

Birmingham Board Of Zoning Appeals Proceedings
March 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, March 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, Ron Reddy, Pierre Yaldo; Alternate Board Member Carl Kona

Absent: Board Members Richard Lilley, John Miller; Alternate Board Member Donald Rogers

Staff: Building Official Johnson; Planning Director Dupuis, 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 February 11, 2025

Motion by Canvasser
Seconded by Kona to approve.

Motion carried, 6-0.

VOICE VOTE

Yeas: Hart, Yaldo, Kona, 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.

It was noted that the present request was reduced to a variance of 6.2%. 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:

- The parking pad would allow one vehicle to be parked on the pad while allowing another vehicle to turn around on the pad in order to drive forward onto Maple.

Motion by Reddy

Seconded by Kona with regard to Appeal 25-01, 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.

Mr. Reddy moved to approve Variance A, citing special conditions applicable to the property. He noted that the contractor for the appellant put this driveway in without obtaining a permit, that the appellant made an effort to reduce the variance by approximately half since the original request was presented to the Board, that literal compliance would result in an unnecessary hardship, that granting the variance would not be contrary to the spirit of the zoning ordinance in this case, and that substantial justice would be done to the appellant and the general public if the variance were granted in this case.

The Vice Chair thanked the appellant for their patience and effort.

The Chair supported the motion, and said the lot is unique because it does back into Maple Road. This would cause the petitioner to back into the road, which can be dangerous. The Board evaluated whether it was reasonable to allow additional impervious surface because of the particular risk of the site. In this case, it was determined that it would be reasonable. The reduction of the request was helpful. He

noted that the site plan did not reflect the final design, the City would be responsible for confirming the square footage after the final install.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

**2) 225 E. Maple
Appeal 25-04**

PD Dupuis presented the item, explaining that the owner of the property known as 225 E. Maple was requesting the following variance to replace a non-conforming outdoor dining facility with a new outdoor dining facility that contains enclosures:

A. Chapter 126, Article 4, Section 4.44(C)(3) of the Zoning Ordinance requires that outdoor dining facilities shall not contain enclosures as defined in Article 9, Section 9.02 of the Zoning Ordinance. The proposed enclosure measures 723 square feet between three sides. Therefore, a variance of 723 square feet is requested.

B. Chapter 126, Article 9, Section 9.02 of the Zoning Ordinance defines Bistro as a restaurant with a full service kitchen with interior seating for no more than 65 people and additional seating for outdoor dining of no more than 65 people. The proposed outdoor dining facility contains 86 outdoor dining seats. Therefore, a variance of 21 outdoor dining seats is requested.

Staff answered informational questions from the Board.

Jacob Newman, representative for the 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 in the course of discussion:

- Eisenglass is a vinyl product made to simulate windows.
- The property of the outdoor dining facility is public property leased from the City.
- The Variance A request stemmed from the proposal to remove the present structure and build a new one.
- Other options for providing outdoor dining would remain if these variances were not granted, including the present rooftop seating, repairs of less than 75% of the outdoor dining facility, or a full rebuild without eisenglass.
- The appellant made an effort to mitigate their request, and reduced the number of seats requested in Variance B from 21 to 11.
- The proposal would be more aesthetically pleasing than the current outdoor dining facility.
- No other dining establishments in the City with a non-conforming structure have been permitted to fully teardown and rebuild that structure.
- Though other establishments may find it desirable, they are prohibited from adding on an outdoor dining facility with eisenglass that would allow dining year-round.

- The Board must understand how the appellant's property necessitates these variances and how it is different from other properties that might seek similar treatment in the future.
- The City intends for legal non-conformities to eventually be replaced with complying structures.
- Since the appellant's outdoor dining facility was part of the original construction, it could be considered a critical part of the facility.
- While the appellant's arguments may be reasonable from the appellant's perspective, the Board must be guided by the ordinance.

Motion by Yaldo

Seconded by Hart with regard to Appeal 25-04, A. Chapter 126, Article 4, Section 4.44(C)(3) of the Zoning Ordinance requires that outdoor dining facilities shall not contain enclosures as defined in Article 9, Section 9.02 of the Zoning Ordinance. The proposed enclosure measures 723 square feet between three sides. Therefore, a variance of 723 square feet is requested; and, B. Chapter 126, Article 9, Section 9.02 of the Zoning Ordinance defines Bistro as a restaurant with a full service kitchen with interior seating for no more than 65 people and additional seating for outdoor dining of no more than 65 people. The proposed outdoor dining facility contains 86 outdoor dining seats. Therefore, a variance of 21 outdoor dining seats is requested.

Mr. Yaldo moved to approve both variance requests and tied approval to the plans. He noted that there are few bistros within the City, and that each bistro is a highly unique property and context. This property has a unique shape within an alley, a downtown location, and its original design included an enclosed seating area. Each bistro is so unique it can be evaluated on a case-by-case basis. A determination that one bistro should have an enclosed seating area should not apply to other bistros. Maintaining an aesthetically pleasing downtown is in the City's best interest.

Mr. Yaldo continued that literal enforcement would result in an unnecessary hardship because if this structure is not replaced, it would eventually have to be taken down and that would change the purpose for which it was built. A redesign of the entire operation might be necessary in that case. Granting of the variance would not be contrary to the spirit or intent of the zoning ordinance. The ordinance aims to prevent bistros from exceeding a certain size. The appellant's bistro is already an existing operation, so no increase in size would occur, and a decrease of ten seats was being offered by the appellant. The design of the space would result in substantial justice to the property owner and to the City.

Mr. Kona said he could not support the motion, seeing no special conditions that required the variances. He noted that the structure could be entirely replaced without the eisenglass. Other bistros are disadvantaged since they are not able to enclose their outdoor dining to create additional year-round seating, which results in a substantial injustice to the surrounding property owners.

The Vice Chair said he would also not support the motion, noting that the appellant had other options including changing the bistro ordinance, removing the structure, or building the proposed structure without eisenglass. Given the appellant's long-term

presence in the community, variances to maintain the present level of seating could be considered.

The Chair said he also could not support the motion, noting that a sufficient reason for the variances had not been provided and that the appellant had many options for maintaining outdoor seating. While the loss of this year-round seating could have a financial impact on the appellant, that is not on the factors the Board is able to consider. He explained that the Board must enforce the ordinance unless there are legal reasons the ordinance cannot be followed, whereupon a variance could be granted. While the justice to the appellant if the variances were granted was clear, it would not be just to other establishments seeking similar treatment.

Motion failed, 2-4.

ROLL CALL VOTE

Yeas: Hart, Yaldo

Nays: Kona, Canvasser, Reddy, Morganroth

Motion by Kona

Seconded by Reddy with regard to Appeal 25-04, A. Chapter 126, Article 4, Section 4.44(C)(3) of the Zoning Ordinance requires that outdoor dining facilities shall not contain enclosures as defined in Article 9, Section 9.02 of the Zoning Ordinance. The proposed enclosure measures 723 square feet between three sides. Therefore, a variance of 723 square feet is requested; and, B. Chapter 126, Article 9, Section 9.02 of the Zoning Ordinance defines Bistro as a restaurant with a full service kitchen with interior seating for no more than 65 people and additional seating for outdoor dining of no more than 65 people. The proposed outdoor dining facility contains 86 outdoor dining seats. Therefore, a variance of 21 outdoor dining seats is requested.

Mr. Kona moved to deny the request, stating that the Board did not hear any unique conditions that necessitated the enclosure, that literal enforcement would not result in unnecessary hardship for the appellant, and that it would be an injustice to the surrounding property owners who might also like to have indoor enclosures. He also stated that granting the variances would be contrary to the spirit of the ordinance, which intend to provide outdoor seating that activates the right-of-way, whereas these variances would just extend the indoor seating for a portion of the year.

Motion carried, 4-2.

ROLL CALL VOTE

Yeas: Kona, Canvasser, Reddy, Morganroth

Nays: Hart, Yaldo

**3) 774 Lakeside
Appeal 25-05**

Mr. Hart noted his recusal from this case and left the room. The appellant was given the option to postpone the case until more Board members were present. The appellant elected to proceed with the present hearing.

BOD Zielke presented the item, explaining that the owner of the property known as 774 Lakeside was requesting the following variances for a single story rear addition and a second floor addition:

A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the maximum lot coverage is 30% of the lot in the residential zones. The required amount for this lot of 30% is 3372.90 SF. The proposed is 33.1% (3721.80 SF). Therefore, a variance of 3.10% (348.90 SF) is being requested.

B. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that a minimum rear yard setback is 30.00 feet. The existing rear yard at the garage is 10.70 feet. The proposed is 20.90 feet for the mud room on the first floor. Therefore, a variance of 9.10 feet is requested.

C. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that a minimum rear yard setback is 30.00 feet. The existing rear yard at the existing home is 24.25 feet. The proposed is 20.90 feet for the second floor addition. Therefore, a variance of 5.75 feet is requested.

Staff answered informational questions from the Board.

Eve Hadley, representative for the 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 in the course of discussion:

- The proposed plans would expand a pre-existing non-conformity.
- Modifications to the proposed second-floor addition, deck, or mudroom could reduce the variance requests.
- The appellant could work with the City on mitigation options.
- The appellant's representative could discuss options for mitigation with the appellant and to return next meeting if desired.

Ms. Hadley elected to adjourn the appeal to the next meeting.

Motion by Reddy

Seconded by Kona moved to adjourn to next month to get more details with regards to mitigating the variance requests.

Motion carried, 5-0.

VOICE VOTE

Yeas: Yaldo, Kona, Canvasser, Reddy, Morganroth

Nays: None

4) 1408 Villa

Appeal 25-06

Mr. Hart rejoined the meeting.

BOD Zielke presented the item, explaining that the owner of the property known as 1408 Villa was requesting the following variance to construct an addition to the existing non-conforming home:

A. Chapter 126, Article 4, Section 4.03(D) of the Zoning Ordinance requires that an accessory building shall not be closer than 10.00 feet to the principal building located on the same lot. The existing is 6.67 feet. The proposed addition is 5.83 feet. Therefore, a variance of 4.17 feet is being requested.

Staff answered informational questions from the Board.

Dominick Tringali, representative for the appellant, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

Board member comment was as follows:

- The Board aims to avoid expansion of pre-existing non-conformities where possible.

Motion by Hart

Seconded by Canvasser with regard to Appeal 25-06, A. Chapter 126, Article 4, Section 4.03(D) of the Zoning Ordinance requires that an accessory building shall not be closer than 10.00 feet to the principal building located on the same lot. The existing is 6.67 feet. The proposed addition is 5.83 feet. Therefore, a variance of 4.17 feet is being requested.

Mr. Hart moved to approve, noting that the home was pre-existing non-conforming, and that the proposed addition was a sensible and reasonable request. He tied approval to the existing plans.

Mr. Reddy supported the motion, stating that there were enough unique circumstances to grant the variance.

The Chair supported the motion as well. He said that while he preferred not to expand a non-conformity, there would be no way to expand the requested space without increasing the non-conformity. He said it was not an unreasonable request, that it would not affect any of the neighbors, that it was behind the home, and that it was less than one foot. He said that asking the appellant to mitigate the less than one foot request would not be reasonable, given how it would sit on the property, tie into the house, and function.

Motion carried, 6-0.

ROLL CALL VOTE

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

Nays: None

**5) 283 E. Frank
Appeal 25-07**

PD Dupuis presented the item, explaining that the owner of the property known as 283 E. Frank was requesting the following variance to expand a pre-existing legal non-conformity regarding required offstreet parking for a new proposed dental office:

A. Chapter 126, Article 4, Section 4.45 of the Zoning Ordinance requires medical office uses to provide a minimum of 1 off-street parking space for each 150 square feet of floor area. The proposed medical office contains 974 square feet of floor area, which would require 7 off-street parking spaces. Therefore, a variance of 7 parking spaces is requested.

Staff answered informational questions from the Board.

Ammar Alkhafaji, co-owner of the property, 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:

- Parking around the perimeter of the neighboring Barnum Park is either prohibited, time-limited, or permit-only.
- Parking in the adjacent area is very limited.
- The owner could pursue a parking agreement with a nearby business, and could return to the Board with a variance request if the distance between both businesses is greater than 100 feet.
- Since this proposal is contingent upon the appellant's staff parking at her home and walking to the office, enforcement of this agreement may increase the burden on the City.
- The variance runs with the property, not with the use. While the appellant's use may be lower intensity, potential future uses that would be permitted by the variance could be less so.
- The Board is limited in its ability to add conditions to a variance.

Public Comment

Linda Ulrey, John Rosso, Larry Zook, and Joshua Block commented regarding the difficulty of parking in the area.

Mr. Block supported granting this variance if conditions ensuring limited use and parking could be imposed.

Motion by Canvasser

Seconded by Kona with regard to Appeal 25-07, A. Chapter 126, Article 4, Section 4.45 of the Zoning Ordinance requires medical office uses to provide a minimum of 1 off-street parking space for each 150 square feet of floor area. The proposed medical office contains 974 square feet of floor area, which would require 7 off-street parking spaces. Therefore, a variance of 7 parking spaces is requested.

VC Canvasser moved to deny the variance, explaining that this variance would expand the pre-existing non-conforming use. He noted there might be opportunities to work with nearby property owners to avoid this variance via a parking agreement, and said he would be open to considering a different variance if the distance between the two businesses in the agreement was greater than 100 feet.

Neighbors expressed concern about parking in the area, and this would exacerbate that issue. While the property's lack of parking spaces is a special condition, literal enforcement of the ordinance would not result in unnecessary hardship in this case. The appellant's commitments regarding parking were not provided in writing, and enforcing those commitments would result in an undue burden on the City. Granting the variance would not do substantial justice to the neighbors, and would be contrary to the spirit and intent of the zoning ordinance. The appellant could also rent to a tenant that would not require a variance.

Mr. Reddy said he would support the motion because attaching this variance to the property would be unfair to the neighbors given the reported parking issues.

Mr. Yaldo said he would not support the motion. He noted that while concerns were raised about a more typical medical use moving in after this appellant, the building could not accommodate a typical medical use because of its small size, its inability to be expanded, and the lack of waiting room. He continued that the Board had the capacity to consider the nuance of different types of medical uses in a way the ordinance did not. The appellant was also persuasive that this use was likely to be less parking intensive than the by-right uses.

The Chair supported the motion. He noted that when the Board approves variances, they tend to be smaller, and that this variance request was significant. He said it would be irresponsible to double the variance for parking regardless of the use in this case.

Motion carried, 5-1.

ROLL CALL VOTE

Yeas: Hart, Kona, Canvasser, Reddy, Morganroth

Nays: Yaldo

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 10:08 p.m.



Bruce R. Johnson, Building Official



Laura Eichenhorn, City Transcriptionist