

Birmingham Board Of Zoning Appeals Proceedings
Tuesday, January 14, 2025
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, January 14, 2025. 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, Ron Reddy, Pierre Yaldo; Alternate Board Member Carl Kona (arrived 7:44 p.m.)

Absent: Board Member John Miller; Alternate Board Member Donald Rogers

Staff: Building Official Johnson; City Transcriptionist Eichenhorn, Building Official Designee 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 December 10, 2024

Motion by Lilley

Seconded by Yaldo to approve the minutes of the BZA meeting of December 10, 2024.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

5. Appeals

1) 732 Westchester Way Appeal 24-30

BOD Zielke presented the item, explaining that the owner of the property known as 732 Westchester Way was requesting the following variances to construct a front and second floor addition to the existing nonconforming home:

A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that front yard setback is the average of homes within 200.00 feet in each direction. The required is 33.20 feet. The existing and proposed is 32.34 feet. Therefore, a variance of 0.86 feet is being requested.

B. Chapter 126, Article 4, Section 4.75 A (1) of the Zoning Ordinance requires that private attached garages must be setback a minimum of 5.00 feet from the portion of the front façade on the first floor of the principal residential building that is furthest setback from the front property line. The existing façade is 10.15 feet behind the garage. The proposed is 5.09 feet behind the garage. Therefore, a variance of 10.09 feet is being requested.

Staff answered informational questions from the Board.

Robin Ballew, designer, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

Motion by Reddy

Seconded by Lilley with regard to Appeal 24-30, A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that front yard setback is the average of homes within 200.00 feet in each direction. The required is 33.20 feet. The existing and proposed is 32.34 feet. Therefore, a variance of 0.86 feet is being requested; and, B. Chapter 126, Article 4, Section 4.75 A (1) of the Zoning Ordinance requires that private attached garages must be setback a minimum of 5.00 feet from the portion of the front façade on the first floor of the principal residential building that is furthest setback from the front property line. The existing façade is 10.15 feet behind the garage. The proposed is 5.09 feet behind the garage. Therefore, a variance of 10.09 feet is being requested.

Mr. Reddy moved to approve both variances, tied to the plans. He explained that this is a pre-existing non-conforming home, and that doing a renovation constrains the appellant to the present footprint of the home. He continued that the proposal was reasonable, that denial of the variances would unreasonably prevent the appellant from using the property, and that a denial would cause an unnecessary hardship.

Mr. Hart supported the motion. He noted that the plans contained two mitigations of the pre-existing non-conformities, and that those were benefits to the appellant's proposal. He opined that the plans were aesthetically pleasing as well.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

**2) 1817 Sheffield
Appeal 24-31**

BOD Zielke presented the item, explaining that the owner of the property known as 1817 Sheffield was requesting the following variances to construct a rear addition, bay window and front porch to the existing non-conforming home:

- A. Chapter 126, Article 4, Section 4.61 A (1)** of the Zoning Ordinance requires that a corner lot which has on its side street an abutting interior residential lot shall have a minimum setback from the side street equal to the minimum front setback for the zoning district which such building is located. This requirement shall not reduce the buildable width of any lot to less than 25.00 feet. The side setback required to maintain the 25.00 foot rule is 16.25 feet. The existing and proposed is 14.30 feet; therefore a variance of 1.95 feet is requested.
- B. As stated in variance A above, Chapter 126, Article 4, Section 4.61 A (1)** of the Zoning Ordinance requires a street side yard setback of 16.25 feet. The proposed second floor box bay projection has a proposed setback of 13.00 feet; therefore a variance of 3.25 feet is requested.
- C. As stated in variance A above, Chapter 126, Article 4, Section 4.61 A (1)** of the Zoning Ordinance requires a street side yard setback of 16.25 feet. The proposed front porch has a proposed setback of 15.50 feet; therefore a variance of 0.75 feet is requested.

Staff answered informational questions from the Board.

Glenda Meads, architect, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

Motion by Hart

Seconded by Lilley with regard to Appeal 24-31, A. Chapter 126, Article 4, Section 4.61 A (1) of the Zoning Ordinance requires that a corner lot which has on its side street an abutting interior residential lot shall have a minimum setback from the side street equal to the minimum front setback for the zoning district which such building is located. This requirement shall not reduce the buildable width of any lot to less than 25.00 feet. The side setback required to maintain the 25.00 foot rule is 16.25 feet. The existing and proposed is 14.30 feet; therefore a variance of 1.95 feet is requested; and, B. As stated in variance A above, Chapter 126, Article 4, Section 4.61

A (1) of the Zoning Ordinance requires a street side yard setback of 16.25 feet. The proposed second floor box bay projection has a proposed setback of 13.00 feet; therefore a variance of 3.25 feet is requested; and, C. As stated in variance A above, Chapter 126, Article 4, Section 4.61 A (1) of the Zoning Ordinance requires a street side yard setback of 16.25 feet. The proposed front porch has a proposed setback of 15.50 feet; therefore a variance of 0.75 feet is requested.

Mr. Hart moved to approve all three variances. He expressed appreciation for the appellant's explanation of the property's unique circumstances. He continued that the approval would not adversely affect any neighboring properties, that it would provide substantial justice to the homeowner and the neighboring properties, that it was not contrary to the spirit or purpose of the zoning ordinance, and that it was not contrary to public health, safety, or welfare. He added that conformity would be unreasonably burdensome to require on some of the smaller sections.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**3) 550 Henley
Appeal 24-32**

BOD Zielke presented the item, explaining that the owner of the property known as 550 Henley was requesting the following variances to construct an addition to the existing non-conforming home:

- A. Chapter 126, Article 2, Section 2.06.2** of the Zoning Ordinance requires that front yard setback is the average of homes within 200.00 feet in each direction. The required is 34.60 feet. The existing and proposed is 24.50 feet. Therefore, a variance of 10.10 feet is being requested.
- B. Chapter 126, Article 2, Section 2.06.2** of the Zoning Ordinance requires that the rear yard setback is a minimum of 30.00 feet. The existing is 12.10 feet and proposed is 7.40 feet. Therefore, a variance of 22.60 feet is being requested on the addition.
- C. Chapter 126, Article 2, Section 2.06.2** of the Zoning Ordinance requires that the minimum combined front and rear setback is 55.00 feet. The existing is 36.60 feet and proposed is 31.90 feet. Therefore, a variance of 23.10 feet is being requested.

Staff answered informational questions from the Board.

Jeff Heichel, appellant, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

Board members raised the following points during discussion:

- Variances that increase a pre-existing non-conformity tend to be challenging to approve.

- This request would result in a significant addition compared to the scale of the home.
- There are options for reducing the requested variances.
- This is a uniquely shaped lot with a number of challenges present, including being triangular with less than 1500 square feet of buildable area.
- While this proposal would result in substantial justice for the appellant, the Board must also consider whether it would result in substantial justice for the neighbors and the general public.
- The Board is bound by the ordinances when considering whether to approve variances. Residents can pursue changes to an ordinance via the Commission.
- It is useful to hear about any efforts an appellant makes to reduce variance requests.
- These variances would impact what could be done on the neighboring property in the future.
- While this proposal would be an ideal scenario for the appellant, the lot does not accommodate the proposal. Granting variances that allow for expanded non-conformities could also result in other property owners seeking the same result.
- It is likely that the owner would require a number of variances even if the proposal were to change significantly.
- If the appellant were to build a new, ordinance-compliant home on this lot, it would likely reduce the value of the neighbors' home. That would not do substantial justice to the neighboring property owners.
- If the appellant chose to delay this appeal to the next Board meeting, it could be useful for the appellant to explore potential ways of reducing the variance requests.

It was recommended that staff be permitted to review how the setbacks were calculated for this lot, and that this appeal be adjourned to the next meeting.

Motion by Canvasser

Seconded by Kona to adjourn request 24-32 to the next regularly scheduled meeting in order to allow the City time to look at the setbacks.

Board comments on the motion were as follows:

- **Having the architect present at the next review of this appeal could be helpful.**
- **Other options for making the home more accessible could also be considered, and described to the Board at the next review.**

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

6. Correspondence

Any 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 8:40 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