

Birmingham Board Of Zoning Appeals Proceedings
June 10, 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 June 10, 2025. The meeting was convened at 7:30 p.m.

2. Rollcall

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

Absent: Vice Chair Jason Canvasser

Staff: Planning Director Dupuis, City Transcriptionist Eichenhorn, Assistant Building Official Morad

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 May 13, 2025

Motion by Lilley

Seconded by Kona to approve.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

5. Appeals

1) 284 W. Maple Appeal 25-16

PD Dupuis presented the item, explaining that the owner of the property known as 284 W. Maple was requesting the following variances for modifications to required window areas:

A. Chapter 126, Article 4, Section 4.90 (B) of the Zoning Ordinance prohibits windows from being blocked with opaque materials or furniture, products, signs, blank walls or the backs of shelving. The applicant is proposing 392 sq. ft. of window film over the windows on the west side of the building along N. Bates. Therefore, a dimensional variance of 392 sq. ft. is requested.

Staff answered informational questions from the Board.

David Blair, architect, 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 point in the course of discussion:

- The space was smaller than the applicant was accustomed to for generating enough revenue to justify the space.
- This is a corner building with glass on two sides, which does not align with the applicant's preferences. These preferences do not seem to amount to a hardship.
- It would be helpful to see what the applicant would have to do in order to leave the windows exposed.
- It is common for national retailers to adapt their stores to the context in which the stores will be located. That would be appropriate here.
- The City prioritizes walkability, and that includes having windows that encourage the visual interplay between exterior and interior spaces.
- The Board exists to uphold the ordinance.
- It seemed that there were other urban J. Jill stores that changed their layout to better accommodate an urban environment. Consequently, this could be a possibility in Birmingham as well.
- There were likely other mitigations available that could reduce or eliminate the need to block windows.
- The applicant indicated that they were unable to customize their fixtures, and the Board would have to make its decision based on that representation.

Motion by Miller

Seconded by Kona with regard to Appeal 25-16, A. Chapter 126, Article 4, Section 4.90 (B) of the Zoning Ordinance prohibits windows from being blocked with opaque materials or furniture, products, signs, blank walls or the backs of shelving. The applicant is proposing 392 sq. ft. of window film over the windows on the west side of the building along N. Bates. Therefore, a dimensional variance of 392 sq. ft. is requested.

Mr. Miller moved to deny. He said that it was difficult to understand how this corner store location in Birmingham was resulting in a hardship. He noted that the ordinance requires and maintains clear glass in the downtown area, and that the lack of any presentation of other potentially viable options was a concern. He continued that there were no special conditions applicable to the property, that the site could be used for its permitted use without the variance, that literal enforcement of the chapter would not result in unnecessary hardship, that granting the variance would be contrary to the spirit and intent of the ordinance, and that granting the variance would not do substantial justice to neighboring businesses.

Board comments on the motion were as follows:

- **The applicant’s presentation was helpful for understanding all the factors at play.**
- **It seemed the space was not appropriate for the applicant because of the specific needs of the applicant.**
- **Birmingham wants to maintain a walkable community with transparent windows.**
- **It would be positive if the applicant were able to find another way to be present within Birmingham.**

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**2) 298 S. Old Woodward
Appeal 25-17**

PD Dupuis presented the item, explaining that the owner of the property known as 298 S. Old Woodward was requesting the following variance for modifications to an existing required off-street loading facility:

A. Chapter 127, Article 4, Section 4.24 (C) of the Zoning Ordinance requires that commercial uses between 5,001 and 20,000 square feet are required to provide one usable off-street loading space. In addition, the Zoning Ordinance requires an off-street loading space to have the following minimum dimensions: 40 feet long, 12 feet wide and 14 feet high. The Daxton Hotel is proposing to eliminate the existing required off-street loading space in favor of a new waste receptacle and other back-of-house needs. Therefore, a dimensional variance of 1 usable off-street loading space is requested.

Staff answered informational questions from the Board.

Robert Carmack of Superior Hospitality Group 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 point in the course of discussion:

- It raised some concern that the hotel was not presently using its loading dock, given the congestion that results from businesses' deliveries at this intersection.
- There did not seem to be sufficient clearance for any large vehicle to conduct deliveries via the lower level of the building.
- This hotel could not have been built without the loading dock or a variance.
- Since the extant loading dock does not presently accommodate a larger truck, the proposed change might not make a significant difference in terms of deliveries.
- It would be beneficial to see where else the trash might be stored, other than the loading dock, in order to create a laundry room.
- The applicant was not proposing the structurally change the loading dock's use as part of this request. Consequently, the loading dock would still exist on-site.
- This proposal could reduce the amount of traffic congestion at the intersection by eliminating laundry pick-up and deliveries.
- The loading dock may function better when the construction across from the hotel is completed. A potential future tenant of this space might find benefit in the loading dock.
- The applicant is already using the loading dock for trash storage, whether bins or the proposed compactor.
- It might be possible to permit the applicant the use of the loading dock for trash storage presently, with the understanding that the loading dock must be structurally maintained.
- Evaluating the loading dock's ability to function as a loading dock overall was not presently before the Board.
- The Planning Board's approval of the planning aspects would only allow the creation of the laundry room and the use of the loading dock for trash storage. It did not permit changing the loading dock into another type of space.
- The loading dock does not presently receive any deliveries. All deliveries with the exception of laundry use the lower level of the building.

Motion by Reddy

Seconded by Kona with regard to Appeal 25-17, A. Chapter 127, Article 4, Section 4.24 (C) of the Zoning Ordinance requires that commercial uses between 5,001 and 20,000 square feet are required to provide one usable off-street loading space. In addition, the Zoning Ordinance requires an off-street loading space to have the following minimum dimensions: 40 feet long, 12 feet wide and 14 feet high. The Daxton Hotel is proposing to eliminate the existing required off-street loading space in favor of a new waste receptacle and other back-of-house needs. Therefore, a dimensional variance of 1 usable off-street loading space is requested.

Mr. Reddy moved to approve the appeal and tied approval to the plans as submitted. He said that there were enough special circumstances unique to the property to merit the variance. He noted that this hotel had a small loading dock as a result of its location in a dense urban area. He continued that the variance should be tied to the Planning Board's approval, and that the loading dock should be able to be returned to its original state in the event of a new tenant. He said the loading dock should only be modified to allow the installation of the trash compactor ramp and the storage of the trash compactor. Literal enforcement would result in an unnecessary hardship because the applicant presently experiences some delivery issues. The trash compactor would eliminate some of those issues. Granting the variance would not be

contrary to the spirit and intent of ordinance because the specific circumstances of the property justify the variance.

Board comment on the motion was as follows:

- **It would be more accurate to the Board's intent if, instead of 'eliminate the existing required off-street loading dock', the advertisement had read 'modify the existing required off-street loading dock'. That would be a reduced request versus elimination.**
- **If the Board preferred 'modify' to 'eliminate', the Board could vote down this motion and make a new motion.**
- **There was some discomfort with saying that the building did not need a loading dock.**
- **It would be difficult for the appellant to mandate that vendors only deliver via the lower level.**
- **This would not create a meaningful precedent because most businesses in this zoning category would not require regular deliveries via a 40 foot long vehicle.**
- **It was not clear whether this loading dock might function once the construction across the street was completed. The hotel might also be able to find a different location for the laundry.**

Motion carried, 4-3.

ROLL CALL VOTE

Yeas: Rogers, Hart, Lilley, Reddy

Nays: Kona, Miller, Morganroth

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 9:08 p.m.



Jeff Zielke, Building Official



Laura Eichenhorn, City Transcriptionist