

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

2. Rollcall

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

Absent: Vice Chair Jason Canvasser; Board Member Ron Reddy

Staff: City Transcriptionist Eichenhorn, Assistant Building Official Morad, 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.

4. Approval Of The Minutes Of The BZA Meetings Of October 8, 2024

Motion by Lilley

Seconded by Miller to approve the minutes of the BZA meeting of October 8, 2024 as amended.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

5. Appeals

1) 1245 Westboro Appeal 24-27

ABO Zielke presented the item, explaining that the owner of the property known as 1245 Westboro was requesting the following variance to construct a pergola on the existing non-conforming home:

- 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 23.95 feet. The existing and proposed is 21.00 feet. Therefore, a variance of 2.95 feet is requested on the west side.

Staff answered informational questions from the Board.

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

Board members raised the following points during deliberation:

- The Board would need more than the provided information to adequately evaluate this request and to tie a potential approval to the plans. Potential alternative options could not be determined due to the lack of detail.
- The appellant could table this request and return with more detailed drawings if desired.
- If this request were voted on and denied, and the appellant still wanted to seek a variance, the appellant would have to return with materially different plans.
- The appellant provided new information during discussion that would have been clear to the Board if adequate documentation had been provided, which demonstrated the necessity of further documentation.
- It may be acceptable to grant the variance, since the pergola would align with the west wall of the home. A smaller pergola may be impractical. Disallowing it may create an unnecessary hardship for the appellant, and may not be doing justice to the appellant.
- The dearth of documentation prevented the Board from knowing whether this request stemmed from a hardship.
- Since the appellant indicated that he was uninterested in providing further documentation, the Board was tasked with voting solely based on the present information.
- The pre-existing non-conformity resulted from the size of the appellant's lot, and not from any feature of the neighbor's lot.
- A motion for approval could possibly be made if it integrated some of the appellant's statements.
- It might set a difficult precedent if the request were approved in part based on the appellant's statements. In memory, the Board has not granted approvals based on appellants' statements.

Motion by Miller

Seconded by Yaldo with regard to Appeal 24-27, 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 23.95 feet. The existing and proposed is 21.00 feet. Therefore, a variance of 2.95 feet is requested on the west side.

Mr. Miller moved to deny the appeal, noting that there was not enough information provided to allow for a reasonable approval. He explained that the provided image was conceptual and did not apply to the exact conditions of the house or the pergola. Historically, the Board ties almost every approval 'to the plans as submitted', and the Board would not be able to do that here. These circumstances were unusual, as appellants given the opportunity to provide more information at a future meeting usually elect to do so. Consequently, the motion to deny is based on having insufficient information, as opposed to being based on site conditions or any other potential hardship.

Mr. Yaldo supported the motion, and noted that the burden of proving a property's special conditions rests with the appellant. Without that proof, the Board was unable to determine whether there were any special conditions applicable to the property. There was insufficient documentation to show whether there could be an ordinance-compliant option. There was also insufficient documentation to show whether the requested variance was the most appropriate way to achieve the desired outcome. Mr. Yaldo supported the motion for these reasons.

Mr. Hart said he would prefer to support the variance request, but the Board lacked documentation showing the proposed encroachment, the existing deck that is to be replaced, and that the proposal would reduce the present ordinance non-compliance. He said that if proper documentation had been provided, the request likely would have been approved. He noted that approval could not be based largely on a conversation with the appellant.

The Chair concurred with his colleagues. He explained that the lack of documentation meant the request could not meet the four ordinance-required criteria. He noted that the first criterion could not be met because there was insufficient information regarding the conditions of the property, including the present deck and railing, the rear elevation, and other potential means of egress. The second criterion could not be met because there was no demonstration of a hardship. The third criterion could not be met because there was no indication the ordinance would allow for building within the minimum distance between principal residential buildings on adjacent lots. The fourth criterion could not be met because the Board did not have enough information to determine whether granting the variance would do substantial justice to the property owner.

Motion carried, 6-1.

ROLL CALL VOTE

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

Nays: Hart

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 8:17 p.m.



Bruce R. Johnson, Building Official



Laura Eichenhorn, City Transcriptionist