

Birmingham Board of Zoning Appeals Proceedings
August 12, 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 August 12, 2025. The meeting was convened at 7:30 p.m.

2. Rollcall

Present: Chair Erik Morganroth, Vice Chair Jason Canvasser; Board Members Kevin Hart, Carl Kona, Richard Lilley, John Miller, Ron Reddy; Alternate Board Member Donald Rogers (non-voting)

Absent: None

Staff: Building Official Zielke; City Transcriptionist Eichenhorn, Assistant Building Official Erickson, Assistant Building Official Morad, Fire Marshal Scaife

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 July 8, 2025

Motion by Canvasser

Seconded by Kona to approve as amended.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

5. Appeals

1) 1133 Latham Appeal 25-19

ABO Erickson presented the item, explaining that the owner of the property known as 1133 Latham was requesting the following variance to install a generator on a non-conforming lot:

A. Chapter 126, Article 4, Section 4.03(N)(1) of the Zoning Ordinance requires that the placement of standby generators shall be limited to the rear open space only at a location that is at least 5.00 feet from any principal building or accessory building with habitable space. The required is 5.00 feet. The proposed is 3.00 feet. Therefore, a variance of 2.00 feet is requested in the rear yard.

Staff answered informational questions from the Board.

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

Board member comments were as follows:

- Information considered can include precedent, ordinance, ability to meet the ordinance, and the potential future owners of the home. While the present windows on the garage would not allow infiltration, future owners could modify the windows to allow infiltration.

Public Comment

FM Scaife opposed the variance request due to safety concerns about carbon monoxide.

Motion by Reddy

Seconded by Canvasser with regard to Appeal 25-19, A. Chapter 126, Article 4, Section 4.03(N)(1) of the Zoning Ordinance requires that the placement of standby generators shall be limited to the rear open space only at a location that is at least 5.00 feet from any principal building or accessory building with habitable space. The required is 5.00 feet. The proposed is 3.00 feet. Therefore, a variance of 2.00 feet is requested in the rear yard.

Mr. Reddy moved to deny the variance request. There were not practical difficulties or unnecessary hardships presented by the appellant. A particular location for the generator does not prevent the applicant from using the property as intended. The Fire Marshal's comments highlighted the issue of unnecessary risk if the generator were installed in the proposed location. The Board has to be cognizant of the fact that this is a variance request for a generator that emits a toxic gas. Literal enforcement of the ordinance would not result in an unnecessary hardship. The property does have an ordinance-compliant location for the generator.

VC Canvasser supported the motion, adding this was not the type of variance the Board should be granting. He noted that the only factor making the variance

potentially necessary was costs, and the Board has noted a number of times in the past that costs are not a factor in granting or denying a variance. He noted that the gate could be moved or modified, and the path could be moved in order to install the generator in an ordinance-compliant location. Granting the variance would be contrary to the spirit and intent of the ordinance. The Fire Marshal raised concerns about potential fatalities. There were also concerns about installing the generator closer to the neighbor. Granting the variance would not result in substantial justice to the property owner, neighbors, or the general public.

Mr. Miller supported the motion, and said it would be inappropriate to deviate from City ordinance, manufacturer recommendations, and Fire Department recommendations.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**2) 1291 Washington
Appeal 25-21**

ABO Morad presented the item, explaining that the owner of the property known as 1291 Washington was requesting the following variance to construct a deck in the side yard:

A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance allows a maximum of 30% of lot coverage. The required is 30.00% (2496.00 sq. ft.). The proposed is 31.83% (2648.75 sq. ft.). Therefore, a variance of 1.83% (152.75 sq. ft.) is requested.

Staff answered informational questions.

Matt Whetstone, 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 discussion was as follows:

- There would be a number of ordinance-compliant options for accommodating the owners' preferences.
- When the plans were reviewed for the home, the only egress was in an area that was considered side yard and not rear yard. The City could have better noted that during plan review.

Motion by Kona

Seconded by Reddy with regard to Appeal 25-21, A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance allows a maximum of 30% of lot coverage. The required is 30.00% (2496.00 sq. ft.). The proposed is 31.83% (2648.75 sq. ft.). Therefore, a variance of 1.83% (152.75 sq. ft.) is requested.

Mr. Kona moved to deny the variance, noting there were options for construction in the rear of the house and the location of the egress to achieve the owners' goals. A practical difficulty necessitating a variance was not established. Literal enforcement of the ordinance does not present a hardship. The granting of the variance would be contrary to the spirit of the zoning ordinance. Following the ordinance would provide substantial justice to the nearby owners.

Mr. Miller supported the motion, explaining that the original design of the house was contrary to the zoning ordinance. The Board could not support the variance in these circumstances.

The Chair noted there were ordinance-compliant solutions given the present conditions, and there were also options during the design phase that could have been implemented to accommodate the owners' preferences. Since there were ordinance-compliant solutions, it would be inappropriate to grant the variance.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**3) 640 Shirley
Appeal 25-22**

ABO Erickson presented the item, explaining that the owner of the property known as 640 Shirley was requesting the following variance to construct a pool house:

A. Chapter 126, Article 4, Section 4.03(B) of the Zoning Ordinance requires that an accessory building not to be permitted closer to a principal building on an adjoining lot than the sum of the minimum required side setbacks as determined in Section 4.74(C). The required is 31.50 feet. The proposed is 21.60 feet. Therefore, a variance of 9.90 feet is requested.

Staff answered informational questions from the Board.

Board discussion was as follows:

- There were ordinance-compliant locations for the pool house.
- The proposed location was unaffected by the DTE lines.
- The pool house is a preference, not a necessity. This made it more challenging to establish a hardship.
- The neighboring house was conforming.
- The lot is uniquely shaped.

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

Motion by Miller

Seconded by Lilley with regard to Appeal 25-22, A. Chapter 126, Article 4, Section 4.03(B) of the Zoning Ordinance requires that an accessory building not to be permitted closer to a principal building on an adjoining lot than the sum of the minimum required side setbacks as determined in Section 4.74(C). The required is 31.50 feet. The proposed is 21.60 feet. Therefore, a variance of 9.90 feet is requested.

Mr. Miller moved to approve the variance, explaining that the location was reasonable given the DTE lines and the utilities if the lot were shaped differently. The lot shape caused the need for the variance for the required distance from the adjacent house. This was a unique condition. Literal enforcement would cause a bit of an unnecessary hardship. The variance would not be contrary to the spirit of the ordinance or to public health, safety, or welfare. Granting the variance would do substantial justice to the owners and the owners of the adjacent properties.

Motion carried, 6-1.

ROLL CALL VOTE

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

Nays: Canvasser

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 8:43 p.m.



Jeff Zielke, Building Official



Laura Eichenhorn, City Transcriptionist