

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, October 8, 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, October 8, 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, Board Member Ron Reddy, Pierre Yaldo; Alternate Board Member Donald Rogers

Absent: Alternate Board Member Carl Kona

Staff: Building Official Johnson; City Transcriptionist Eichenhorn, 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 Chair noted Mr. Miller's reappointment to the Board, as well as his own.

4. Approval Of The Minutes Of The BZA Meetings Of September 10, 2024

T# 10-36-24

Motion by Lilley

Seconded by Yaldo to approve the minutes of the BZA meeting of September 10, 2024 as amended.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

5. Appeals

T# 10-37-24

**1) 2136 W Lincoln
Appeal 24-23**

ABO Zielke presented the item, explaining that the owner of the property known as 2136 W Lincoln was requesting the following variance to install a single garage door to an attached garage:

- A. Chapter 126, Article 4, Section 4.75 A (2)** of the Zoning Ordinance requires that garage doors on an attached garage which are facing a street may not exceed 9.00 feet in width. The proposed is 17.00 feet. Therefore, an 8.00 foot variance is being requested.

Staff answered informational questions from the Board.

Rolf Quisling, appellant, described why this variance was being sought and answered informational questions from the Board.

Motion by Miller

Seconded by Reddy with regard to Appeal 24-23, A. Chapter 126, Article 4, Section 4.75 A (2) of the Zoning Ordinance requires that garage doors on an attached garage which are facing a street may not exceed 9.00 feet in width. The proposed is 17.00 feet. Therefore, an 8.00 foot variance is being requested.

Mr. Miller moved to deny the appeal, noting that the City's present ordinances intend homes with smaller garage doors and less prominent garages. Addressing the appellant's comment that some nearby homes had more prominent, pre-existing non-conforming garages, he noted that two of the newer homes near the 2136 W. Lincoln had ordinance-compliant garages. Mr. Miller said that granting the variance would not do substantial justice to the neighborhood, that it would be contrary to the spirit and intent of the ordinance, and that there were no special conditions of the property that necessitated the variance. He continued that denying the ordinance would not result in any substantial hardship to the appellant since there were ordinance-compliant ways of resolving the concern.

VC Canvasser concurred with Mr. Miller. He noted that while the Board was sympathetic to the appellant's concerns, the Board was not permitted to take that sympathy into consideration when considering a variance.

The Chair concurred with Mr. Miller and VC Canvasser, and explained that the Board has to be consistent in its application of the ordinance.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 10-38-24

**2) 695 E 14 Mile
Appeal 24-24**

ABO Zielke presented the item, explaining that the owner of the property known as 695 E 14 Mile was requesting the following variances 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.
- B. Chapter 126, Article 2, Section 2.10.2** of the Zoning Ordinance requires that the minimum total side yard setbacks are 14.00 feet or 25% of lot width, whichever is larger. The required is 14.00 feet. The existing and proposed is 11.30 feet. Therefore, a variance of 2.70 feet is being requested.
- C. 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 existing and proposed is 12.30 feet. Therefore, a variance of 1.70 feet is requested on the east side.

Staff answered informational questions from the Board.

Erik Heiderer, representative for the appellant, described why these variances were being sought and answered informational questions from the Board.

Motion by Reddy

Seconded by Canvasser with regard to Appeal 24-24, 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; B. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that the minimum total side yard setbacks are 14.00 feet or 25% of lot width, whichever is larger. The required is 14.00 feet. The existing and proposed is 11.30 feet. Therefore, a variance of 2.70 feet is being requested; and C. 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 existing and proposed is 12.30 feet. Therefore, a variance of 1.70 feet is requested on the east side.

Mr. Reddy moved to approve variances A, B, and C, and tied approval to the plans as submitted. He explained that it would be unfair to prevent the appellant from building

a second story, and that it would be unfair to prevent the appellant from aligning the second story walls with the load-bearing walls of the first floor. He said that literal enforcement of the ordinance would result in an unnecessary hardship for the appellant, and that granting the variance would not be contrary to the spirit and intent of the ordinance.

Mr. Hart supported the motion, stating that the appellant presented a good solution and a reasonable request, especially since the outer dimensions posed a challenge by being less than 28 feet in width.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 10-39-24

**3) 303 Greenwood
Appeal 24-25**

Mr. Hart recused himself from the item, citing present involvement with the appellant and left the room for the duration of the item's discussion. Mr. Rogers participated in the Board's deliberation on the item.

ABO Zielke presented the item, explaining that the owner of the property known as 303 Greenwood was requesting the following variance to construct a new detached garage:

- A. Chapter 126, Article 2, Section 2.08.1** of the Zoning Ordinance requires a maximum 30% lot coverage for residential lots. The required 30% coverage for this lot is 1452 SF. The proposed is 32.7% (1584 SF). Therefore, a variance of 2.70% (132 SF) is requested.

Staff answered informational questions from the Board.

Eve Hadley, representative for the appellant, described why this variance was being sought and answered informational questions from the Board.

Motion by Miller

Seconded by Yaldo with regard to Appeal 24-25, A. Chapter 126, Article 2, Section 2.08.1 of the Zoning Ordinance requires a maximum 30% lot coverage for residential lots. The required 30% coverage for this lot is 1452 SF. The proposed is 32.7% (1584 SF). Therefore, a variance of 2.70% (132 SF) is requested.

Mr. Miller moved to approve the variance and tied approval to the plans as submitted. He noted that the present garage may or may not be able to be repaired, and that the present garage was pre-existing non-conforming. He explained that the proposed, new garage included enough mitigation that granting the variance would do substantial justice to the property owner and to the neighborhood. He noted that the proposed garage would eliminate the encroachment into the side setback, and that

the variance of 2.70% of lot coverage was a reasonable amount. The variance would comply with the spirit and intent of ordinance, and strictly applying the ordinance would unreasonably prevent the appellant from resolving the issue with the present garage. He noted that granting the variance would not be contrary to public health, safety, or welfare.

Mr. Rogers noted that if the ordinance were strictly enforced, the resulting garage would be impractically small. He noted that the proposed garage would comply with the setback requirements, would align with the spirit and intent of the ordinance, and would reduce the present lot coverage. Consequently, Mr. Rogers offered his support for the motion.

The Chair concurred with the prior comments on the motion, additionally noting that this was a request for a one car garage of minimal dimensions necessary to function. He continued that denying the variance would likely result in the present garage, with its greater nonconformities, remaining. As a result, granting the variance would do justice to the community and to the appellant.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 10-40-24

**4) 1155 E Lincoln
Appeal 24-26**

Mr. Hart returned for this item, replacing Mr. Rogers on the Board.

ABO Zielke presented the item, explaining that the owner of the property known as 1155 E Lincoln was requesting the following variances to construct a second floor and rear 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 4.50 feet on the east side. Therefore, a variance of 0.50 feet is being requested.
- B. Chapter 126, Article 2, Section 2.10.2** of the Zoning Ordinance requires that the minimum total side yard setbacks are 14.00 feet or 25% of lot width, whichever is larger. The required is 14.00 feet. The existing and proposed is 11.92 feet. Therefore, a variance of 2.08 feet is being requested.
- C. Chapter 126, Article 4, Section 4.31 A(1)** of the Zoning Ordinance requires that a minimum of 65% of the front open space in all single-family districts shall be free of paved surfaces. The required 65% is 575.25 SF. The existing and proposed is 48.9% (433.00 SF). Therefore, a variance of 16.10% (142.25 SF) is being requested.

Staff answered informational questions from the Board.

Raymond Shisha, representative for the appellant, described why these variances were being sought and answered informational questions from the Board.

Motion by Yaldo

Seconded by Hart with regard to Appeal 24-26, 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 4.50 feet on the east side. Therefore, a variance of 0.50 feet is being requested; B. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that the minimum total side yard setbacks are 14.00 feet or 25% of lot width, whichever is larger. The required is 14.00 feet. The existing and proposed is 11.92 feet. Therefore, a variance of 2.08 feet is being requested; and, C. Chapter 126, Article 4, Section 4.31 A(1) of the Zoning Ordinance requires that a minimum of 65% of the front open space in all single-family districts shall be free of paved surfaces. The required 65% is 575.25 SF. The existing and proposed is 48.9% (433.00 SF). Therefore, a variance of 16.10% (142.25 SF) is being requested.

Mr. Yaldo moved to approve the variances and tied approval to the plans as submitted. The appellant was dealing with challenging circumstances, including the width of the existing house, the structure of the neighboring properties, the layout of the driveway, and the need to access a neighboring property to use the driveway. These circumstances are particular to the property and constitute special conditions. Because of these conditions, literal enforcement of the ordinance would result in an unnecessary hardship for the appellant. Granting the variances would not conflict with the spirit and intent of the ordinance, and would not be contrary to public health, safety, or welfare. Granting the variances would also result in substantial justice to the appellant and the community by allowing the appellant to improve the property's aesthetic appeal without further impacting the neighbors.

Mr. Miller noted that the Board often has difficulty approving a more hardscape in the front yard than is allowed by ordinance. He said he would support the motion, but encouraged the appellant to soften the effect of the hardscape with landscaping.

The Chair noted that neither variance A nor B would expand the existing nonconformity. He noted that while the Board tends not to approve excess hardscape in the front open space, the complexity of the house's position on the lot, the width of the home, and the narrowness of the lot made variance C warranted. He said he would support the motion.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Reddy, Yaldo, Morganroth, Miller, Canvasser, Hart, 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 8:47 p.m.

A handwritten signature in black ink, appearing to read 'Laura Eichenhorn', with a stylized, flowing script.

Bruce R. Johnson, Building Official

Laura Eichenhorn, City Transcriptionist