

**Birmingham Board Of Zoning Appeals Proceedings
Tuesday, May 11, 2021
Held Remotely Via Zoom And Telephone Access**

1. Call To Order

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, May 11, 2021. Chair Charles Lillie convened the meeting at 7:30 p.m.

2. Rollcall

Present: Chair Charles Lillie; Board Members Jason Canvasser, Richard Lilley, John Miller, Erik Morganroth, Francis Rodriguez; Alternate Board Member Ron Reddy (all located in Birmingham, MI.)

Absent: Board Member Kevin Hart; Alternate Board Member Erin Rodenhouse

Administration:

Bruce Johnson, Building Official
Laura Eichenhorn, City Transcriptionist
Mike Morad, Assistant Building Official
Jeff Zielke, Assistant Building Official

Chair Lillie explained the meeting was being held virtually due to the Covid-19 pandemic. He explained the procedures to be followed for the virtual meeting. He then assigned duties for running the evening's meeting to Vice-Chair Canvasser.

Vice-Chair Canvasser described BZA procedure to the audience. 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.

Vice-Chair Canvasser took rollcall of the petitioners. All petitioners were present.

T# 05-25-21

3. Approval Of The Minutes Of The BZA Meeting Of April 13, 2021

**Motion by Mr. Lilley
Seconded by Mr. Lillie to accept the Minutes of the BZA meeting of April 13, 2021 as submitted.**

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Lilley, Lillie, Miller, Rodriguez, Morganroth, Canvasser, Reddy

Nays: None

T# 05-26-21

4. Appeals

**1) 900 Puritan
Appeal 21-18**

ABO Zielke presented the item, explaining that the owner of the property known as 900 Puritan was requesting the following variances to construct new single-family home with an attached garage:

A. Chapter 126, Article 4, Section 4.30(C)(1) of the Zoning Ordinance states that covered or uncovered porches shall not project into the required side open space. The proposed 10.00 foot covered porch is to project 16.18 feet; therefore, a variance of 16.18 feet is being requested.

B. Chapter 126, Article 4, Section 4.61(A)(1) of the Zoning Ordinance requires a corner lot which has on the 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 in which such building is located. The required side yard setback for this property is 38.03 feet. The proposed setback is 31.85 feet; therefore, a variance of 6.18 feet is requested.

ABO Zielke continued that the applicant proposed to construct a new home in place of the existing non-conforming home.

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

In reply to Mr. Lillie, Mr. Martin stated there has been multiple attempts to design a home that would fit within the building envelope. While he acknowledged that an ordinance-compliant home could be constructed within the building envelope, he opined that every ordinance-compliant option ended up less desirable than the proposed plans.

Mr. Lillie stated that if these variances were granted they could be used as precedent for the neighbors to request variances to move forward towards Oak.

In reply to Mr. Lillie, Mr. Martin said that might actually benefit the aesthetics of Oak.

Mr. Morganroth stated that there were a number of different options for building in the building envelope.

Mr. Martin said that granting the variances maintained the spirit of the ordinance, and that not granting the variances would cause his family to lose the rights available to others in the same area. He stated that the available building width would be substantially reduced due to the special circumstances of his lot.

Tom Sowden, neighbor, spoke in favor of granting the variances in order to maintain the trees between the two homes.

Motion by Mr. Lillie

Seconded by Mr. Morganroth with regard to Appeal 21-18, A. Chapter 126, Article 4, Section 4.30(C)(1) of the Zoning Ordinance states that covered or uncovered porches shall not project into the required side open space. The proposed 10.00 foot covered porch is to project 16.18 feet; therefore, a variance of 16.18 feet is being requested; and, B. Chapter 126, Article 4, Section 4.61(A)(1) of the Zoning Ordinance requires a corner lot which has on the 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 in which such building is located. The required side yard setback for this property is 38.03 feet. The proposed setback is 31.85 feet; therefore, a variance of 6.18 feet is requested.

Mr. Lillie moved to deny the variances, stating that the petitioner had not demonstrated a practical difficulty. He said permitting the variance would do no justice to the neighbors, that the property had no unique characteristics necessitating the variances and that the petitioner failed to show why the home could not be built within the building envelope. He said the need for the variances was self-created since the plan is to tear down the existing home and begin with a blank slate.

Mr. Miller said that while he understood his colleague's reasoning he would not support the motion. He said the two homes to the east of 900 Puritan are anomalous in terms of their sideyard setbacks. He said the sideyard setback for Puritan would be more appropriate if it were more similar to the rest of the homes on Puritan and to the west. Granting the variances, then, would cause 900 Puritan to fall into alignment with the majority of the other homes on the street and would do justice to the overall neighborhood. He said the proposed plans also somewhat mitigate the existing non-conformities. He stated that moving the driveway to Puritan was both safer and more aesthetically pleasing.

Vice-Chair Canvasser said he would support the motion. He noted the appellant would be working with a blank slate once the home is torn down and that the appellant acknowledged an ordinance-compliant home could be built in the building envelope. Both of these facts indicated to Vice-Chair Canvasser that the desire for these two variances was self-created.

Mr. Rodriguez said he was somewhat torn on this petition, noting that the proposal did seek to decrease the extant non-conformity. He said the deciding factor was the appellant's acknowledgement that the property could be used for the permitted purpose without the variances and that an ordinance-compliant home could be built within the building envelope. He concurred with Mr. Lillie and Vice-Chair Canvasser that these factors demonstrated self-creation, so he said he would vote to support the motion.

Motion carried, 6-1.

ROLL CALL VOTE

Yeas: Lillie, Morganroth, Lilley, Canvasser, Reddy, Rodriguez

Nays: Miller

**2) 1394 Westwood
Appeal 21-19**

ABO Zielke presented the item, explaining that the owner of the property known as 1394 Westwood was requesting the following variances to construct an addition to the existing home with an attached garage:

A. Chapter 126, Article 4, Section 4.61(A)(2) of the Zoning Ordinance requires that a corner lot where there is no abutting interior residential lot on such side street, the minimum side street setback shall be 10.00 feet for the permitted principal building. The proposed is 7.69 feet. Therefore, a 2.31 foot variance is being requested.

B. Chapter 126, Article 4, Section 4.61(A)(2) of the Zoning Ordinance requires that a corner lot where there is no abutting interior residential lot on such side street, the minimum side street setback shall be 15.00 feet for permitted attached garages with vehicle entry doors facing the side street. The proposed is 11.17 feet. Therefore, a 3.83 foot variance is being requested.

ABO Zielke stated the existing home was constructed in 1961 on a corner lot.

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

Mr. Clarke explained that he was attempting to maintain the south and north edge of the garage and foundation areas.

Mr. Morganroth said a 21- or 22-foot garage should be able to adequately accommodate the kind of vehicles the appellants would be driving, which would mitigate the need for the variance. Mr. Morganroth also suggested that the garage doors be moved to the outside facade rather than the inside to create a bit more room.

In reply to Mr. Miller, Mr. Clarke said there was a grade drop of three-and-a-half to four feet on the east side of the garage.

In reply to Mr. Reddy, Mr. Clarke stated that he was trying to avoid a runaway building line in the front of the home in order to resemble the other homes in the area. He said he could not expand on the north face of the laundry room to create space because of the second floor window.

Motion by Mr. Miller

Seconded by Mr. Lillie with regard to Appeal 21-19, A. Chapter 126, Article 4, Section 4.61(A)(2) of the Zoning Ordinance requires that a corner lot where there is no abutting interior residential lot on such side street, the minimum side street setback shall be 10.00 feet for the permitted principal building. The proposed is 7.69 feet. Therefore, a 2.31 foot variance is being requested; and, B. Chapter 126, Article 4, Section 4.61(A)(2) of the Zoning Ordinance requires that a corner lot where there is no abutting interior residential lot on such side street, the minimum side street setback shall be 15.00 feet for permitted attached garages with vehicle entry doors facing the side street. The proposed is 11.17 feet. Therefore, a 3.83 foot variance is being requested.

Mr. Miller made a motion to deny Appeal 21-19. He said the need for variances was self-created and that there were no particularly unique aspects of the property. He said the soft angle of the road and the slight fall-off of the grade did not amount to hardships. Mr. Miller found that strict compliance with the ordinance was not unreasonable in this case.

Mr. Morganroth said he would support the motion. While he acknowledged that the angle of the lot creates some challenges, he said the proposed changes to the home could likely be achieved in an ordinance-compliant way. He remained unconvinced that the appellant required the requested variances to meet their goals.

Vice-Chair Canvasser said he had concerns about self-creation and the expansion of a pre-existing non-conformity.

Mr. Reddy concurred with Vice-Chair Canvasser.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Miller, Lillie, Rodriguez, Morganroth, Lilley, Canvasser, Reddy

Nays: None

**3) 689 Westwood
Appeal 21-20**

ABO Zielke presented the item, explaining that the owner of the property known as 689 Westwood was requesting the following variances to construct an addition to an existing non-conforming home:

A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum total side yard setback are 14.00 feet or 25% of the total lot width whichever is larger. The required is 22.47 feet. The proposed is 17.78 feet. Therefore; a variance of 4.49 feet is being requested.

B. Chapter 126, Article 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width, whichever is larger. The required is 22.47 feet. The proposed is 21.40 feet. Therefore; a variance of 1.07 feet is being requested.

ABO Zielke stated the existing home was constructed in 1945 along with a small kitchen addition in 2014 in the rear of the home.

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 Mr. Morganroth

Seconded by Mr. Rodriguez with regard to Appeal 21-20, A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum total side yard setback are 14.00 feet or 25% of the total lot width whichever is larger. The required is 22.47 feet. The proposed is 17.78 feet. Therefore; a variance of 4.49 feet is being requested; and, B. Chapter 126, Article 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width, whichever is larger. The required is 22.47 feet. The proposed is 21.40 feet. Therefore; a variance of 1.07 feet is being requested.

Mr. Morganroth moved to deny Appeal 21-20. He said several issues formed the basis for his denial, noting that his most significant concern was substantial justice to the neighbor. He said expanding the non-conformity on the side could compromise the neighbor's maximum width home if they chose to tear down and build again at some point in the future. He said he understood the challenge of the garage but said Ms. Meads did not establish the side relative to the side-entry porch was a factor. He said the use was a factor.

Mr. Miller said this was a difficult case because he said wanting the garage to be a usable width was reasonable. Noting that, he still concurred with Mr. Morganroth that the Board could not compromise justice for the neighbor by granting the variances, and so he supported the motion to deny.

Vice-Chair Canvasser said he would support the motion since it would expand a pre-existing non-conformity and would impact the neighbor.

Mr. Lillie said he would support the motion for the previously stated reasons.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Morganroth, Rodriguez, Lilley, Canvasser, Reddy, Lillie, Miller

Nays: None

**4) 1016 Pierce
Appeal 21-21**

ABO Zielke presented the item, explaining that the owner of the property known as 1016 Pierce was requesting the following variance to construct a new single-family home with an attached garage:

A. Chapter 126, Article 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width, whichever is larger. The required is 17.25 feet. The proposed is 12.95 feet on the South side. Therefore; a variance of 4.30 foot is being requested.

ABO Zielke stated the proposed home met the ordinance for the lot with the exception of meeting the distance between principal structures.

Ann and Brett Eilander, owners, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet. They stated Ben Templeton, builder, and Glenda Meads, architect, were also on the call.

Vice-Chair Canvasser said the lack of dimensions on the drawings made it difficult for him to evaluate the appellants' claims.

Mr. Miller concurred with Vice-Chair Canvasser, adding that the lack of information about vertical elevations in the drawings did the same.

Mr. Morganroth concurred with Vice-Chair Canvasser.

Mr. Templeton stated that plans with full elevations were not submitted because the Eilanders were waiting for the results of this BZA meeting to get a design set of drawings from Ms. Meads.

Mr. Morganroth suggested that if the elevator could come down to the garage floor and then the first floor that the ramp would not be needed. If that were the case, then minimizing the garage could possibly also minimize, if not completely mitigate, the need for the variance.

Mr. Eilander said the three feet also allows the appellants enough room to navigate the garage without having to move the cars.

Mr. Lillie suggested that the 12.95 feet could be split between the southern and northern neighbors.

The Eilanders said they would be happy to either keep the 12.95 feet as proposed or to follow Mr. Lillie's suggestion, whichever the Board ended up preferring.

In response to Board discussion, the Eilanders said they could return with plans that showed dimensions and elevations.

Vice-Chair Canvasser clarified for the Eilanders that a review of updated plans would not necessarily result in an approval. He said it would just provide more information to the Board members.

Motion by Mr. Lillie

Seconded by Vice-Chair Canvasser with regard to Appeal 21-21, A. Chapter 126, Article 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width, whichever is larger. The required is 17.25 feet. The proposed is 12.95 feet on the South side. Therefore a variance of 4.30 foot is being requested.

Mr. Lillie moved to adjourn Appeal 21-21 to the June 2021 BZA meeting with a request that the appellants submit the dimensions and elevations for the plans.

Mr. Miller cautioned the appellants that the proposed office bump-out would difficult to vote to approve.

Mr. Reddy concurred with the Mr. Miller. He said the bump-out could be mitigated. He said that slightly reducing the width of the garage and doing a bit of redesign might help the appellants achieve their goals.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Lillie, Canvasser, Reddy, Miller, Rodriguez, Morganroth, Lilley

Nays: None

**5) 1301 Fairway
Appeal 21-22**

ABO Zielke presented the item, explaining that the owner of the property known as 1301 Fairway was requesting the following variances to construct an addition to an existing non-conforming home:

A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 32.24 feet. The proposed is 25.34 feet. Therefore; a 6.90 foot variance is being requested.

B. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum total side yard setback are 14.00 feet or 25% of the total lot width whichever is larger. The required is 28.12 feet. The existing is 16.14 feet and the proposed is 15.94 feet. Therefore; a variance of 9.18 feet is being requested.

C. Chapter 126, Article 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width, whichever is larger. The required is 28.12 feet. The proposed is 21.90 feet on the South side Therefore; a variance of 6.22 foot is being requested.

D. Chapter 126, Article 4.75(A)(1) of the Zoning Ordinance requires that single family 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 is 6.00 feet in front of the furthest setback portion. Therefore; a variance of 11.00 feet is being requested.

E. Chapter 126, Article 4.75(A)(2) of the Zoning Ordinance requires that garage doors on attached garages which facing a street may not exceed 9.00 feet in width. The existing is 16.00 feet. Therefore; a variance of 7.00 feet is being requested.

ABO Zielke stated the existing home, constructed in 1960, was a non-conforming home and sat on an irregularly-shaped lot.

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

Motion by Mr. Reddy

Seconded by Mr. Lilley with regard to Appeal 21-22, A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 32.24 feet. The proposed is 25.34 feet. Therefore; a 6.90 foot variance is being requested; B. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum total side yard setback are 14.00 feet or 25% of the total lot width whichever is larger. The required is 28.12 feet. The existing is 16.14 feet and the proposed is 15.94 feet. Therefore; a variance of 9.18 feet is being requested; C. Chapter 126, Article 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width, whichever is larger. The required is 28.12 feet. The proposed is 21.90 feet on the South side Therefore; a variance of 6.22 foot is being requested; D. Chapter 126, Article 4.75(A)(1) of the Zoning Ordinance requires that single family 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 is 6.00 feet in front of the furthest setback portion. Therefore; a variance of 11.00 feet is being requested; and, E. Chapter 126, Article 4.75(A)(2) of the Zoning Ordinance requires that garage doors on attached garages which facing a street may not exceed 9.00 feet in width. The existing is 16.00 feet. Therefore; a variance of 7.00 feet is being requested.

Mr. Reddy moved to approve Variances A, B, C, D and E for Appeal 21-22 and tied it to the plans as submitted. He said denial of the appeal would prevent the appellant from gaining full use of the home because of its unusually-shaped lot. He said it was not self-created because the owner was seeking to improve the appearance of the home.

Mr. Miller said the unusual triangular-shaped lot was a reason to support the variance request.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Reddy, Lilley, Canvasser, Lillie, Miller, Rodriguez, Morganroth

Nays: None

**6) 815 Woodland
Appeal 21-23**

ABO Zielke presented the item, explaining that the owner of the property known as 815 Woodland was requesting the following variances to construct an addition to an existing non-conforming garage:

A. Chapter 126, Article 4.03(G) of the Zoning Ordinance limits the maximum eave height on accessory structures shall not exceed 12.00 feet. The proposed is 20.33 feet. Therefore; a variance of 8.33 feet is being requested.

B. Chapter 126, Article 4.03(H) of the Zoning Ordinance limits the maximum area of the first floor of any accessory structure in an R2 Zone district is 550 square feet. The existing and proposed is 564. Therefore a variance of 14 square feet is being requested.

C. Chapter 126, Article 4.03(J) of the Zoning Ordinance requires that dormers on accessory structures are limited to 50% or less of the width of the roof per elevation or 10.00 foot interior dimension, whichever is greater. The proposed is 100% of the roof width. Therefore; a variance of 50% is being requested.

ABO Zielke stated the existing detached structure footprint exceeded the allowable square footage. The proposed renovation to the existing structure would exceed the eave height and the dormer width permitted.

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

Discussion between Mr. Morganroth, ABO Zielke and Mr. Tarver clarified that if the side walls of the dormer aligned with the wall of the storage room and the interior staircase wall that most, if not all, of the need for Variance C could be mitigated.

Mr. Tarver confirmed that modification would be possible.

Discussion between the Board, Building Official Johnson, and Mr. Tarver concluded that the Board would give the Tarvers the opportunity to return with plans that included Variances A and B but mitigated Variance C.

Motion by Mr. Morganroth

Seconded by Mr. Lillie with regard to Appeal 21-23, A. Chapter 126, Article 4.03(G) of the Zoning Ordinance limits the maximum eave height on accessory structures shall not exceed 12.00 feet. The proposed is 20.33 feet. Therefore; a variance of 8.33 feet is being requested; B. Chapter 126, Article 4.03(H) of the Zoning Ordinance limits the maximum area of the first floor of any accessory structure in an R2 Zone district is 550 square feet. The existing and proposed is 564. Therefore a variance of 14 square feet is being requested; and, C. Chapter 126, Article 4.03(J) of the Zoning Ordinance requires that dormers on accessory structures are limited to 50% or less of the width of the roof per elevation or 10.00 foot interior dimension, whichever is greater. The proposed is 100% of the roof width. Therefore; a variance of 50% is being requested.

Mr. Morganroth moved to adjourn Appeal 21-23 to the June 2021 BZA meeting in order to give the appellants an opportunity to revise their plans.

In reply to Mr. Reddy, Building Official Johnson said the Zoning Ordinance's definition of a dormer could be included in the next BZA agenda packet.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Morganroth, Lillie, Miller, Rodriguez, Lilley, Canvasser, Reddy

Nays: None

T# 05-27-21

5. Correspondence

Included in the agenda packet.

T# 05-28-21

6. General Business

There was brief discussion regarding when in-person meetings might resume. Building Official Johnson said he would inform the Board of any changes to the current policy.

T# 05-29-21

7. Open To The Public For Matters Not On The Agenda

None.

T# 05-30-21

8. Adjournment

Motion by Mr. Morganroth

Seconded by Mr. Lilley to adjourn the May 11, 2021 BZA meeting at 10:12 p.m.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Morganroth, Lilley, Canvasser, Reddy, Lillie, Miller, Rodriguez

Nays: None



Bruce R. Johnson, Building Official