seconded by Kona to approve the minutes of the BZA meeting of August 13, 2024 as amended.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

5. Appeals

T# 09-30-24

**1) 1115 Chapin
Appeal 24-19**

BO Johnson introduced the item. CA Marku presented the item, explaining that the Board should conduct a rehearing of the appellant's variance request, originally heard on October 10, 2023, and that the BZA should state its findings as to each factor set forth in Chapter 126, Section 8.01F.3.a and should connect those findings to the record before it.

Staff answered informational questions from the Board.

Daniel Christ, attorney for the appellant, described why this variance was being sought and answered informational questions from the Board.

Board members raised the following points during discussion:

- The request exceeded a standard two vehicle garage.
- If the appellant wants at least one of their vehicles to be a sports utility vehicle, it would be unlikely to fit in the garage as-proposed because of the staircase.
- While Mr. Christ noted some other properties in Birmingham that exceed 30% lot coverage, Board members said they were not provided with enough information to know whether those were fully appropriate comparisons to 1115 Chapin.
- It was not clear what hardship necessitated a larger-than-standard two-car garage on this property.
- Board members might be willing to consider the minimum variance necessary to achieve a two-car garage on the property.

Motion by Miller

Seconded by Kona with regard to Appeal 24-19, A. Chapter 126, Article 2, Section 2.10.1 of the Zoning Ordinance limits the lot coverage to a maximum of 30% of the lot. The required 30% is 1440.00 SF. The proposed is 32.95% (1581.90 SF). Therefore, a variance of 2.95% (141.90 SF) is being requested.

Mr. Miller moved to deny the appeal because the provisions of the zoning ordinance, if strictly applied to the property in question, would not unreasonably prevent the property owner from using the property for a permitted purpose. He noted that a garage that accommodates two vehicles and complies with the zoning ordinance could be built on the property. He continued that literal enforcement would not result in an unnecessary hardship because the site was not unique and would accommodate a two vehicle garage. Granting of the variance would be contrary to the spirit and intent of the ordinance, and would be contrary to public health, safety, and welfare because it would reduce the site's water percolation and the neighborhood's intended

density. He concluded that granting the variance would not do substantial justice to the property owners, the neighboring property owners, or the general public because it would compromise the scale, uniformity, and building massing dictated by the ordinance.

VC Canvasser concurred, and specified that the site lacked any topography, water table, tree, or other issues that could be described as special conditions unique to the site. He noted that while the Board was asked to compare 1115 Chapin to some nearby properties, the record was devoid of information indicating whether those properties received variances or whether they were compliant at the time they were built. The lack of that information meant the Board could not determine whether those other properties should influence the consideration of this request. Many homes in Birmingham have garages that cannot fit all of the household's vehicles, and many homes in Birmingham have to park some of their vehicles on the street.

Mr. Kona reiterated that if the request was for a two vehicle garage, one could be built on the property without a variance.

Mr. Yaldo said that while there are some circumstances where the size of a lot might influence the granting of a variance, in this case the design of the garage itself was causing the issue on this particular lot.

The Chair concurred with the motion, and noted that the desire for a structure too large for the lot was not a hardship.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 09-31-24

**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.

Alexander Bogaerts, architect for the 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 members raised the following points during discussion:

- This presentation included the information Board members sought at the prior meeting.
- The habitable space was not excessive. Some of the rooms could be a bit smaller, but given the constraints on the site, the proposed changes were well-done and appropriate.
- The home complied with the allowable setback and the distance between primary structures.
- The appellant's team reduced the width of the home out of respect for the neighbor to the north's concerns, which increased the need for the variance in the front yard.

Public Comment

Kim Cramer, neighbor to the north, commented that she did not receive notice of this hearing and summarized her concerns as detailed in her correspondence to the Board.

Motion by Miller

Seconded by Canvasser with regard to Appeal 24-09, 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.

Mr. Miller moved to approve the requested variance and tied approval to the plans as submitted. He noted that the unique site geometry and the floodway made the variance request reasonable. Strict compliance with the ordinance would result in unnecessary hardship, and granting the variance was not contrary to the spirit or intent of the ordinance. He said granting the variance would allow the floodway to become cleared and fully functional, which would benefit this lot and the adjacent homes. The proposed home would also align with all the adjacent homes to the north, and the side setback to the north was beyond the minimum requirement. Granting this variance would result in substantial justice to the property owner, the neighbors, and the community.

Mr. Kona concurred, and added that the average frontage on the street was skewed by unusual circumstances with two other homes on the street.

The Chair concurred and noted that the plans complied with the average setback on the street excluding the outliers.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

The Chair recommended this presentation from the appellants be used as a model for guiding future appellant submissions.

T# 09-32-24

**3) 999 Twin Oaks
Appeal 24-18**

ABO Zielke presented the item, explaining that the owner of the property known as 160 Baldwin was requesting the following variance to replace the existing driveway:

- A. Chapter 126, Article 4.31(A)** of the Zoning Ordinance requires that a minimum of 65% (1356.00) of the front open space in all single-family districts shall be free of paved surfaces. The proposed is 42.40% (884.00 SF). Therefore a variance of 22.60% (472.00 SF) is being requested.

Staff answered informational questions from the Board.

Matt Mohser, representative for the 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.

Motion by Reddy

Seconded by Miller with regard to Appeal 24-18, A. Chapter 126, Article 4.31(A) of the Zoning Ordinance requires that a minimum of 65% (1356.00) of the front open space in all single-family districts shall be free of paved surfaces. The proposed is 42.40% (884.00 SF). Therefore a variance of 22.60% (472.00 SF) is being requested.

Mr. Reddy moved to approve the requested variance and tied approval to the plans as submitted. He said there were enough practical difficulties and unique circumstances to make granting the variance appropriate. He noted the shape of the lot and the possibilities for locating the driveway were unusual. He said that efforts were made to minimize the variance request, and that literal enforcement would result in unnecessary hardship. The variance would not contradict the spirit or intent of the ordinance, and granting the variance would result in substantial justice to the property owner.

Mr. Miller concurred, and emphasized the lot's unusual circumstances.

The Chair said he did not support increasing the non-conformity since some of the hardscape could be replaced with landscaping without increasing the hardship for the appellant. He said a design that did not expand the non-conformity was possible.

Motion carried, 5-2.

ROLL CALL VOTE

Yeas: Reddy, Yaldo, Miller, Canvasser, Lilley

Nays: Kona, Morganroth

T# 09-33-24

4) 1587 S. Bates

Appeal 24-20

ABO Zielke presented the item, explaining that the owner of the property known as 1587 S. Bates was requesting the following variance to construct a new single-family home with a detached garage:

- A. Chapter 126, Article 4, Section 4.74(C)** of the Zoning Ordinance requires that a minimum distance between principal residential buildings on adjacent lots to be 14.00 feet or 25% of the lot width, whichever is larger. The required is 14.00 feet. The proposed is 13.22 feet on the south side. Therefore, a variance of 0.78 feet is requested.

Staff answered informational questions from the Board.

Nadim Yachouchi, representative for the 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.

Public Comment

Michael Rich commented that he objected to this home being built closer to his home than would otherwise be allowed by ordinance.

Motion by Kona

Seconded by Lilley with regard to Appeal 24-20, A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires that a minimum distance between principal residential buildings on adjacent lots to be 14.00 feet or 25% of the lot width, whichever is larger. The required is 14.00 feet. The proposed is 13.22 feet on the south side. Therefore, a variance of 0.78 feet is requested.

Mr. Kona moved to approve the requested variance and tied approval to the plans as submitted. He noted that the property was a standard lot and that the appellant was meeting all of the requirements of the ordinance and that the need for the variance was necessitated by the neighboring lot. He said literal enforcement of the ordinance would result in hardship for the property owner, and granting the variance would not be contrary to the spirit or purpose of the ordinance. Granting the variance would result in substantial justice to the property owners, neighbors, and community.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 09-34-24

**5) 1407 Ruffner
Appeal 24-21**

ABO Zielke presented the item, explaining that the owner of the property known as 1407 Ruffner was requesting the following variance to construct a covered rear porch:

- A. Chapter 126, Article 2, Section 2.10.1** of the Zoning Ordinance limits the lot coverage to a maximum of 30% of the lot. The required 30% is 1440.00 SF. The proposed is 30.68% (1472.62 SF). Therefore, a variance of 0.68% (32.62 SF) is being requested.

Staff answered informational questions from the Board.

Brian Castillo, 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 members raised the following points during discussion:

- Cost is not a factor the Board is permitted to consider in its deliberations.

Motion by Canvasser

Seconded by Kona with regard to Appeal 24-21, A. Chapter 126, Article 2, Section 2.10.1 of the Zoning Ordinance limits the lot coverage to a maximum of 30% of the lot. The required 30% is 1440.00 SF. The proposed is 30.68% (1472.62 SF). Therefore, a variance of 0.68% (32.62 SF) is being requested.

Mr. Canvasser moved to deny the requested variance. He said there were no special conditions to the property that necessitated the variance. He said that literal enforcement would not result in an unnecessary hardship, and that Board members discussed a number of options that could address the appellant's concerns. Granting the variance would be contrary to the spirit and intent of the ordinance, since the variance would expand the lot coverage. Denying the variance would not cause any injustice to the property owner, neighbors, or community.

Mr. Miller and the Chair noted options that would be ordinance-compliant and would address the appellant's concerns.

The Chair noted that lot coverage variances are often requested and often not granted.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 09-35-24

**6) 1410 Cole
Appeal 24-22**

ABO Zielke presented the item, explaining that the owner of the property known as 1410 Cole was requesting the following variance to construct a second floor addition to the existing non-conforming 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 3.90 feet on the east side. Therefore, a variance of 1.10 feet is being requested.

Daniel Zwolak, 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.

Motion by Reddy

Seconded by Kona with regard to Appeal 24-22, 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 3.90 feet on the east side. Therefore, a variance of 1.10 feet is being requested.

Mr. Reddy moved to approve the variance and tied approval to the plans as submitted. He noted the home was pre-existing non-conforming, and that asking the appellant to adjust their load-bearing walls to comply with the setback was an unreasonable request. He said that the appellant's request for a second story was reasonable. Literal enforcement would result in an unnecessary hardship and granting the variance would not be contrary to the spirit or purpose of the zoning ordinance. He concluded that the variance would do justice to the property owner, neighbors, and community.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

6. Correspondence

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

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 10:18 p.m.



Bruce R. Johnson, Building Official



Laura Eichenhorn, City Transcriptionist