

Birmingham Board Of Zoning Appeals Proceedings
February 11, 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, February 11, 2025. The meeting was convened at 7:30 p.m.

2. Rollcall

Present: Chair Erik Morganroth, Vice Chair Jason Canvasser; Board Members Kevin Hart (arrived 8:45 p.m.), John Miller, Ron Reddy; Alternate Board Member Carl Kona

Absent: Board Members Richard Lilley, Pierre Yaldo; Alternate Board Member Donald Rogers

Staff: Building Official Johnson; City Transcriptionist Eichenhorn, Assistant Building Official Erickson, 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 January 14, 2025

Motion by Canvasser
Seconded by Kona to approve.

Motion carried, 5-0.

VOICE VOTE

Yeas: Kona, Miller, Canvasser, Reddy, Morganroth

Nays: None

5. Appeals

1) 1511 E. Maple Appeal 25-01

BOD Zielke presented the item, explaining that the owner of the property known as 1511 E. Maple was requesting the following variance regarding the front open space impervious requirements:

A. Chapter 126, Article 4.31(A) of the Zoning Ordinance requires that a minimum of 65% (2831.34 sf) of the front open space in all single-family districts shall be free of paved surfaces. The proposed is 53.70% (2339.12 SF). Therefore a variance of 11.30% (492.22 SF) is being requested.

Staff answered informational questions from the Board.

Jason Hurst, owner, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

Board members raised the following points in the course of discussion:

- It may be prudent for the applicant to return with a proposal to remove some of the pavers in order to request a smaller variance.
- Financial or logistical hardships are not the types of hardship the Board can consider in granting a variance.
- The Board is constrained by the four factor test in granting a variance.
- The present request is reasonable, given the traffic conditions of the neighborhood and the location of the garage on the property.
- The pavers improve the safety and aesthetics of this home and the neighborhood.
- Alternatively, there are more pavers than necessary around the driveway than required just to address the safety concerns.
- While the applicant may have additional reasons of convenience to desire more pavers, those are not factors the Board can consider either.
- The applicant could also delay the vote to consider all of the options, and could return with the same proposal if desired as long as the Board does not vote on the proposal presently.

Mr. Hurst asked to postpone to the next regular meeting.

Motion by Canvasser

Seconded by Reddy to adjourn to the next regular meeting.

Motion carried, 5-0.

VOICE VOTE

Yeas: Kona, Miller, Canvasser, Reddy, Morganroth

Nays: None

**2) 1845 Humphrey
Appeal 25-02**

BOD Zielke presented the item, explaining that the owner of the property known as 1845 Humphrey was requesting the following variances to construct an addition and to rebuild the existing non-conforming home:

A. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that front yard setback is the average of homes within 200.00 feet in each direction. The required is 27.00 feet. The existing and proposed is 25.04 feet. Therefore, a variance of 1.96 feet is being requested.

B. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that a minimum total combined side yard setbacks 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 13.00 feet. Therefore, a variance of 1.00 feet is requested.

Staff answered informational questions from the Board.

Joseph Novitsky, architect, 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 in the course of discussion:

- With the proposed addition, ingress and egress to the garage may be challenging.
- The Board sometimes allows non-conformities to be maintained under certain conditions. Suggesting that a non-conforming home should be permissible because the pre-existing foundation would be maintained is more questionable.
- Building within the ordinance is feasible in this circumstance.

Motion by Reddy

Seconded by Miller with regard to Appeal 25-02, A. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that front yard setback is the average of homes within 200.00 feet in each direction. The required is 27.00 feet. The existing and proposed is 25.04 feet. Therefore, a variance of 1.96 feet is being requested; and, B. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that a minimum total combined side yard setbacks 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 13.00 feet. Therefore, a variance of 1.00 feet is requested.

Mr. Reddy moved to deny variance requests A and B. No practical difficulties or unnecessary hardships prevented the appellant from building a home on the lot as it currently exists. Removing the foundation and building anew would allow the appellant to meet the requirements of the zoning ordinance.

Mr. Miller supported the motion, and added that the proposal did not align with the ordinance.

VC Canvasser supported the motion, and said there were no conditions that necessitated a non-conforming home be built on the site. Additionally, certain features could be removed to avoid a variance. The requested variances seemed to be a way to avoid building an ordinance-compliant, modern home. It did not seem that this proposal would do substantial justice to the neighboring properties.

The Chair supported the motion, and said he appreciated the appellant's idea of maintaining pre-existing homes. He said that demolishing a house to the deck and foundation and rebuilding the rest of the home would result in a substantially new home, and would require compliance with the ordinance in most circumstances. Consequently, this home should also comply with the current zoning. Concerns about making the home more marketable were not circumstances the Board could consider in its decision.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Kona, Miller, Canvasser, Reddy, Morganroth

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 minimum side yard setback on the west side is to be 12.90 feet. The existing is 12.10 feet and proposed is 7.40 feet. Therefore, a variance of 5.50 feet is being requested on the addition.

Staff answered informational questions from the Board.

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

Board comment was as follows:

- The appellant took steps to reduce the prior variance request.

Motion by Miller

Seconded by Canvasser with regard to Appeal 24-32, 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; and B. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum side yard setback on the west side is to be 12.90 feet. The existing is 12.10 feet and proposed is 7.40 feet. Therefore, a variance of 5.50 feet is being requested on the addition.

Mr. Miller moved to approve and tied approval to the plans as submitted, stating that the shape and location of the property unreasonably would prevent the property owner from using the property for its permitted purpose. He continued that literal enforcement would make improving the property difficult, and that the variances were not contrary to the zoning ordinance in terms of health, safety, and welfare. He said it was a reasonable request, and that the proposal would do substantial justice to the street and the neighborhood. He said this lot in effect had two front yards and two side yards, which made the ordinance more challenging to apply to this property. He noted this would not negatively affect the adjacent properties.

Mr. Hart concurred, adding this was a particularly difficult, non-conforming structure, and that nearly any attempt to improve the home would have likely required several variances. He said the proposal aligned with the spirit of the ordinance, and that it would do substantial justice to neighboring properties.

The Chair supported the motion as well, noting that the City altered the way it was analyzing the lot which changed the required variances, and that the appellant made meaningful efforts to minimize the non-conformities. He said this proposal was reasonable and provided substantial justice.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Hart, Kona, Miller, Canvasser, Reddy, Morganroth

Nays: None

**4) 468 Willits
Appeal 25-03**

BOD Zielke presented the item, explaining that the owner of the property known as 468 Willits was requesting the following variances to construct a new home:

A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires a maximum roof height for a pitched roof in an R-2 zoning district of 30.00 feet for this property. The proposed roof height is 35.66 feet; therefore a variance of 5.66 feet is requested.

B. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires a maximum roof height for a flat roof in an R-2 zoning district of 24.00 feet for this property. The proposed roof height is 24.84 feet; therefore a variance of 0.84 feet is requested.

C. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires a maximum eave height for the building for an R-2 zoning district of 24.00 feet for this property. The proposed eave height is 33.38 feet; therefore a variance of 9.38 feet is requested.

Staff answered informational questions from the Board.

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

Board comment was as follows:

- This proposal reflected a reasonable limitation on the height of the home.

Motion by Miller

Seconded by Reddy with regard to Appeal 25-03, A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires a maximum roof height for a pitched roof in an R-2 zoning district of 30.00 feet for this property. The proposed roof height is 35.66 feet; therefore a variance of 5.66 feet is requested; B. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires a maximum roof height for a flat roof in an R-2 zoning district of 24.00 feet for this property. The proposed roof height is 24.84 feet; therefore a variance of 0.84 feet is requested; and, C. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires a maximum eave height for the building for an R-2 zoning district of 24.00 feet for this property. The proposed eave height is 33.38 feet; therefore a variance of 9.38 feet is requested.

Mr. Miller moved to approve the three variances, noting that there is an 11 foot decline from the front to the rear of the property, and a five foot slope from the east to the west, which makes this property very unique. He noted that, strictly applied, the zoning ordinance would prevent the owner from reasonable use of the property, that literal enforcement of the chapter would result in unnecessary hardship, and that the variances would be contrary to neither the spirit or intent of the ordinance. He concluded that the variances would result in substantial justice to the property owner and the neighborhood.

Mr. Kona concurred, noting that the house would be conforming if it were on a flat lot, which demonstrated that the variances were necessitated by the property.

The Chair also supported the motion, noting that the ordinance does not take into account a natural drop in grade.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Hart, Kona, Miller, Canvasser, Reddy, Morganroth

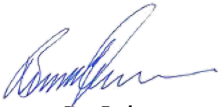
Nays: None

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 9:18 p.m.



Bruce R. Johnson, Building Official



Laura Eichenhorn, City Transcriptionist