

**Birmingham Board Of Zoning Appeals Proceedings
Tuesday, June 8, 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, June 8, 2021. Chair Charles Lillie convened the meeting at 7:31 p.m.

2. Rollcall

Present: Chair Charles Lillie; Board Members Jason Canvasser, Kevin Hart, John Miller, Erik Morganroth, Francis Rodriguez; Alternate Board Member Erin Rodenhouse

All located in Birmingham, MI.

Absent: Board Member Richard Lilley; Alternate Board Member Ron Reddy

Administration:

Jeff Zielke, Assistant Building Official
Brooks Cowan, City Planner
Laura Eichenhorn, City Transcriptionist
Mike Morad, 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 Morganroth.

Vice-Chair Morganroth 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 Morganroth took rollcall of the petitioners. All petitioners were present except for Appeal 21-27 for 1220 Bird.

T# 06-31-21

3. Approval Of The Minutes Of The BZA Meeting Of May 11, 2021

Mr. Rodriguez asked that 'extant' be changed to 'existing' on page four.

Motion by Mr. Lillie

Seconded by Mr. Miller to accept the Minutes of the BZA meeting of May 11, 2021 as amended.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Lillie, Morganroth, Canvasser, Rodriguez, Miller

Nays: None

Abstain: Hart, Rodenhouse

T# 06-32-21

4. Appeals

**1) 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 14.00 feet on the North side therefore; a variance of 3.25 foot is being requested.

ABO Zielke continued that this appeal was in front of the board in May 2021. The applicant reduced the variance request based on the comments from the May meeting.

In reply to Ms. Rodenhouse, ABO Zielke confirmed that a new home could be built on this lot that would not require any variances.

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

In reply to Vice-Chair Morganroth, Mr. Eilander said the sitting office bump out could not be reduced since the width as-proposed prevented the need for another variance.

Vice-Chair Morganroth noted that with the variance request the garage would be almost 27 feet wide, with almost seven feet of non-vehicle space. He observed that many garages in Birmingham are only 21 feet wide.

Mr. Eilander said that without the variance they could not fit a ramp.

Vice-Chair Morganroth said he was unsure that was the case.

In reply to Ms. Rodenhouse, Mr. Eilander said that with a 23-foot garage there would only be room for the ramp and two vehicles, with no room for storage.

Ms. Eilander said that the only prohibitive issue here is the distance between principal residential buildings. She said that if that were not the case there would be no need for a variance.

Motion by Mr. Miller

Seconded by Mr. Hart 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 14.00 feet on the North side. Therefore a variance of 3.25 foot is being requested.

Mr. Miller moved to approve the appeal and tied it to the plans as submitted. He said it was a reasonable request given the location of the adjacent homes on the lots to the north and south and that strict compliance with the ordinance would prevent the petitioner from fully using their lot. He said that approving the appeal would do substantial justice and would not effect the property owners to the north or south of this home.

Mr. Lillie offered his support for the motion, explaining that the BZA has run into similar issues on a number of occasions where adjoining lots are not the same width. He noted that if the lot to the north were also approximately 70 feet there would be no need for the variance request in this case. He confirmed Ms. Eilander's contention that all the other ordinance requirements in this case were being met.

Mr. Rodriguez and Vice-Chair Morganroth concurred with Mr. Miller and Mr. Lillie.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Miller, Hart, Canvasser, Rodenhouse, Rodriguez, Lillie, Morganroth

Nays: None

**2) 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:

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.

ABO Zielke continued that this appeal was in front of the board in May 2021. Based on the comments from the May meeting, the applicant withdrew two of the three variances previously requested.

Mr. Lillie noted for the record that the appellant was not tearing the garage down, and was only adding on to the second floor.

W. David Tarver, appellant, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

Motion by Mr. Rodriguez

Seconded by Mr. Miller with regard to Appeal 21-23, 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.

Mr. Rodriguez moved to approve variance B and to tie it to the plans as submitted. He noted that the garage was existing non-conforming and that the appellant would not be expanding the non-conformity. He stated it was not self-created and would not impact any of the adjacent properties.

Mr. Rodriguez confirmed that, per ABO Zielke's presentation, the appellant would be required to consult with the City regarding the window on the dormer before receiving final approval.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Rodriguez, Miller, Hart, Canvasser, Rodenhouse, Lillie, Morganroth

Nays: None

**3) 856 N. Old Woodward, Suite 101
Appeal 21-25**

CP Cowan presented the item, explaining that the owner of the business known as Fruition, located at 856 N. Old Woodward, Suite 101, was requesting the following dimensional variance to operate a food & beverage use in the O2-Office zone:

A. Chapter 126, Article 4, Section 4.46(A), Table A of the Zoning Ordinance requires that an eating establishment for indoor or combined indoor-outdoor consumption requires 1 parking space for every 75 square feet of floor area plus such spaces as are required for assembly rooms and affiliated facilities, excluding all area utilized for outdoor dining. 856 N. Old Woodward "The Pearl" is a mixed-use building with three first floor tenant spaces, residential units on floors 2-4, and 70 parking spaces total. Fruition is a 1,227 square foot tenant space that requires 16 parking spaces as a food & beverage use with indoor dining, increasing the total parking requirement to 82 parking spaces for 856 N. Old Woodward, therefore a variance of 12 parking spaces is being requested.

Mr. Lillie noted that the landlord was obligated to make sure that the tenants would be able to run their businesses in adherence with the parking requirements. He observed that there was already an issue with too little parking in the area, and that if the BZA were to grant this variance it could both create a deleterious precedent for future businesses wanting to be granted parking spaces in excess of their allotment. He said it would also contribute to further parking issues in the area.

Leah Cason, appellant, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

Ms. Cason confirmed for the Board that the majority of business at the Grand Rapids location of Fruition is takeout. She said that was true both before Covid-19 and after the Covid-19 restrictions were lifted.

In reply to Vice-Chair Morganroth, CP Cowan said that bartop tables without seating would be a grey area between dine-in and carryout. He said the impact on parking requirements would have to be determined by Planning Director Ecker and Building Official Johnson.

Motion by Mr. Canvasser

Seconded by Mr. Lillie with regard to Appeal 21-25, A. Chapter 126, Article 4, Section 4.46(A), Table A of the Zoning Ordinance requires that an eating establishment for indoor or combined indoor-outdoor consumption requires 1 parking space for every 75 square feet of floor area plus such spaces as are required for assembly rooms and affiliated facilities, excluding all area utilized for outdoor dining. 856 N. Old Woodward "The Pearl" is a mixed-use building with three first floor tenant spaces, residential units on floors 2-4, and 70 parking spaces total. Fruition is a 1,227 square foot tenant space that requires 16 parking spaces as a food & beverage use with indoor dining, increasing the total parking requirement to 82 parking spaces for 856 N. Old Woodward, therefore a variance of 12 parking spaces is being requested.

Mr. Canvasser moved to deny the variance request. He said that the issue the appellant was facing was a private contractual matter. He explained that the landlord was approved for a certain number of parking spaces, and that the landlord should have divvied up the retail spaces based on the approved parking spaces and based on the concepts of each of the tenants. He said he agreed with Mr. Lillie's caution that approving this variance could establish damaging precedent in terms of future

requests for parking spaces. Mr. Canvasser said he was strongly urging the appellant to consult with an appropriate person about the appellant's remedies and rights because there may have possibly been some representations made that were not appropriate. He said that he was sympathetic to the appellant, and wanted to see her succeed, but noted that within the specific charge of the BZA they had no choice but to deny the request.

Ms. Rodenhouse concurred with Mr. Canvasser. She stated that the appellant's remedy would be found with the landlord and not with the BZA.

Mr. Lillie concurred with Mr. Canvasser.

Mr. Miller concurred with Mr. Canvasser, stating that while he wanted to see the business succeed that the BZA was not the right instrument for trying to gain additional parking in this case.

Vice-Chair Morganroth concurred with Mr. Canvasser. He stated that while he would support Fruition as a member of the public, he explained that the BZA could not be used to resolve tenant-landlord issues.

Motion carried, 6-1.

ROLL CALL VOTE

Yeas: Canvasser, Lillie, Morganroth, Rodriguez, Miller, Rodenhouse

Nays: Hart

**4) 555 S. Old Woodward, Suite 100
Appeal 21-26**

CP Cowan presented the item, explaining that the owner of the business known as Birmingham Pub, located at 555 S. Old Woodward, Suite 100, was requesting the following variance to have an illuminated building identification sign:

A. Article 1, Section 1.05(K)(2) of the Sign Ordinance states that non-illuminated signs identifying the entire structure by a building name may be permitted above the first floor in accordance with Section 2.02(C) Requirements. The applicant is proposing a 42-square foot illuminated building identification sign above the second floor, therefore a variance to allow the illumination of a 42-square foot sign is requested.

CP Cowan continued that the applicant received Final Site Plan and SLUP approval to operate an establishment with an Economic Development Liquor License on March 22nd, 2021. Neither the Planning Board nor the City Commission voiced concern or opposition to the signage. The previous restaurant tenant Triple Nickel received a variance for an illuminated building identification sign in December of 2016.

Vice-Chair Morganroth and Mr. Lillie asked how the color-changing lights visible from the railing of this establishment might factor into this variance request.

CP Cowan said that since the color-changing lights were already approved they were not being considered as a factor in the present variance request.

In reply to a question from Mr. Canvasser, CP Cowan said that the City had no concerns about the amount of illumination since the signage would have to comply with all other photometric requirements.

Timothy Muller, representing the appeal, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to Mr. Canvasser, Mr. Muller stated that the Birmingham Pub signage letters were the same 10-inch height as the signage letters previously used for Triple Nickel.

Motion by Mr. Miller

Seconded by Mr. Hart with regard to Appeal 21-26, A. Article 1, Section 1.05(K)(2) of the Sign Ordinance states that non-illuminated signs identifying the entire structure by a building name may be permitted above the first floor in accordance with Section 2.02(C) Requirements. The applicant is proposing a 42 square foot illuminated building identification sign above the second floor, therefore a variance to allow the illumination of a 42 square foot sign is requested.

Mr. Miller moved to approve the variance and tied it to the plans as submitted. He noted that the same issue arose in consideration of the previous Triple Nickel signage, which the Board approved, and added that the Birmingham Pub signage only had one additional letter. He noted that the height of the Birmingham Pub signage and the height of the Triple Nickel signage were the same. Mr. Miller continued that the signage was unlikely to have a negative impact. Describing the the properties to the north and south as 'blighted' in terms of urban design, Mr. Miller stated that given the environs locating Birmingham Pub would be difficult without illuminated signage. He said the circumstances of the property made it unique, that granting the variance would benefit both the owner and the surrounding property owners, and that the need for the variance was not self-created.

Mr. Lillie explained that while he had previously opposed Triple Nickel's similar request he did not think it would be fair to deny Birmingham Pub's request since Triple Nickel's request had ultimately been approved. Given that, Mr. Lillie said he would support the motion.

Vice-Chair Morganroth concurred with Mr. Miller. He said that he had concerns about the illuminated railing and hoped that the City was looking at that.³

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Miller, Hart, Rodenhouse, Canvasser, Lillie, Morganroth, Rodriguez
Nays: None

**5) 1220 Bird
Appeal 21-27**

Vice-Chair Morganroth asked again if the appellants were present. Since they were not, the Board moved to reschedule the hearing for Appeal 21-27 to the next regular BZA meeting.

**Motion by Mr. Lillie
Seconded by Mr. Rodriguez to reschedule the hearing for Appeal 21-27 to the July 2021 BZA meeting.**

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Lillie, Rodriguez, Miller, Hart, Rodenhouse, Canvasser, Morganroth
Nays: None

**6) 2351 Buckingham
Appeal 21-28**

ABO Zielke presented the item, explaining that the owner of the property known 2351 Buckingham was requesting the following variance to construct a rear second floor addition to an existing non-conforming single-family home:

A. Chapter 126, Article 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 and proposed is 9.00 feet. Therefore; a variance of 1.00 feet is being requested.

Stephanie Choate, appellant, and John Choate, contractor, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to Vice-Chair Morganroth, Ms. Choate stated that she did explore stepping in the second floor. She explained that doing so would cause the bedroom to be prohibitively constrained.

**Motion by Mr. Miller
Seconded by Mr. Hart with regard to Appeal 21-28, A. Chapter 126, Article 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 and proposed is 9.00 feet. Therefore; a variance of 1.00 feet is being requested.**

Mr. Miller moved to approve the plans and tied it to the plans as submitted. He said the need for the variance arose as a result of the position of the two existing buildings

on the site. He said the issue was not self-created and that it arose from the unique circumstances of the site. He stated that strict compliance with the ordinance in this case would prevent the petitioner from reasonably improving their property.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Miller, Hart, Rodenhouse, Canvasser, Lillie, Morganroth, Rodriguez

Nays: None

T# 06-33-21

5. Correspondence

Included in the agenda packet.

T# 06-34-21

6. General Business

Mr. Miller and Vice-Chair Morganroth thanked the City for the token of appreciation given to each BZA member as an acknowledgment of their volunteer service on the Board.

T# 06-35-21

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

None.

T# 06-36-21

8. Adjournment

Motion by Mr. Canvasser

Seconded by Mr. Lillie to adjourn the June 8, 2021 BZA meeting at 9:31 p.m.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Canvasser, Lillie, Morganroth, Hart, Rodenhouse, Rodriguez, Miller

Nays: None



Bruce R. Johnson, Building Official