

BIRMINGHAM BOARD OF ZONING APPEALS AGENDA

UPDATED: VIRTUAL MEETING DUE TO COVID-19 PANDEMIC

Go To: <https://zoom.us/j/96343198370>

Or Dial: 877 853 5247 US Toll-Free

Meeting Code: 963 4319 8370

May 12, 2020
7:30 PM

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF THE MINUTES

a) APRIL 14, 2020

4. APPEALS

	Address	Petitioner	Appeal	Type/Reason
1)	1054 SAXON	ATKINS	20-13	WITHDRAWN
2)	412 WILLITS	STEIN	20-21	DIMENSIONAL
3)	501 S ETON	WHISTLE STOP DINER	20-22	DIMENSIONAL
4)	1313 LAKESIDE	MARCUS	20-24	DIMENSIONAL
5)	1124 SMITH	SCHILLING	20-26	DIMENSIONAL
6)	1989 WEBSTER	BLOOMINGDALE HOMES	20-25	DIMENSIONAL
7)	1971 WEBSTER	BLOOMINGDALE HOMES	20-27	DIMENSIONAL

5. CORRESPONDENCE

6. GENERAL BUSINESS

7. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

8. ADJOURNMENT

Title VI

Persons with disabilities that may require assistance for effective participation in this public meeting should contact the City Clerk's Office at the number (248) 530-1880, or (248) 644-5115 (for the hearing impaired) at least one day before the meeting to request help in mobility, visual, hearing, or other assistance.

Las personas con incapacidad que requieren algún tipo de ayuda para la participación en esta sesión pública deben ponerse en contacto con la oficina del escribano de la ciudad en el número (248) 530-1800 o al (248) 644-5115 (para las personas con incapacidad auditiva) por lo menos un día antes de la reunión para solicitar ayuda a la movilidad, visual, auditiva, o de otras asistencias. (Title VI of the Civil Rights Act of 1964).

The public entrance during non-business hours is through the police department at the Pierce Street entrance only. Individuals requiring assistance entering the building should request aid via the intercom system at the parking lot entrance gate on Henrietta Street.

La entrada pública durante horas no hábiles es a través del Departamento de policía en la entrada de la calle Pierce solamente. Las personas que requieren asistencia entrando al edificio debe solicitar ayudan a través del sistema de intercomunicación en la puerta de entrada de estacionamiento en la calle de Henrietta.

MAY BZA MAP



**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, APRIL 14, 2020
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, April 14, 2020. Chairman Charles Lillie convened the meeting at 7:30 p.m.

2. ROLLCALL

Present: Chairman Charles Lillie; Board Members Jason Canvasser, Kevin Hart (left at 9:11 p.m.), Richard Lilley, Erik Morganroth, Francis Rodriguez; Alternate Board Member Ron Reddy

Absent: Board Member John Miller; Alternate Board Member Jerry Attia

Administration:

Bruce Johnson, Building Official
Eric Brunk, I.T. Manager
Mike Morad, Asst. Building Official
Jeff Zielke, Asst. Building Official
Laura Eichenhorn, Transcriptionist

Chairman Lillie explained 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.

Chairman Lillie took rollcall of the petitioners. The petitioners for Appeal 20-20, 311 Frank, were absent. All other petitioners were present. Chairman Lillie explained the meeting was being held virtually due to the Covid-19 pandemic. He explained the procedures that would be followed for the virtual meeting.

T# 04-19-20

3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF MARCH 10, 2020

Chairman Lillie recommended the following amendments to the minutes:

- In the third full paragraph on page seven it should read that four affirmative votes, not five, would have been required.
- On page 12, in the second full paragraph up from the bottom, the word "current" should be changed to "revised".
- On page 14, in the third full paragraph up from the bottom, "cannot impact the building of those houses since most of them do not need variances" should be changed to "does not deal with the aesthetics of building houses". After that sentence an additional sentence should be added that reads, "In addition, most of them do not need variances."

Motion by Mr. Morganroth

Seconded by Mr. Canvasser to accept the Minutes of the BZA meeting of March 10, 2020 as amended.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Morganroth, Canvasser, Lillie, Hart, Reddy

Nays: None

Abstain: Lilley, Rodriguez

T# 04-20-20

4. APPEALS

1) 1974 Hazel Appeal 20-17

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 1974 Hazel, requests the following variances of the distance between structures to construct a new single family home:

A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 13.80 feet. Therefore, a variance of 0.20 feet is being requested on the West side.

B. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 10.70 feet. Therefore, a variance of 3.30 feet is being requested on the East side.

Assistant Building Official Zielke noted the appellant was requesting to construct a new home on this property where the adjacent homes are existing non-conforming. This property is zoned R2 – Single Family Residential.

In reply to Chairman Lillie, Assistant Building Official Zielke stated that no variances would be required for the proposed work on 1974 Hazel if the homes to the east and west were not existing present.

Robert Bloomingdale, developer, was present on behalf of the appeal. The Board members had no questions for Mr. Bloomingdale.

Chairman Lillie invited comment from the public.

Alexis Pollock, neighbor to the west of 1974 Hazel, stated that she is in the process of remodeling her home and was adamant about not seeking variances during that process. She noted that Mr. Bloomingdale inevitably knew the dimensions of the home before purchase, and asked why he chose to purchase a home that would require a variance. She asked Mr. Bloomingdale to clarify how narrow the home would be if he did not receive the variance he was requesting.

Mr. Bloomingdale told Ms. Pollock that the home would be 23 feet wide without the variance, and 26 feet wide with the variance.

Ms. Pollock expressed the hope to Mr. Bloomingdale that he would design and build a home that is keeping in the character of the block. She expressed concern, which she said was both her neighbors' and her own, that the proposed house will be disproportionately large for the size of the lot. She said that other new homes in the neighborhood have been more imposing than the older homes still present, to the consternation of the neighbors. She said she and her neighbors are concerned that property values could decline as a result of overly large homes being built on smaller lots.

Chairman Lillie told Ms. Pollock that her concern was noted and invited other comment from the public.

A man speaking under Kathleen Riley's Zoom username stated that Mr. Bloom was unable to talk to the Board because for security reasons he was unable to use Zoom on his computer.

Kathleen Riley reported that David Bloom was attempting to comment on the issue, but that since he was dialing into the meeting by phone he was unsure of how to comment. She asked if the Board could allow Mr. Bloom to comment on the issue.

Chairman Lilley told Ms. Riley that "they just said for security reasons we cannot". Constance Romanelli, neighbor to the east side of 1974 Hazel, said she was concerned about the three foot variance request on the east side. She said that could put 1974 Hazel within two to three feet of her garage, which is closer to the lot line than the rest of her house.

Chairman Lillie told Ms. Romanelli that according to the drawings submitted to the City her garage would be eight feet away from 1974 Hazel.

Ms. Romanelli said she had no concern about eight feet, and further said she hoped the variance would be granted to allow a good house to be built at 1974 Hazel.

Mr. Bloom was able to join the meeting to give comment. He thanked the Board for the opportunity to comment. He noted that this appeal was submitted by a builder, who is neither a resident of Birmingham or the primary resident of 1974 Hazel. Mr. Bloom noted that there were similar applications on the evening's agenda, where the appellants were not residents of the properties. Mr. Bloom continued:

- These builders purchased properties which they are now saying are unusable without variances.
- If the properties are unsuitable for for the builders' purposes, they should not have purchased the properties.
- The quality of homes in Birmingham is declining because of builders who purchase properties and then pursue variances. This practice should not be permitted.
- Builders should have to reimburse the legal fees of neighbors to such properties who have had to hire attorneys to protect their interests.

Mr. Bloomingdale replied to Ms. Pollock's earlier comments and assured the neighbors that his company is very sensitive to the streetscapes of a tight-knit neighborhood such as the Birmingham rail district. He said his company takes that into account when designing their homes.

Seeing no further comment from the public, Chairman Lillie returned discussion to the Board.

Motion by Mr. Morganroth

Seconded by Mr. Lilley with regard to Appeal 20-17, A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 13.80 feet. Therefore, a variance of 0.20 feet is being requested on the West side. B. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 10.70 feet. Therefore, a variance of 3.30 feet is being requested on the East side.

Mr. Morganroth moved to approve the requested variances since the appellant was seeking to abide by the requirements of nine feet on one side of the home and five feet on the other side. He noted that if the homes on either side were not present then 1974 Hazel would not require a variance. He said that strict compliance would unreasonably prevent the petitioner from using the property for its purpose and that the need for the variances was not self-created because he would be building within the ordinance. He tied his approval to the plans as presented.

Mr. Lilley said he concurred with Mr. Morganroth because the proposed home would be built within the zoning requirements and that it was the homes on either side of 1974 Hazel that were not in compliance.

Chairman Lillie agreed with Mr. Morganroth's and Mr. Lilley's comments and said he would be supporting the motion.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**2) 1291 Taunton
Appeal 20-18**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 1291 Taunton requested the following variances to construct an addition to an existing nonconforming home:

A. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that no side yard setback shall be less than 5.00 feet. The existing and proposed is 4.86 feet. Therefore, a variance of 0.14 feet is being requested.

Assistant Building Official Zielke noted the applicant was requesting to construct an addition to the existing 1948 non-conforming home. This property is zoned R2 – Single Family Residential.

Robin Ballew, architect, was present on behalf of the petition.

In reply to Mr. Morganroth, Mr. Ballew stated that while the appellant considered stepping the addition back so as not to require the variance, it was determined that it would be structurally more sound to keep the addition in-line with the current parameters. Mr. Ballew also said that the result would be more aesthetically pleasing, and thus more beneficial for the project and the community as a whole.

Motion by Mr. Rodriguez

Seconded by Mr. Reddy with regard to Appeal 20-18, A. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that no side yard setback shall be less than 5.00 feet. The existing and proposed is 4.86 feet. Therefore, a variance of 0.14 feet is being requested.

Mr. Rodriguez moved to approve the variance and tied it to the plans as submitted since a practical difficulty had been established due to the existing non-conformity and the irregular shaped lot. He said the variance appeared to be the minimum necessary since the non-conformity would not be increased. He continued that the

need for the variance was not self-created, and would not adversely affect the adjacent properties.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**3) 995 Gordon
Appeal 20-19**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 995 Gordon was requesting the following variances for the height to construct a new single family home:

A. Chapter 126, Article 2, Section 2.06.4 of the Zoning Ordinance requires that the maximum building height for the R1 zoning district is 30.00 feet to the midpoint. The proposed height is 31.81 feet. Therefore a 1.81 foot variance is being requested.

B. Chapter 126, Article 2, Section 2.06.4 of the Zoning Ordinance requires that the maximum eave height for the R1 zoning district is 24.00 feet. The proposed height is 31.81 feet. Therefore a 7.81 foot variance is being requested.

Assistant Building Official Zielke noted the applicant was requesting to construct a new home on this sloping lot. This property is zoned R2 – Single Family Residential.

Assistant Building Official Zielke confirmed that the variances would not be required if the appellant were not seeking to create a walkout in the rear of the home.

Todd Bergsman, designer, was present on behalf of the petition.

In reply to Mr. Canvasser, Mr. Bergsman said the house, excluding the walkout, could be built without the two variances. Mr. Bergsman explained that, in his experience, Birmingham ordinance was not written to accommodate sloped lots so designing and building on sloped lots has always required variances. With the home being moved further back on the lot than otherwise required in order to alleviate some of the potential parking and traffic issues on Gordon stemming from tightly-packed homes, the appellant would stand to lose some of the square footage of the rear yard. The appellant is seeking these variances in order to mitigate that loss of square footage in the rear yard.

In reply to Mr. Morganroth, Mr. Bergsman said the plans for the home were trying to accommodate traffic congestion issues on Gordon by providing more parking for the homeowner and creating a home more in the spirit of what the zoning ordinances require for the front yard setback. He said the ordinance would currently allow the home to be about ten feet closer to Gordon than the neighbors' homes, and that the appellant is trying to better align their home

with the neighbors which is what creates the variance need. Mr. Bergsman said the need is not self-created for that reason.

Mr. Morganroth said that he understood why the appellant wanted the walkout, and conceded that if it were his home he would want it as well. That said, Mr. Morganroth said that the Board makes its decisions based on set definitions of practical difficulty, and preference is not one of the criteria. He stated that having to install a retaining wall in the rear of the home to create the walkout indicates self-creation of the need for the variance.

Mr. Bergsman said that homes can always be designed to adhere exactly to the ordinance, but that he believes the homeowner was bringing a reasonable request to the BZA. He said that the ordinances cannot always take into account all circumstances, and that sometimes strict compliance with the ordinance is unfair to the homeowner, which Mr. Bergsman said he believed was the case here.

Motion by Mr. Morganroth

Seconded by Mr. Canvasser with regard to Appeal 20-19, A. Chapter 126, Article 2, Section 2.06.4 of the Zoning Ordinance requires that the maximum building height for the R1 zoning district is 30.00 feet to the midpoint. The proposed height is 31.81 feet. Therefore a 1.81 foot variance is being requested. B. Chapter 126, Article 2, Section 2.06.4 of the Zoning Ordinance requires that the maximum eave height for the R1 zoning district is 24.00 feet. The proposed height is 31.81 feet. Therefore a 7.81 foot variance is being requested.

Mr. Morganroth moved to deny the variances. He said that the need for the variances was self-created, even though there were some unique circumstances of the lot and sloping in the rear of the home. He expressed appreciation that the appellants were planning to push the home further back from the street in order to accommodate the neighbors and were planning to build a smaller home than the lot could accommodate. Mr. Morganroth continued that in spite of those goodwill gestures on the part of the appellant, self-creation is one of the most significant criteria the Board must consider in these appeals, and the need for the retaining walls and the additional height in the eave are self-created.

Mr. Canvasser echoed Mr. Morganroth's comments, saying that while he greatly respected the well-done and reasonable plans submitted to the Board, the Board had to determine whether the need for the requested variances was self-created. He said the need for the variances was self-created since Mr. Bergsman acknowledged that the same home could be built without a walkout. Mr. Canvasser stated that the BZA is not a body of lawmakers, and that if the ordinance does not appropriately deal with lots with this type of slope there are other options available to the appellant to address that issue. He explained that the BZA is tasked with enforcing the ordinance as written, and with applying tests to see whether or not a request complies.

Mr. Rodriguez said he would support the motion as well. He said that even while the plans were well-designed, the presentation was well done, and there was evidence

of attempted mitigation, he still found that the need for the variances was self-created.

Mr. Hart said he would not be supporting the motion. He said the substantial drop in the topography in the rear of the home created a sufficiently unique circumstance to find that the need for the variances was not self-created. He noted that Assistant Building Official Zielke said during his presentation that a variance would still be needed in the rear yard area even without a walkout. He said there would be no adverse affect on neighboring properties if the variance were granted, and that granting the variances would result in substantial justice for all parties concerned. Mr. Hart specifically commended Mr. Bergsman on his work to make the home appropriate within the context of the neighborhood.

Motion carried, 5-2.

ROLL CALL VOTE

Yeas: Morganroth, Canvasser, Lillie, Rodriguez, Reddy

Nays: Hart, Lilley

**4) 311 Frank
Appeal 20-20**

The appellant had joined the proceedings during the course of the meeting.

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 311 Frank requested the following variance to construct a new single family home with a detached garage:

A. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that the minimum combined front and rear setback is 55.00 feet. The proposed is 49.50 feet. Therefore a 5.50 foot variance is being requested.

Assistant Building Official Zielke noted the applicant was requesting to construct a new home on this corner lot. This property is zoned R3 – Single Family Residential.

Brian Neeper, architect, was present on behalf of the petition. He reviewed the reasons for the variance request as detailed in his letter dated March 10, 2020 and included in the evening's agenda packet.

John Staran, attorney, was present representing Kathleen and Chris McCarthy, the owners of 335 E. Frank, the historic home next door to 311 Frank. Mr. Staran stated he was speaking in opposition to the variance request because no practical difficulty has been demonstrated. Mr. Staran noted that an ordinance-conforming home is currently located on the lot.

Mr. Bloom stated that the McCarthys have been longtime Birmingham residents, and their preferences should be prioritized over a builder's. He also noted that Mr. Neeper has built a

number of quality homes in Birmingham, which means that Mr. Neeper is familiar with Birmingham ordinance requirements. Mr. Bloom asserted that if Mr. Neeper is not able to build on the lot the kind of home he would like to build he should not have purchased the lot in the first place.

Motion by Mr. Canvasser

Seconded by Mr. Reddy with regard to Appeal 20-20, A. Chapter 126, Article 2, Section 2.10.2 of the Zoning Ordinance requires that the minimum combined front and rear setback is 55.00 feet. The proposed is 49.50 feet. Therefore a 5.50 foot variance is being requested.

Mr. Canvasser moved to deny the variance request because he found the need for the variance to be self-created. He noted that the lot has no unique factors and that the lot could accommodate a 2700 square foot home that would conform to ordinance. While Mr. Canvasser acknowledged that a smaller-than-requested home may not be the appellant's preference, Mr. Canvasser said that did not rise to the level of creating a practical difficulty.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T#04-21-20

5. CORRESPONDENCE (included in agenda)

T# 04-22-20

6. GENERAL BUSINESS

T# 04-23-20

7. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

T# 04-24-20

8. ADJOURNMENT

Motion by Mr. Morganroth

Seconded by Mr. Rodriguez to adjourn the April 14, 2020 BZA meeting at 9:12 p.m.

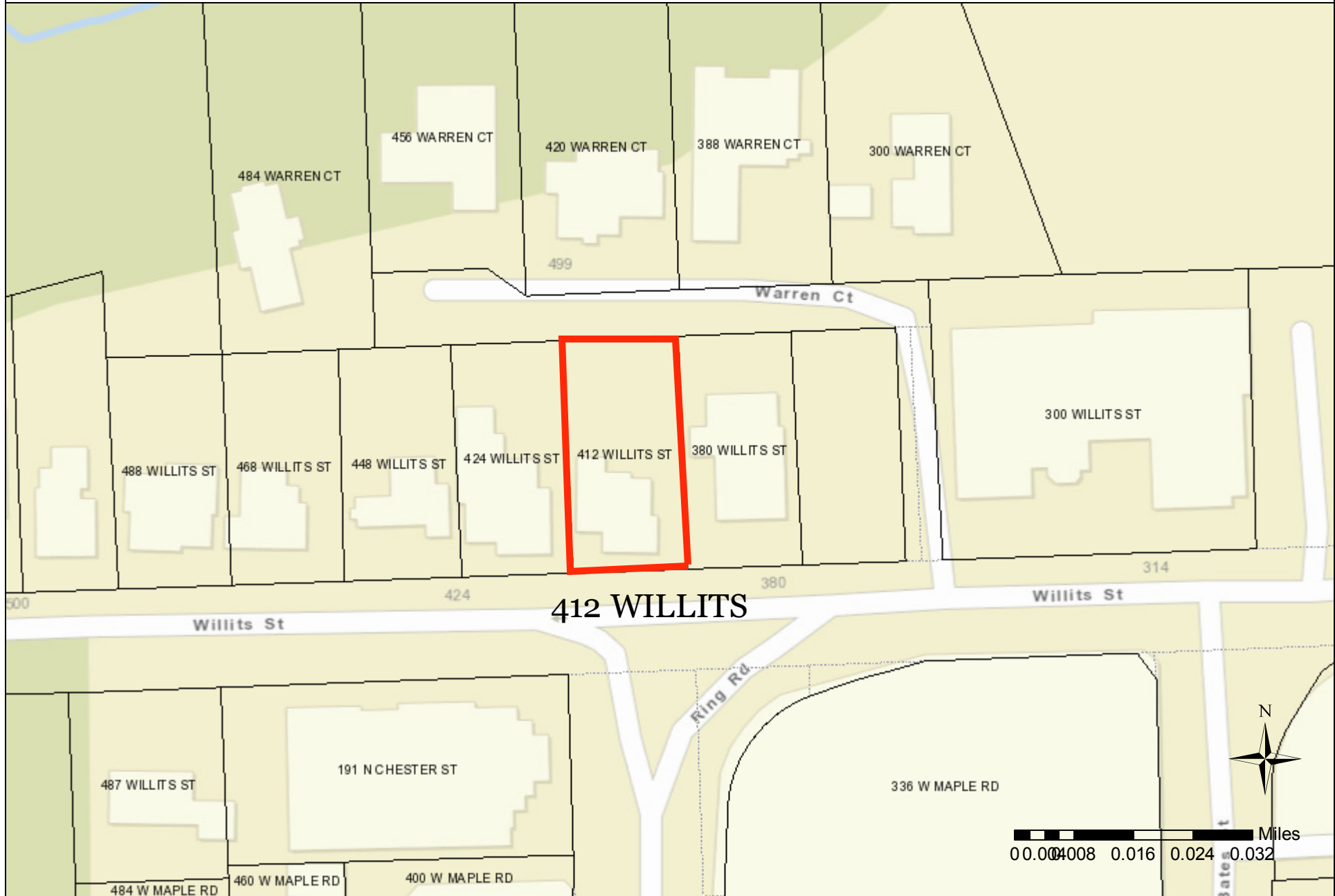
Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Morganroth, Rodriguez, Canvasser, Reddy, Lilley, Lillie
Nays: None

Bruce R. Johnson, Building Official

412 WILLITS MAP



CASE DESCRIPTION

412 Willits (20-21)

Hearing date: May 12, 2020

Appeal No. 20-21: The owner of the property known as 412 Willits, requests the following variance to construct an addition to the existing non-conforming home:

A. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that the minimum total side yard setbacks are 14.0 feet or 25% of the lot width whichever is greater. The required total is 15.00 feet. The existing and proposed total is 10.82 feet. Therefore, a variance of 4.18 feet is being requested.

B. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 15.00 feet. The proposed is 11.02 feet. Therefore, a variance of 3.98 feet is being requested on the East side.

Staff Notes: The applicant is requesting to construct an addition to the existing 1865 historic home. The applicant was before the HDC in February. minutes attached.

This property is zoned R3 – Single Family Residential.

CITY OF BIRMINGHAM
Community Development - Building Department
 151 Martin Street, Birmingham, MI 48009
 Community Development: 248-530-1850
 Fax: 248-530-1290 / www.bhamgov.org

APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: 2/12/20
 Received By: Bm

Hearing Date: 4-14-20
 Appeal #: 20-21

Type of Variance:	<input type="checkbox"/> Interpretation	<input checked="" type="checkbox"/> Dimensional	<input type="checkbox"/> Land Use	<input type="checkbox"/> Sign	<input type="checkbox"/> Admin Review
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I. PROPERTY INFORMATION:

Address: <u>412 WILLITS, BIRMINGHAM, MI 48009</u>	Lot Number:	Sidwell Number: <u>1925376044</u>
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II. OWNER INFORMATION:

Name: <u>JONATHAN AND LAUREN STEIN</u>			
Address: <u>412 WILLITS</u>	City: <u>BIRMINGHAM</u>	State: <u>MI</u>	Zip code: <u>48009</u>
Email:	Phone: <u>248-647-4947</u>		

III. PETITIONER INFORMATION:

Name: <u>JONATHAN STEIN</u>		Firm/Company Name:	
Address: <u>412 WILLITS</u>	City: <u>BIRMINGHAM</u>	State: <u>MI</u>	Zip code: <u>48009</u>
Email:	Phone: <u>248-647-4947</u>		

IV. GENERAL INFORMATION:

The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12th day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.

To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted. Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.

The BZA application fee is \$360.00 for single family residential; \$560.00 for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.

Variance Chart Example				
Requested Variances	Required	Existing	Proposed	Variance Amount
Variance A, Front Setback	25.00 Feet	23.50 Feet	23.50 Feet	1.50 Feet
Variance B, Height	30.00 Feet	30.25 Feet	30.25 Feet	0.25 Feet

V. REQUIRED INFORMATION CHECKLIST:

- One original and nine copies of the signed application
- One original and nine copies of the signed letter of practical difficulty and/or hardship
- One original and nine copies of the certified survey → ON BUILDING PLANS
- 10 folded copies of site plan and building plans including existing and proposed floor plans and elevations
- If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting

VI. APPLICANT SIGNATURE

By signing this application, I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

Signature of Owner: <u>[Signature]</u>	Date: <u>02/12/2020</u>
Signature of Petitioner: <u>[Signature]</u>	Date: <u>02/12/2020</u>



CITY OF BIRMINGHAM
 Date 02/12/2020 4:00:11 PM
 Ref 00167899
 Receipt 526297
 Amount \$360.00

February 5, 2020

City of Birmingham
Board of Zoning Appeals
151 Martin Street
Birmingham, MI 48009

Re: 412 Willits Street, Birmingham, MI 48009

Dear Board of Zoning Appeals:

My name is Jonathan Stein, and my wife Lauren and I are the owners of the property located at 412 Willits Street in Birmingham. Our home is situated in the Mill Pond neighborhood, right on the edge of downtown. Constructed around 1860 by one of Elijah Willits' children on land that was part of his original 160-acre parcel, 412 Willits is now known as the Stickney House Historic District after its second and long-time owner, Ms. Anne Stickney.

The Stickney House is one of the oldest structures in Birmingham and it has been continuously inhabited since construction. Its existence pre-dates not only Birmingham's 1933 incorporation as a city, but also likely precedes its incorporation as a village in 1864.

It is believed that 412 Willits was originally constructed as a 26' wide x 16' deep colonial farmhouse. Over time, the "lean-to" kitchen was removed, and additions were placed on the west and north sides between 1980-82. The western addition is a single-car garage, and the northern addition contains the current kitchen, dining area, family room and a small bedroom. The existing historic structure contains a downstairs living room and a small 9' x 7' study, and the upstairs contains the current master bedroom and bath. All rooms in the historic "box" structure face Willits Street and are exposed to downtown noise and traffic which, according to the Southeast Michigan Council of Governments (SEMCOG), is on average between 3,560 and 4,100 vehicles per day, one of the highest rates in downtown Birmingham.¹

Due to the physical closeness of our east and west neighbors and the minimal, pre-zoning code front yard setback of 10'-10.5", the front elevation is extremely visible to the Maple-Ring Road intersection and is also the only significantly visible portion of our home. The focus of our addition plan is to maintain the original farmhouse "box"

¹ <https://semcog.org/traffic-counts>, search for "Willits," accessed February 4, 2020

massing and existing front elevation with no changes, while enabling a new first-floor master bedroom suite to be constructed with minimum visibility from the street. The causes necessitating the location and orientation of the addition will become apparent as we explain the nature of our request.

The intent of the planned renovations is to preserve the vintage character and charm of one of our area's few remaining historic structures for future Birmingham residents and guests to enjoy, while making a compromised structure livable for present-day occupants. In order to make the Stickney House livable in light of adverse conditions that we did not cause through our own making, this addition is vitally needed.

Lauren and I would like to build a modest, 365 square foot master bedroom and bath on the back and side of the current addition, which will require variances to construct. We began the planning process for this addition more than two years ago, when it became clear that the lightly used church across the street was going to increase dramatically in size to become "The Jeffrey," the Surnow Company's new office building. The existing historic footprint of the Stickney House will not be disturbed as part of planned renovations. Our architect Brian Neeper is located in Birmingham and has worked on many projects in our city, and he has specifically designed this addition to minimize any impact to our neighbors' enjoyment of their own homes, and the addition will improve privacy for our neighbors to the east at 380-382 Willits. We think that this project will increase the overall value of the neighborhood, and that it might serve as a marker for owners of future historic homes in Birmingham on how to preserve their properties while adding the modern comforts that home buyers now expect. The absence of these comforts likewise diminishes the value and salability of these homes.

The following hardship conditions described below necessitate our request for the variances required to build this project with maximum benefits to the home and minimal impact to the neighborhood:

HARDSHIP: Downtown encroachment on the neighborhood

Our home is zoned R2, with neighboring properties zoned R2 (the homes on Willits to the east and to the north on Warren Court) R6 (the homes on Willits and the First Baptist Church to the west), TZ-1 (the Surnow Company building at 191 Chester to the south, formerly the Christian Scientist Church) and B-4 (McCann Detroit at 360 W. Maple to the southeast). It is also across the street from Downtown Overlay Districts allowing for up to four-story development. As a residential dwelling right in

downtown Birmingham, our home offers many opportunities to be part of a vibrant community, but it is subject to unique pressures from development and density that impact our privacy and our ability to enjoy our home. It is not inconceivable that the buildings directly across from our home could double in height in the coming years, with a commensurate increase in density, traffic, and noise.

As an example of the real-life application of this idea, construction has now been ongoing at the Surnow site for more than two years, resulting in constant all-day noise and house-shaking vibration on a daily basis. When we purchased our home eight years ago, 191 Chester was a church occupied only during services or scheduled events. When construction is complete on the office redevelopment there will be a daily stream of workers coming and going at all hours, with accompanying traffic and visitors. Despite the developers' original promise to maintain the church's historic façade, the final structure has a multi-story glass atrium at the front of the building with a second story conference room that looks down into our master bedroom from directly across the street. The construction, noise, traffic and the major changes to this development are a key cause for our need to relocate our main private areas to the rear of our home. Any potential future owners will be subjected to the same conditions, potentially limiting the market for and resale value of our home. We did not create this issue, and our enjoyment of our home has been severely impacted by this project.

It is worth noting that development proposals such as the recent Bates Street Redevelopment project demonstrate that height and density in Birmingham will be increasing in the future, and that if our main living and sleeping areas remain in the front of the house we and future residents will be subjected to all of the accompanying lighting, noise and traffic. We are attempting to preserve the existing historic structure and keep it livable, but if we are unable to do so a future owner may attempt to de-register the home as a historic district and tear it down because of the discomfort caused by living so close to a busy street. Lauren and I love our home and are requesting these changes to maintain our home's place as a livable part of downtown Birmingham and marker of our town's history.

HARDSHIP: Pre-Code structures limit future mobility; allow in outside environment

The current master bedroom at 412 Willits is located at the front of the historic "box" and is comprised of a bedroom and bath that occupy the entire second story of the residence. While functional as a room, the master bedroom is only accessible via a 19th-Century staircase with a steep rise of over 8 inches, a tread depth of only 8.5 inches (1/2" below the currently required 9"), and a width of only 27" at its narrowest, well below the currently required 31.5" clear width from the single handrail. The overall

width of 33" at its widest point is also significantly below the currently required 36" minimum.

This steep rise, narrow tread depth and narrow width make navigating the stairway a significant hardship. As Lauren and I age this stairway may present a significant challenge to our ability to utilize the upstairs of the home as a living space, necessitating the need for a first-floor master bedroom. Any future occupant or owner of the home with potential mobility issues would have the same issue. Moving furniture and appliances up and down the stairs is already a difficult proposition, and ideas for utilizing the current master bedroom for any type of potential convalescence or for a long-term ability to "age-in-place" are not practical. While current circumstances dictate the use of this space as a master suite, it is best suited in the long term as a children's room, guest room or den.

In addition to the mobility issues presented by the pre-code staircase, the Stickney House has eight extremely old windows in the historic "box" portion of the dwelling. These windows do not meet modern expectations for insulation or noise reduction, and as a result noise from the street enters the home. As downtown has increased with construction and now future commuters heading to The Jeffrey building from the Bates Street parking structure, the livability of the front of the house been deteriorated by a steadily heightened noise level in the home over time. This condition did not exist when we purchased the home in 2011, and the situation is not of our making.

HARDSHIP: Second-floor laundry requirement in current dwelling

In conjunction with the difficult-to-navigate staircase, the only available space for laundry to be done in the home as currently configured is in an upstairs closet with room for a stackable washer-dryer. This presents its own hardships – both in bringing clothing up and down the stairs to the lower bedroom, and in the fact that catastrophic damage to the historic structure of the home is possible from this arrangement.

In early 2018 the washer in the closet failed, causing water to cascade from the machine and soak into the floor below. This damaged the living room ceiling extensively, and a contractor replaced the drywall and repainted the ceiling at considerable expense. We also needed to replace the machine, and due to the tight confines of the stairway and the closet only compact stacking units would fit. Even so, the removal and replacement of the old unit caused damage to the stairway walls due to the tight confines of the spaces involved.

Even though the machine has been replaced, repetition of the above scenario is absolutely possible at any time should a future machine fail in the same manner. For these reasons, second-story laundry a hardship both for ourselves and for the historic structure, and one which would only be remediated by relocating laundry facilities to the new addition.

HARDSHIP: Historic structure cannot be changed; limited room to add on

As both the staircase and the laundry hardship descriptions convey, there is an over-arching hardship that encompasses all living conditions in the Stickney House, which is that it cannot be easily changed or reconfigured and still remain a registered historic structure.

Lauren and I understood this challenge when we bought our home as an ex-rental out of foreclosure and completely remodeled it. We have spent substantial time and money converting a home that sat empty and neglected into a historic structure that the entire community can enjoy looking at. We have renovated the interior and exterior in conjunction with the Birmingham planning department and according to the guidelines and best practices of historic preservation, using city-approved colors and materials at each step. We are proud of what we have achieved in bringing this home back from a long period of decline.

We are committed to keeping the historic box intact because we value its presence in the community, but even if we wanted to make significant changes, we are particularly bound by the historic designation that existed when we purchased the home to not significantly change the street-visible elevations of the house. Birmingham's Historic District Ordinance requires the City Commission to follow the U.S. Secretary of the Interior's *Standards for Rehabilitation* thusly in reviewing plans: **"New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment."**²

The restrictions mandate that our plans not impact the original "box" of the Stickney House and make the existing 1980-82 additions the only logical and practical place to add on. The limitations around adding on to the front are compounded by the

² Chapter 127 - HISTORIC DISTRICTS, https://library.municode.com/mi/birmingham/codes/code_of_ordinances?nodeId=PTIICICO_CH127IHD1. Accessed February 4, 2020

tight confines of our lot, which was platted prior to the existence of Birmingham's zoning law. Because our neighbors are close-by on each side, there is almost no room to add on to the house without running afoul of the city's side yard requirements.

A non-historically designated home does not have requirements not to affect the main structure of the home with an addition. The decision to designate was a situation not of our making, and the only currently available workaround to the requirement not to change the historic "box" requires the variances requested below.

HARDSHIP: Inability to build "upward"

As previously noted, there are additions to our home that were constructed from 1980-82, including the northern addition consisting of a kitchen/eating area, bedroom, bath and family room. Our construction contractor evaluated the addition of a second story above this current rear addition, and while this location is good for building a rear second-story from a space standpoint, it has several drawbacks:

- a. As noted, it would not be possible to build an addition in this area without significantly altering the historic "box" of the original home. This would diminish the historic significance of the house and the view of the box from the front approaches and would not be permissible under the existing Historic District registration or the Historic District Ordinance.
- b. Even if it were permissible, the 1980-82 additions were not originally constructed with the intent of supporting a second story, and new construction would have to correct for the rearward sloping roof of the current addition and any structural reinforcements necessary to build above it. The costs of reinforcement and modification would be higher than constructing an equivalent space at ground level as requested.
- c. Even if it were permissible and structurally possible, we have been informed by multiple contractors that the tight dimensions of the side yards of our home make it impossible to get larger construction machinery into our back yard to facilitate an addition in this area. The added costs of bringing in all materials by hand and in completing all construction by hand would be higher than constructing an equivalent space at ground level as requested.

The destructive impact to the historic structure, scope of modifications and overall inaccessibility associated with adding a second story to the current 1980-82

addition make building create a significant hardship and necessitate the variances requested below.

HARDSHIP: Lack of privacy from surrounding structures

As we mentioned above, the Surnow Company's The Jeffrey office building has been constructed in a manner that provides a view directly down and into the current master bedroom from a glass-walled conference room, and the edges of the former church structure have been moved significantly closer to our home. Prior to construction, the front of the church was approximately 120 feet from our front door, with no windows with a view into our home. The new development places a glass-walled conference room approximately 90 feet from our bedroom windows - more than 25% closer, with virtually 100% more visibility into our private residence.

In addition to the Jeffrey building, privacy is an issue on the side of our home. On the east side of our house is 380-382 Willits, a duplex with side-by-side units. In the 1980s, former owner Ricki Nederlander constructed a glass atrium on the west side of 382 Willits approximately 6 feet from the property line with an easterly view directly into the 412 Willits living room. Ricki was a beloved local resident, and she was a wonderful person and one of the best neighbors that we have ever had. Following Ricki's untimely passing her home became a rental, and the tenants have used the space very differently than Ricki did. Ricki had a sofa facing the interior of her home and had blinds to filter her view, while all tenants since her occupancy have utilized the room in ways that have them looking out over our yard and into our home for multiple hours each day and in the evenings, such as for home office use. We have experienced situations where business meetings would be held in the atrium in which multiple people not known to our family had a view into our private living space for hours on end. In addition to the basic awkwardness of this situation, being under observation has substantially impacted our enjoyment of our living room and our yard. The addition will serve to reduce the view into our home while creating an attractive buffer that does not diminish the view over our yard, allowing us to comfortably use our interior space without being perpetually on view to our neighbors and their guests.

It is important to emphasize that this is a situation not of our making. The atrium at 382 Willits was constructed after the additions to our home were complete, and we could not have reasonably anticipated that this situation would become an issue many years after buying our home.

VARIANCES REQUESTED

- A. Chapter 126, Article 2, Section 2.08 R2** of the Zoning Ordinance requires that the minimum side yard setback be 9% or 10% of total lot width for one side of yard, and 14 feet or 25% of total lot width for both side yards, and that no side yard shall be less than 5 feet. The lot width at 412 Willits is 60 feet, necessitating 15 total feet of side yard, with one side being greater than 9 feet. The existing west side yard is 5.23 feet in width, and the proposed east side yard setback is 5.59 feet in width. Because the home would not have a side yard greater than 9 feet with the proposed addition, a 3.41 foot variance is requested for the 9 feet single side yard requirement.
- B. Chapter 126, Article 2, Section 2.08 R2** of the Zoning Ordinance requires that the minimum side yard setback be 9% or 10% of total lot width for one side of yard, and 14 feet or 25% of total lot width for both side yards, and that no side yard shall be less than 5 feet. The lot width at 412 Willits is 60 feet, necessitating 15 total feet of side yard, with one side being greater than 9 feet. The current western side yard is 5.23 feet in width, and the proposed east side yard setback is 5.59 feet in width. Because the home would not 15 total feet of side yard with the proposed addition, a 4.18 foot variance is requested for the 15 feet total side yard requirement.
- C. Chapter 126, Article 4, Section 4.74 (C)** of the Zoning Ordinance requires the minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is greater. 412 Willits sits on a 60 foot lot width, and therefore requires 15 feet of distance between residential buildings. The proposed addition is 11.02' feet from the structure to the nearest adjacent structure to the east at 382 Willits. Therefore, a 3.98 foot variance is requested. This variance would not be necessary had the home at 382 Willits not built its atrium, and our plan endeavors to minimize the effects on our neighbors by making our addition as small as practically possible.

The Stickney House is remarkable in having survived in essentially the same form for 160 years. The Willits Family could not have planned for offices across the street when deciding where to place our house, and Ann Stickney could not have envisioned that her bucolic view of houses and dirt roads would become Ring Road, McCann Detroit and the eponymous Willits building. We recognize that we have chosen to live in a special home located in an area of frequent change, and we are glad

to have made improvements to the property over time that significantly improved the condition of the house to the benefit of ourselves and the community. We are respectfully requesting the variances listed above in order to correct challenges resulting from causes not of our making, so that we may continue to enjoy living in our home and preserving it as an important piece of Birmingham history.

Sincerely,



Jonathan Stein



Lauren Stein

Owners

412 Willits Street

Variance Chart - 412 Willits

Requested Variances	Required	Existing	Proposed	Variance Amount
Variance A Side Yard Setback (individual)	9.00 Feet	16.10 Feet	5.59 Feet	3.41 Feet
Variance B Side Yard Setback (total)	15.00 Feet	21.33 Feet	10.82 Feet	4.18 Feet
Variance C Distance Between Buildings	15.00 Feet	21.53 Feet	11.02 Feet	3.98 Feet

**HISTORIC DISTRICT COMMISSION
MINUTES OF FEBRUARY 19, 2020**
Municipal Building Commission Room
151 Martin, Birmingham, Michigan

Minutes of the regular meeting of the Historic District Commission ("HDC") held Wednesday, February 19, 2020. Chairman John Henke called the meeting to order at 7:02 p.m.

1) ROLL CALL

Present: Chairman John Henke; Board Members Gigi Debbrecht, Natalia Dukas, Patricia Lang, Michael Willoughby

Absent: Vice-Chairman Keith Deyer; Board Member Doug Burley; Alternate Member Kevin Filthaut

Administration: Nicholas Dupuis, City Planner
Laura Eichenhorn, Transcriptionist

02-15-20

2) Approval Of Minutes

Motion by Mr. Willoughby

Seconded by Ms. Lang to approve the HDC Minutes of February 5, 2020 as submitted.

Motion carried, 5-0.

VOICE VOTE

Yeas: Willoughby, Lang, Debbrecht, Dukas, Henke

Nays: None

02-16-20

3) Courtesy Review

None.

02-17-20

4) Historic Design Review

A. 412 Willits – Stickney House

City Planner Dupuis, Jon Stein, co-owner of 412 Willits, and Brian Neeper, architect for the project, presented the item.

The HDC asked Mr. Neeper to get a swatch of the proposed color for the cedar shake siding to City Planner Dupuis. They also told Mr. Neeper to update the City if a change in the proposed cedar shake siding color is pursued.

Motion by Mr. Willoughby

Seconded by Ms. Dukas to approve the Historic Design Review application and issue a Certificate of Appropriateness for 412 Willits, provided that City Planner Dupuis is provided with a color swatch of the proposed cedar shake siding color administrative approval. The Secretary of the Interior's Standards for Rehabilitation standard number(s) 1, 2 and 9 will be met upon fulfillment of condition(s).

Motion carried, 5-0.

VOICE VOTE

Yeas: Willoughby, Dukas, Debbrecht, Henke, Lang

Nays: None

02-18-20

5) Sign Review

None.

02-19-20

6) Study Session

A. The Birmingham Plan (2040)

Chairman Henke said all HDC members should provide City Planner Dupuis with their comments regarding the Birmingham Plan by April 10, 2020.

City Planner Dupuis said he would keep the topic on the HDC agendas through April 10, 2020 in order to allow opportunity for discussion. He said he would be happy to take Committee members' comments on the Plan via email, phone call, or in person.

02-20-20

7) Miscellaneous Business and Communication

A. Pre-Application Discussions

B. Staff Reports

1. Administrative Sign Approvals

City Planner Dupuis commented that the sign for Bakehouse 46 seems to have been installed slightly off-center to the left, and said that if HDC members find it to be an issue once they have seen it in person the Committee can discuss further options.

2. Administrative Approvals

3. Action List 2020

4. Historical Preservation Collaboration Matrix

5. National Preservation Month

02-21-20

ADJOURNMENT

No further business being evident, the board motioned to adjourn the meeting at 7:33 p.m.

Nicholas Dupuis
City Planner

APPROVED

501 S ETON MAP



CASE DESCRIPTION

501 S. Eton (20-22)

Hearing date: May 12, 2020

Appeal No. 20-22: The owner of the property known as 501 S. Eton requests the following dimensional variance regarding parking requirements in the MX Zone.

A. Chapter 126, Article 4, Section 4.46(A) states that off-street parking spaces are required based on land use or land uses for the site, and that the number of spaces required per land use is detailed in Table A. **Chapter 126, Article 4, Table A** requires eating establishments with combined indoor-outdoor consumption to provide 1 parking space for each 75 square feet of floor area and 1 parking space per 300 square feet of commercial office or retail use.

The subject property currently has a total of 21 parking spaces. 13 parking spaces are located on site while an additional 8 parking spaces in the public right-of-way were approved by City Commission in 2007. The Whistle Stop restaurant is one of three tenant spaces in the subject building, the other two spaces are currently vacant. Whistle Stop occupies 1,494 square feet and therefore requires 20 parking spaces as an eating establishment. This requirement leaves one remaining parking space for the two vacant tenant spaces on the southern portion of the building.

The applicant is proposing to combine two tenant spaces and expand Whistle Stop into 2,554 square feet of restaurant use. Doing so would require 34 parking spaces for the eating establishment. The remaining 1,175 square foot tenant space is currently vacant, though if used for office/retail would require an additional 4 parking spaces. Assuming the aforementioned uses for the subject building, a total of 38 parking spaces would be required for the two tenant spaces. Therefore, the applicant has requested a dimensional variance of 17 parking spaces.

Staff Notes:

The subject property was built in 1968 and is zoned MX, Mixed Use. At the time of construction, the building was zoned (I) Industrial and had a parking requirement of 2 parking spaces + 1 square foot of parking space per 1 square foot of building space over 2,001 square feet. The building is 3,729 square feet and therefore was required to provide a total of 12 parking spaces when originally constructed. The Zoning Ordinance parking requirements have since been amended to 1 parking space per 75 square feet of restaurant use and 1 parking space per 300 square feet of office/retail use.

The applicant appeared before the Planning Board on January 22nd, 2020. The Planning Board expressed their support for the project and motioned to approve the Final Site Plan and Design Review with the condition that the applicant satisfy the parking requirements through either a shared parking agreement or by obtaining a variance from the Board of Zoning Appeals.

CITY OF BIRMINGHAM
Community Development - Building Department
 151 Martin Street, Birmingham, MI 48009
 Community Development: 248-530-1850
 Fax: 248-530-1290 / www.bhamgov.org

APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: 2-12-20

Hearing Date: 4-14-20

Received By: BW

Appeal #: 20-22

Type of Variance:	<input type="checkbox"/> Interpretation	<input checked="" type="checkbox"/> Dimensional <i>Parking</i>	<input type="checkbox"/> Land Use	<input type="checkbox"/> Sign	<input type="checkbox"/> Admin Review
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I. PROPERTY INFORMATION:

Address: <u>501 S Eton</u>	Lot Number:	Sidwell Number:
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II. OWNER INFORMATION:

Name: <u>Valter Khomagi / WHISTLE STOP DINER INC.</u>			
Address: <u>501 S Eton</u>	City: <u>Birmingham</u>	State: <u>MI</u>	Zip code: <u>46009</u>
Email: *	Phone:		

III. PETITIONER INFORMATION: SAME

Name:	Firm/Company Name:		
Address:	City:	State:	Zip code:
Email: <u>vali2@gmail.com</u>	Phone: <u>248-635-7050</u>		

IV. GENERAL INFORMATION:

The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12th day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.

To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted. Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.

The BZA application fee is **\$360.00** for single family residential; **\$560.00** for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.

Variance Chart Example				
Requested Variances	Required	Existing	Proposed	Variance Amount
Variance A, Front Setback	25.00 Feet	23.50 Feet	23.50 Feet	1.50 Feet
Variance B, Height	30.00 Feet	30.25 Feet	30.25 Feet	0.25 Feet

V. REQUIRED INFORMATION CHECKLIST:

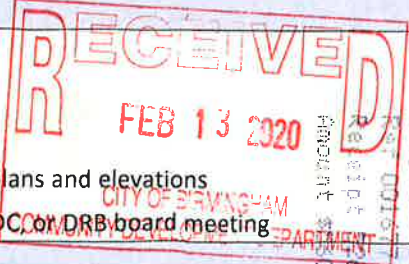
- One original and nine copies of the signed application
- One original and nine copies of the signed letter of practical difficulty and/or hardship
- One original and nine copies of the certified survey
- 10 folded copies of site plan and building plans including existing and proposed floor plans and elevations
- If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting

VI. APPLICANT SIGNATURE

By signing this application, I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

*By providing your email to the City, you agree to receive news and notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

Signature of Owner: <u>Valter Khomagi</u>	Date: <u>Feb. 12, 2020</u>
Signature of Petitioner: <u>Valter Khomagi</u>	Date: <u>Feb 12, 2020</u>



CITY OF BIRMINGHAM
 COMMUNITY DEVELOPMENT DEPARTMENT
 151 MARTIN STREET, BIRMINGHAM, MI 48009
 TEL: 248-530-1850 FAX: 248-530-1290



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www.spclaw.com

Jerome P. Pesick
H. Adam Cohen
Jason C. Long
John E. Scheibelhut

Frederick D. Steinhardt
(1941-2000)

Walter B. Mason, Jr.
(Retired)

March 23, 2020

City of Birmingham
Board of Zoning Appeals
151 Martin Street
Birmingham, MI 48009

**VIA: EMAIL AND
FIRST CLASS MAIL**

Re: 501 South Eton Street, Birmingham ("Property")
Whistle Stop Diner, Inc. ("Petitioner")

Dear Members of the Board of Zoning Appeals:

Please accept the following as a hardship letter on behalf of the Petitioner in support of its request for a dimensional variance from the following sections of the Birmingham Zoning Ordinance ("Zoning Ordinance"):

**Variance from the "Off-Street Parking Spaces" requirement
of the MX zone as set forth in Article 4, Section 4.46.**

The Property sits within the boundaries of the MX District (Mixed Use) of the Rail Overlay District and within the boundaries of the Via Activation Overlay District and Eton Road Area Corridor. The Property is located on the southeast boundary of the City of Birmingham, bounded by South Eton Road on the west, Hazel Street on the north, Graten Street to the east, and Palmer Street to the south.

The Petitioner, Whistle Stop Diner, is a traditional American diner that has been operating in Birmingham for decades, which serves patrons high quality, homestyle comfort food. The diner itself operates in the north end of a one-story brick building that also houses two other businesses (the "Building"). The space to the south of the diner with which it shares a wall is a bakery kitchen used by the Petitioner as the area devoted to baking bread and pastries for the diner. The



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retail commercial space situated in the south end of the building was previously operated as a yoga/health studio and is now vacant.

The proposed renovation of the restaurant is minor and does not involve an expansion of the building's current footprint except for the additional new walk-in cooler. The diner currently is tiny (1,494 square feet) and very outdated. Petitioner wishes to remove the wall between the current diner and the bakery space to reconfigure the diner and kitchen, so that the bakery kitchen is incorporated into the diner and the seating areas and bathrooms are updated to bring them into ADA compliance. The central purpose is to provide a safe area for the cooks and restaurant workers by increasing the size of the kitchen and storage coolers. Although these minor alterations of the building will allow the diner to increase its seating capacity and add a window banquette for patrons, the central purpose is to increase the size of the kitchen and storage coolers. Once the wall is removed so the existing restaurant is combined with the bakery, the entire restaurant space that will be approximately 1,000 square feet larger. However, even though the Building footprint will essentially remain unchanged. See Architectural Site Plan A050 and Floor Plan A100.

Pursuant to the requirements of the MX off-street parking standards of the Zoning Ordinance ("Ordinance"), this minor re-design to incorporate the existing restaurant with the bakery will require a total of 38 parking spaces for the Building. The Property currently provides 21 spaces, including 8 on-street parking spaces along Eton, Hazel and Palmer streets pursuant to a right-of-way parking authorization the City granted to the Property in 2007. The Petitioner would therefore need to increase the spaces provided by 17 to accommodate the diner renovation. The addition of 17 spaces creates a practical difficulty and unnecessary hardship for the Petitioner due to the uniqueness of this Property, its Rail District location and unusual shape, and the configuration of the existing parking. Thus, the Petitioner requests the Board of Zoning Appeals grant a variance for the Property, as set forth below, so that this Property, which is essentially unchanged, can continue to operate with 21 parking spaces.

The most recent Birmingham Master Plan draft states that "[b]oth the Triangle and Rail Districts suffer from lot patterns that are generally **small and include a number of oddly shaped properties**. Redeveloping these properties at a high capacity doesn't easily pencil when parking must be accommodated." The condition



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of having an oddly shaped property should not close the door for redevelopment, instead creative solutions should be discussed. The Birmingham Plan further states; **“...the Rail District needs public parking capacity and the ability to use that capacity in lieu of providing parking in mixed-use development projects.”** See The Birmingham Plan, Draft 10/03/19, page 230. Importantly, the City of Birmingham recently approved a new street design in the Rail District. The concept plan is aimed to maximize parking, improve walkability and bikeability in the Rail District. This pending project hopes to achieve a redesign of Eton Road, adding additional features that would reduce traffic speeds and improve pedestrian crossing. These improvements could vastly improve parking and traffic in the Rail District in which the Property sits. See Esshaki, Tiffany. “Commission approves new street design for Rail District” Birmingham-Bloomfield Eagle, January 4, 2018.

Variance from Off-Street Parking Spaces Requirement

The Petitioner requests this variance, which would allow the diner to continue to operate as it currently exists, as a result of the unique size, shape, physical characteristics and location of this Property as it relates to other neighboring and nearby properties, coupled with the requirements in the Eton Road Corridor principles of design. Further, the purpose of combining the diner and bakery is not focused on increasing the number of patrons or to further intensify the use, but rather is mainly concerned with the health and safety of the kitchen operation and the restaurant employees.

The uniqueness of this area of the City is recognized by the Ordinance. It is interesting to note that although the general rule for restaurant use is 1 space for each 75 feet of floor area and retail commercial use is 1 space per 300 feet of floor area, the Eton Road Corridor plan does not establish the number of parking spots required for commercial buildings, only residential. The parking requirements for the Via Activation Overlay District do not apply to this instance. Further, the Rail District, in which the Property is located, does not have listed parking requirements. The Downtown Birmingham and Triangle Overlay Districts, on the other hand, both rely upon Article 4 of the Ordinance for off-street parking requirements. As stated above, the Property currently has 21 parking spaces, but needs a total of 38 to strictly comply with the Ordinance.

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The location of the Property has been fortunate for the Petitioner in many ways since it opened its doors in the 1980s. But in order to renovate the Building, the Petitioner has come to realize that its very unique location ironically stands in the way of improving the diner. To the west of the diner are residential homes, to the north is the Irongate of Birmingham apartment complex, to the immediate east is a commercial building and condos, and to the south is the newly built Griffin Claw Brewing Company. The Petitioner has an informal agreement with the Griffin Claw owner to allow diner patrons to park in their parking lot for overflow, if necessary. Also, the Griffin Claw and Whistle Stop do not require parking during the same hours of the day. The Griffin Claw sits less than 100 ft. away from the property and is closed on Mondays, open Tuesday through Thursday at 2:00 p.m. and Friday through Sunday at noon. Whereas the Whistle Stop serves breakfast and lunch and is open Monday through Saturday from 7:00 a.m. to 3:00 p.m. and Sunday 8:00 a.m. to 3:00 p.m. There is minimal overlap in operating hours between the two businesses. It has and will continue to be a high priority to the Petitioner to minimize the impacts of traffic on the residential neighborhoods.

ARTICLE 8.03(F)(3)(a)(i) - BECAUSE OF SPECIAL CONDITIONS APPLICABLE TO THE PROPERTY IN QUESTION THE PROVISIONS OF THE ZONING ORDINANCE, IF STRICTLY APPLIED, UNREASONABLY PREVENT THE PROPERTY OWNER FROM ENHANCING THE PROPERTY FOR ITS PERMITTED PURPOSE.

There are exceptional and extraordinary circumstances and conditions applicable to the Property because of its placement, size, unique shape and location along Eton and the thoroughfare running from Eton to Maple streets. These unusual circumstances cause a practical difficulty and unnecessary hardship for the Petitioner and prevent the Petitioner from renovating the diner to make it a safer place for the employees. Because of its location within the Rail District, it is physically impossible for off-street parking to be added to the Property. There is no option to expand the parking area behind or on either side of the existing building. The result of limiting a minor renovation of the diner which does not expand the existing footprint seems contrary to the goals of the Eton Road Corridor Plan. The clear and overwhelming pursuit of the district in which the Property sits, is to "encourage the retention, improvement and expansion of existing uses that help define the Eton Road Corridor." See Ordinance Sec. 2.39(c). The Petitioner wishes to do just that; improve its diner by incorporating adjoining bakery space and



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expanding its kitchen to provide local patrons a more comfortable area to enjoy their dining experience. The initial vision for the Eton Road Corridor was enhanced by the existence of the Petitioner as referenced in their plan over twenty years ago; “the Whistle Stop Restaurant, located on Eton north of Palmer, serves the immediate neighborhood. The restaurant’s residential scale, quality building materials, and shallow front setback is particularly pedestrian-friendly.” See Eton Road Corridor Plan, page 7, October 1999. The off-site parking restriction contained in the Ordinance is inconsistent with the goals of the Rail District for a modern, mixed use and pedestrian friendly neighborhood, as applied to the Property. Application of the parking restriction to this Property prohibits the diner from being modernized and maintained as part of the Rail District.

ARTICLE 8.01(F)(3)(A)(ii) - LITERAL ENFORCEMENT OF THE CHAPTER WILL RESULT IN PRACTICAL DIFFICULTY AND UNNECESSARY HARDSHIP.

The literal enforcement of the off-street parking requirements of the MX zoning district as it applies to an eating establishment will result in a practical difficulty and an unnecessary hardship to the Petitioner. Although the Building is designed in all respects as intended by the Zoning Ordinance, that is, with the standards of the Eton Road Corridor Plan, it is clear that the application of the off-street parking found in the MX zoning district, if applied to this particular unusually configured and located Property in this unique situation, will not only cause the Petitioner a practical difficulty and an unnecessary hardship, but also causes a conflict with the Eton Corridor Plan and the district’s vision statement and intentions for the area. First, the Eton Road Corridor Plan expresses the driving vision as follows:

The Eton Road Corridor will be a mixed-use corridor with a range of commercial, service light industrial and residential uses that serve that needs of the residents of Birmingham. **Creative site planning will be encouraged to promote high quality, cohesive development that is compatible with the existing uses in the corridor and the adjacent single-family residential neighborhoods.** Eton Road Corridor Plan, page 8, October 1999.

Second, the spirit and intent of the Birmingham Ordinance is to have mixed-use buildings with an activated urban neighborhood pedestrian streetscape. The



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hardship caused here is that this MX zoning district standard does not satisfactorily accommodate the location of this Property with its unique shape as it is situated in the neighborhood. The result is that application of the off-street parking requirements to this Property has the unintended result of impeding the diner from redesigning and upgrading its interior space. The redesign will modernize the diner, with a minor expansion of the dining area, bring the building into ADA compliance, and allow an expansion of the kitchen and coolers, with only a minor change to the Bding's footprint. The only change to the footprint is to install a modern cooler for the health and safety of the patrons. The hardship is caused because of the unique siting of this Property, its configuration and the actual uses contemplated under the MX regulations.

ARTICLE 8.01(F)(3)(a)(iii) – THE GRANTING OF THE VARIANCE WILL NOT BE CONTRARY TO THE SPIRIT AND PURPOSE OF THE ZONING ORDINANCE NOR CONTRARY TO PUBLIC HEALTH, SAFETY AND WELFARE.

Granting of the variance that Petitioner requests will not be contrary to the spirit and purpose of the Zoning Ordinance nor will it be detrimental to the public health, safety and welfare. Other than being able to provide the current required amount of parking spots, all other elements of this building's renovations will be built in accordance with the Eton Road Corridor Plan and the Ordinance.

The purpose, spirit and intent of the Ordinance is clearly set forth in Section 2.39. It directs development in the MX District "that will encourage development in the Eton Road Mixed Use District and implement the Eton Road Plan", and further to "encourage the retention, improvement, and expansion of existing uses that help define the Eton Road Corridor." As noted above and referenced in the Eton Corridor Plan, the Whistle Stop diner is a quintessential example of an encouraged use within the Eton Road MX District. An "expansion and improvement" of this use is expressly supported by the Ordinance.

The location of this Building and the unusual shape and siting of the Property at the corner of Eton and Hazel, do not fit the normal MX zone paradigm. The spirit and intent of the Eton Road MX zone is not enhanced or in any way accomplished by applying the off-street parking restrictions to the diner. It is physically impossible to add parking to this Property due to its unique shape, size and location. The parking requirements unnecessarily inhibit the retention and

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improvement of the encouraged use of this Property as a neighborhood restaurant. The spirit, purpose and intent of the Zoning Ordinance is served by granting a variance that would allow the Petitioner to enhance and remodel the diner in the way described in this letter without adding 17 parking spots.

ARTICLE 8.01(F)(3)(a)(iv) – THE GRANTING OF THE VARIANCE WILL RESULT IN SUBSTANTIAL JUSTICE TO THE PROPERTY OWNERS, THE OWNERS OF THE PROPERTY IN THE AREA AND THE GENERAL PUBLIC.

Granting of the variance will result in substantial justice to the owner of the Property and the neighboring owners and the general public. The purposes of the Eton Road Corridor Plan are set forth above. The fulfillment of these requirements and the purpose of the Eton Road MX District have been determined by the Planning Commission and the City Commission as being for the benefit to the health, safety and welfare of the community. The purpose and planning goals of the Eton Road Corridor Plan encourage new, compact development with a traditional mixed-use urban form, in order to create an area of Birmingham that is as vibrant as the downtown, as well as retention and improvements of encouraged uses, such as the neighborhood Whistle Stop diner, all for the benefit of the community. The unique location and shape of this Property has ruled out the possibility of creating 17 new parking spots. The neighboring property owner, namely the owner of Griffin Claw, supports the renovation of the Property and has continuously participated with the Petitioner in an informal shared parking arrangement regarding the Property and Griffin Claw. That property owner also owns the nearby Eton Street Station. Lastly, granting this variance will be of benefit to the general public and will result in substantial justice to all of the citizens of the City of Birmingham as it aligns with the goals of the Eton Corridor Plan.

THE PRACTICAL DIFFICULTY AND HARDSHIP IS NOT SELF-CREATED.

The practical difficulty and hardship experienced by this Petitioner is not self-created but exists because of the existing size, shape, location and natural features of the Property and existing building. This Property is an odd, trapezoid, almost triangular shape situated on the corner of Eton Street and Palmer Street. The reasons for this variance and the current development plan is to benefit the City of Birmingham with a building and development that is complimentary to, consistent

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with, and encouraged by the Eton Road Corridor Plan and the Eton Road MX District.

The Property has existed on this site for decades, as has the diner. Petitioner's proposed improvements to the Whistle Stop do not expand the building's footprint, except for the small addition of a modern walk-in cooler. The hardship and practical difficulty of adding 17 parking spaces in order to accomplish Petitioner's proposed interior renovation of the Property is not self-created. If parking spaces must be added, the Property owner will be deprived of the use of the entire building for its intended purposes, which purposes are expressly encouraged by Ordinance Section 2.39.

Conclusion

The variance requested is necessary to preserve the enjoyment and substantial property rights possessed by the property owner. Further, granting this variance provides the following relief: (i) the Petitioner will not be unreasonably prevented from renovating and improving the existing use of the Property; (ii) the literal enforcement of the Zoning Ordinance will result in unfair and unnecessary hardship to the Petitioner; (iii) the granting of the variance will not be contrary to the spirit and purpose of the Zoning Ordinance nor contrary to the public health, safety, and welfare; and (iv) the granting of the variance will result in substantial justice to the Petitioner. Finally, the practical difficulty and unnecessary hardships experienced by the Petitioner are not caused by the Petitioner. The granting of this variance will produce a situation where the renovation of this Property as proposed in all ways complies with the purposes and objectives of both the Eton Road Corridor Plan and the Eton Road MX District.

Accordingly, Petitioner requests the Board of Zoning Appeals to grant the dimensional variance as submitted herein. Please contact the undersigned with any questions or requests for additional information.

Very truly yours,

Jerome P. Pesick

JPP/pas

cc: Whistle Stop Diner, Inc.
Ms. Jawan Matti

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JANUARY 22, 2020**

City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on January 22, 2020. Chairman Scott Clein convened the meeting at 7:30 p.m.

A. ROLL CALL

Present: Chairman Scott Clein; Board Members Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Members Jason Emerine, Nasseem Ramin

Absent: Board Member Robin Boyle, Stuart Jeffares

Administration: Jana Ecker, Planning Director
Brooks Cowan, City Planner
Nicholas Dupuis, City Planner
Laura Eichenhorn, Transcriptionist

01-09-20

B. Approval Of The Minutes Of The Regular Planning Board Meeting of January 8, 2020

Motion by Mr. Share

Seconded by Ms. Whipple-Boyce to approve the minutes of the Regular Planning Board Meeting of January 8, 2020 as submitted.

Motion carried, 6-0.

VOICE VOTE

Yeas: Share, Clein, Whipple-Boyce, Koseck, Emerine, Ramin

Nays: None

Abstain: Williams

01-10-20

C. Chairperson's Comments

Chairman Clein explained standard Planning Board meeting procedures.

01-11-20

D. Approval Of The Agenda

There were no changes to the agenda.

01-12-20

E. Community Impact Study Review and Preliminary Site Plan Review

1. 35001 Woodward (Parking lots & Hunter House) - Revised Community Impact Study Review to allow construction of a new 5 story mixed use building containing retail, office and residential uses

Planning Director Ecker presented the item. She confirmed that 35001 Woodward is located in the Parking Assessment District (PAD).

Motion by Mr. Williams

Seconded by Mr. Share to accept for filing the memorandum from Assistant City Engineer Austin Fletcher dated January 22, 2020.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Share, Clein, Whipple-Boyce, Koseck, Emerine, Ramin

Nays: None

Kevin Biddison, architect for the project, commented on the fact that the 11 extra parking spaces could be used by the general public because the stairway and elevator accessing the residential areas of the building would be keycoded to prevent unauthorized entry.

Kelly Cobb, owner of Hunter House Hamburgers, stated that the wait time on Hamilton will increase if the number of parking spots available to Hunter House decreases.

Mr. Williams explained he had previously voted against the Community Impact Study (CIS) for this project due to concerns regarding potential congestion at Park and Maple stemming from an entrance to the site being located too close to Maple. He said that the current CIS corrected that issue.

Motion by Mr. Share

Seconded by Mr. Williams to accept the CIS as provided for the proposed development at 35001 and 35075 Woodward – with the following conditions:

- 1) Provide copies of Phase I and II Environmental Assessments;**
- 2) Applicant must provide mitigation strategies for control of noise vibration and dust during construction;**
- 3) Applicant will be required to bury all utilities on the site;**
- 4) Applicant must distinguish an area for the separation and storage of recycling;**
- 5) Applicant must conform to the streetscape design as outlined in the new E. Maple streetscape project; and,**

6) Applicant provide information on all life safety issues and Fire Dept. approval, as well as details on the proposed security system provided to and approved by the Police Department.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Share, Clein, Whipple-Boyce, Koseck, Emerine, Ramin

Nays: None

Mr. Biddison explained the trash receptacles would be stored and obscured behind the wall meaning they would only be visible to stationary observers, looking into the building at a certain angle, while the glass doors are rolled up to allow entry or egress.

Ms. Whipple-Boyce shared concern regarding the fact that if one were to enter the garage in their vehicle and discover that the cluster of three parking spaces allotted to Hunter House were full, one would have to either reverse onto Hamilton or execute a multi-point turn to exit back onto the street.

Mr. Share and Mr. Koseck shared concern regarding the parking layout on the site as well.

Mr. Biddison stated that the eleven or twelve parking spaces being discussed as public spaces could also be executive or residential spaces, meaning they could be private instead and tied to an office or retail lease.

Mr. Cobb spoke, saying:

- Hunter House employees will continue parking in the parking deck, for which they are reimbursed, as opposed to parking in the three parking spaces in the garage off Hamilton.
- According to the deed the developer is required to provide Hunter House with 14 parking spaces which shall also be located on Hunter House property.
- If he were to enter the three-space section in the garage in his truck and discover those spots full, he would not be able to execute a turn that would allow him to leave given the insufficient space.
- There have been a number of deed violations on the part of the developer in this process including not seeking Mr. Cobb's approval of plans for the site before the plans' submission to the City, not seeking Mr. Cobb's approval for planning to build a non-hotel development, and proposing to leave a space for Hunter House that Mr. Cobb says would be unusable for operating the restaurant.
- He proposed multiple compromises to the developer which would allow Hunter House to continue and for a development to be built on the lot, all of which were passed on by the developer.
- If the developer and the Hunter House cannot reach an understanding, Mr. Cobb would pursue legal action. He said that legal action could result in a delay of the development for seven to ten years. Mr. Cobb said that the City, the developer, and himself should sit down together and try to reach an agreement amenable to all parties in order to avoid such a delay.

Chairman Clein said that in many respects he was in strong favor of the plan submitted for this site, including three stories of residential with units under 1,000 square feet, less reliance on office space, and well designed facades on most of the project. He continued that he sympathized with the Hunter House, which he said was being pulled from a park-and-go model to an urban center model. Chairman Clein said there were also aspects of the plan that gave him pause, including the functionality of the three parking space area in the garage and the Hunter House's charge that their space as laid out in these plans would be unusable. He acknowledged that it is not within the Board's purview to get involved in a dispute between two private parties. He stated that it is within the Board's purview to make sure all elements of the plans are functional and adhere to ordinance, however, and that he was unclear if the three parking space area off of Hamilton met those requirements.

Mr. Williams said he would not approve plans that include the three space parking area off of Hamilton because that layout creates more problems than it solves or propose a restaurant layout that would not comply with various laws, including health codes and ADA regulations. He concurred with the Chairman that the Board should not intervene in a matter between private parties, but knowing that the restaurant could not operate legally is a matter within the Board's purview.

Mr. Share also emphasized that the Board should not be involved in a dispute between two private parties. He said the Board has ruled on projects before that have resulted in legal action between two private parties subsequent to the approval. Mr. Share said he would consider moving forward on a preliminary site plan ~~under those~~ **despite these** circumstances, but that this particular site plan was deficient under Article 7, section 7.27 of the Zoning Ordinance in a couple of respects including the three parking space area off of Hamilton and the parking designated for the public off of Park Street. He said that the parking off of Park Street could become hazardous unless there was a traffic flow plan presented.

Mr. Koseck concurred with his colleagues' previous comments that the dispute between the Hunter House and the developer is not within the Board's purview. Continuing, he said that the plans are an improvement over previous plans submitted for the development, and that the building complies with ordinance. He stressed that the Board's only present obligation regarding this development was to ensure that residential parking would be included onsite. Mr. Koseck suggested that if the development included an egress across from the loading dock, a vehicle could move straight through the garage from Hamilton onto Park Street if it saw no free parking spaces in the three space area off of Hamilton. In that design, it could also turn into the three parking space area if there were a vacant space. This would avoid the need for either a vehicle reversal onto Hamilton or a multi-point turn in the case of full spaces. Mr. Koseck said he would approve the plans if that possibility were present.

Mr. Biddison confirmed that such a route through the garage would be possible. He stated he would need the owner to comment further on how the route would be designed.

Ms. Whipple-Boyce said that from a Board perspective the site should not include the parking off of Hamilton because it is not required by ordinance and creates an unsafe situation. She said she understood the legal agreement between the developer and the Hunter House required 14 spaces, but that was not the Board's concern. She expressed great enthusiasm for the majority

of the project in general, and frustration that the contention between the developer and the Hunter House was resulting in poor design in certain areas. She conceded that Mr. Koseck's proposal of being able to pass through from Hamilton onto Park would in theory solve the issue, but that the best outcome from a City perspective would be to eliminate the spaces off of Hamilton.

Mr. Emerine said he was also very enthusiastic about most aspects of the project with the exception of the issues with the parking off of Hamilton. He said he could not support the plans without a resolution to the Hamilton parking issue which could include Mr. Koseck's proposal of allowing entry off of Hamilton and egress onto Park.

Mr. Share said he would offer an editorial comment to the developer and the Hunter House, recommending that the parties actually speak to one another and resolve their issues.

Chairman Clein agreed, and said a future City Commission discussion of potential public land use by this development would prove very difficult if the issues between the Hunter House and the developer are not resolved.

Motion by Mr. Williams

Seconded by Mr. Koseck to schedule a special meeting of the Planning Board for the evening of February 27, 2020 at 7:30 p.m. to be held in the City Commission room.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Koseck, Share, Ramin, Whipple-Boyce, Clein, Emerine

Nays: None

Motion by Mr. Williams

Seconded by Mr. Share to postpone consideration of the preliminary site plan for 35001 Woodward to February 27, 2020.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Share, Whipple-Boyce, Clein, Emerine, Koseck, Ramin

Nays: None

01-13-20

F. Special Land Use Permit Reviews

- 1. 34350 Woodward (previously 835 Haynes, Fred Lavery Porsche) & 907 - 911 Haynes (former Barda Salon Building) - Amendment of Special Land Use Permit at 34350 Woodward to include the property at 907-911 Haynes to allow demolition of the existing Barda Salon Building and construction of a surface parking lot on 907 – 911 Haynes to provide additional parking for the Porsche dealership at 34350**

Woodward

City Planner Cowan, Fred Lavery, owner, John Gardner, architect, and Rick Rattner, attorney, reviewed the item for the Board.

Chairman Clein asked Mr. Rattner:

- How the Board could support approval of this proposal when it does not seem to support the purpose of the Triangle District as required by ordinance; and,
- Whether the Board's approval of the proposal would amount to the expansion of a legal non-conforming use, which the Board is not permitted to do.

Mr. Rattner said the proposal supports the Triangle District plans because the surface lot would function as a placeholder for the eventual Worth Street realignment. He said it would not be expanding a legal non-conformity because the lot combination would be allowed under a SLUP as an auxiliary use.

Mr. Share noted that the combined lot could require a variance since the parking lot frontage would be greater than ordinance allows.

After Board discussion, Planning Director Ecker received confirmation from the Board that they were requesting clarification from the Building Official and City Attorney regarding whether the Board has authority to consider granting the requests put forth by the applicant, what impediments exist to granting the requests, and what the remedies to the impediments could be. She said the remedies could include a variance if the City chose to allow more than 25% of the frontage to be parking, an expansion of an existing non-conformity because the lots will be combined, or some other factor in a lot combination that could affect the result.

Motion by Mr. Share

Seconded by Mr. Koseck to postpone consideration of the SLUP amendment for 34350 pending a response from the City Attorney and/or Building Official regarding whether the Board has authority to consider granting these requests, what impediments exist to granting the requests, and what the remedies to the impediments could be.

Mr. Rattner said it would be useful to know what effect an agreement with the City would have vis-a-vis resolving these problems. Mr. Rattner then stated that Mr. Lavery requested to withdraw his application for the SLUP amendment.

The Board allowed Mr. Lavery to withdraw his request and accordingly took no action on the motion.

01-14-20

G. Final Site Plan & Design Reviews

- 1. 34350 Woodward (previously 835 Haynes, Fred Lavery Porsche) & 907 - 911 Haynes (former Barda Salon Building) - Final Site Plan & Design Review for**

the entire site to allow demolition of the existing Barda Salon Building and construction of a surface parking lot on 907 – 911 Haynes to provide additional parking for the Porsche dealership at 34350 Woodward

Matter withdrawn by the applicant during the Planning Board's January 22, 2020 meeting.

2. 501 S. Eton (Whistle Stop) - Final Site Plan & Design Review for construction of rear addition to the existing building and changes to existing building

City Planner Dupuis, Elda Xhomaqi, owner and Jawan Matti, architect, presented the item. City Planner Dupuis confirmed that the Zoning Ordinance requires a formal agreement for shared parking to be approved by the Planning Board.

Motion by Mr. Williams

Seconded by Mr. Share to receive and file the memorandums from Assistant City Engineer Fletcher dated January 22, 2020 and from the Building Department dated January 21, 2020, and an email from Norman LePage to Planning Director Ecker and City Planner Dupuis dated January 22, 2020.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Share, Whipple-Boyce, Clein, Emerine, Koseck, Ramin

Nays: None

Mr. Koseck said the Whistle Stop could be positively improved if the windows were made more transparent from the exterior.

Ms. Xhomaqi said she would consider updating the windows.

Chairman Clein invited public comment.

Karen Fithe said the landscaping in the neighborhood around Whistle Stop is rather lacking and asked that more effort be into the upkeep of the Arborvitaes near the entrance to the parking lot that the Whistle Stop shares with the Griffin Claw. She said that the Arborvitaes on Hazel Street are well maintained. She said there is no landscaping behind the Whistle Stop along the fencing of the condominium complex on Graten Street and that a line or Arborvitaes could be appropriate there as well. Ms. Fithe said she was also concerned that patrons of the Griffin Claw would congregate in the outdoor seating section of the Whistle Stop in the evening, contributing to noise in the neighborhood. She said pulling onto Eton from Hazel is difficult when large vehicles are parked in front of the Whistle Stop, which contributes to unsafe traffic conditions. Ms. Fithe concluded by saying she hoped that the freezers at the Whistle Stop will not be too noisy, as she said the Griffin Claw freezers are noisy enough to impact residential living.

Chairman Clein invited Ms. Matti and Ms. Xhomaqi to reply to Ms. Fithe's concerns.

Ms. Xhomaqi said that the outdoor seating would only be available in the summer, and not likely early in the morning.

Ms. Matti noted that the freezer Whistle Stop would be installing would be much smaller than the one at Griffin Claw, so noise would not likely be an issue. She said Arborvitaes could be added in some of the areas Ms. Fithe suggested, and that the Whistle Stop could add a bicycle rack to help reduce the number of vehicles parking in front of the restaurant.

Mr. Williams said that the City needs to consider putting a stop sign at Eton and Hazel in order to allow vehicles to exist Graten. He stressed that the lack of stop sign at that intersection is highly hazardous, and that he has been saying that for ten years.

Ms. Whipple-Boyce expressed her enthusiasm for the project, and said she would not require that the applicant add landscaping to the back property line since it is an asphalt parking lot. She said that it would make sense to add landscaping to the area near the entrance to the parking lot, noting that an adjacent building had successfully grown ornamental tall grasses on a similar strip of land. She said that it would likely be possible to find plants that could withstand being located close to a parking lot. Ms. Whipple-Boyce said she would also like to see the Whistle Stop enter into a formal shared parking agreement with the owners of Griffin Claw.

Chairman Clein expressed his support for the project. He encouraged Whistle Stop to be responsive to nearby residents' concerns in order to ensure the restaurant's continued success. Chairman Clein emphasized that the applicant can either enter into a formal parking agreement or pursue a variance from the Board of Zoning appeals.

Mr. Williams pointed out that while normally the Planning Board would review a formal shared parking agreement, it should be acceptable to allow the Planning Division to approve an appropriate shared parking agreement for this item should one occur.

Chairman Clein agreed. He invited the applicant to talk with Planning Director Ecker further to explore options for satisfying the parking requirements, including potentially counting adjacent street parking if approved by the City Commission to do so. For the benefit of the Board of Zoning Appeals, Chairman Clein stated that as long as relations remain amicable between the Whistle Stop and its neighbors he is happy to see the business continue with investments in the building.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Williams to Motion to approve the Final Site Plan and Design Review for 501 S. Eton St. – Whistle Stop diner – with approval of the LED Litebars as architectural enhancements and with the following conditions:

- 1. The applicant must provide 26 additional off-street parking spaces, enter into a written shared parking agreement with the adjacent property owner subject to review and approval by the Planning Division, or obtain a variance from the Board of Zoning Appeals;**
- 2. The applicant must revise the lighting proposals and photometric plan to not exceed 1.5 foot-candles at all property lines or obtain a variance from the Board of Zoning Appeals;**

- 3. The applicant receive administrative approval from the Planning Division for the proposed tables and chairs to ensure they are constructed primarily of metal, wood, or material of comparable quality and submit new plans with outdoor dining hours and add a trash receptacle within the outdoor dining area;**
- 4. The applicant must provide details to the Planning Division and/or the Design Review Board for approval for all proposed signage;**
- 5. The applicant must submit material samples; and,**
- 6. Comply with the requests of the Planning Board and all City departments.**

Motion carried, 7-0.

VOICE VOTE

Yeas: Whipple-Boyce, Williams, Share, Clein, Emerine, Koseck, Ramin

Nays: None

3. 1026 Canterbury Street (House) - Design Review to consider installation of solar panels on roof of single family home

City Planner Dupuis presented the item.

Mr. Williams noted a lot of foliage to the west of the house that would block solar panels on the side. He also observed that foliage in front of the home would not block the solar panels but would prevent the solar panels from being obtrusive to the across-the-street home.

Motion by Mr. Williams

Seconded by Mr. Koseck to approve the Design Plan for 1026 Canterbury based on the plans submitted.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Koseck, Share, Whipple-Boyce, Clein, Emerine, Ramin

Nays: None

4. 1800 Pine Street (House) - Design Review to consider installation of solar panels on roof of single family home

City Planner Dupuis presented the item.

Motion by Mr. Williams

Seconded by Mr. Koseck to approve the Design Plan for 1800 Pine based on the plans submitted.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Koseck, Share, Whipple-Boyce, Clein, Emerine, Ramin

Nays: None

01-15-20

H. Pre-Application Discussion

1. 219 Elm Street (existing chiropractic office)

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to permit the January 22, 2020 Planning Board meeting to continue until 11:15 p.m.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Whipple-Boyce, Koseck, Share, Clein, Emerine, Ramin

Nays: None

Mark Highlen of Beztak presented the item. He explained the residents of Beztak's five current sites are 75 and older. The proposed expansion into 219 Elm Street would be for residents 55 and older seeking upscale apartments ranging from 1,140 square feet to 1,500 square feet in size. Mr. Highlen said they would be replacing the building at 219 Elm with a five-story building with stepped back upper floors, LEED certification, and the City's required parking contribution. There would be a total of 27 parking spaces for 24 units.

In response to Chairman Clein, Mr. Highlen stated he checked with the Planning and Building Departments to ensure ordinance compliance, and that at this time the project seemed like it would not require any variances.

01-16-20

I. Miscellaneous Business and Communications:

a. Communications

b. Administrative Approval Correspondence

Planning Director Ecker explained that Joe Barbat, future owner of the Forefront Building, is looking to increase the number of residential units on the second and third floor while reducing the size of the units and keeping the overall footprint of the building the same. She clarified that this change would change the building's parking requirements, leaving a shortfall of 13 spaces. There are no spaces on the street that could be counted towards meeting the parking requirement. The owners would have the option of entering into a formal shared parking agreement or pursuing a variance from the Board of Zoning Appeals.

Mr. Barbat stated the project would be working with Tom Roberts Architects, and has a total of 18 at-grade parking spaces within the building. Another 13 residential parking spaces would be

provided at the Pierce Street parking deck which is 400 feet away from the Forefront Building. The apartments would be between 600 square feet and 1,000 square feet in size, and the number of units in the building would increase from 10 to 30. He added there are another five parking spaces onsite which are used by retail during the day but could be used for residential parking in the evening when the retail businesses are closed.

Planning Director Ecker clarified that while the draft master plan is looking at allowing spaces in the public parking decks to be counted towards a building's parking requirements, at this time City ordinance does not allow parking deck spaces to be used to meet a building's parking requirements.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to permit the January 22, 2020 Planning Board meeting to continue until 11:30 p.m.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Whipple-Boyce, Koseck, Share, Clein, Emerine, Ramin

Nays: None

Chairman Clein stated he liked the idea of smaller units and liked the idea of leveraging the parking decks for residential parking in the evenings. He said the Board could not likely make a full determination on the impact of specifically going from 10 to 30 units at the end of a meeting, but that moving towards smaller units was in-line with the City's aims.

In reply to Planning Director Ecker, the Board expressed consensus with Chairman Clein's statement.

c. Draft Agenda for the next Regular Planning Board Meeting (February 12, 2020)

d. Other Business

Motion by Mr. Share

Seconded by Mr. Koseck to hold a special meeting of the Planning Board on April 9, 2020 at 7:30 p.m. in the City Commission room.

Motion carried, 7-0.

VOICE VOTE

Yeas: Share, Koseck, Williams, Whipple-Boyce, Clein, Emerine, Ramin

Nays: None

Please note: Per an email subsequent to this meeting, the date of the Planning Board's April special meeting was moved to April 7, 2020, 7:30 p.m., in order to avoid a conflict with Passover.

01-17-20

J. Planning Division Action Items

- a. Staff Report on Previous Requests**
- b. Additional Items from tonight's meeting**

01-18-20

K. Adjournment

No further business being evident, the Chairman adjourned the meeting at 11:20 p.m.

Jana L. Ecker

Planning Director

APPROVED

1313 LAKESIDE MAP



CASE DESCRIPTION

1313 Lakeside (20-24)

Hearing date: May 12, 2020

Appeal No. 20-24: The owner of the property known as 1313 Lakeside, requests the following variances to construct a new single family home:

- A. Chapter 126, Article 2, Section 2.06.4** of the Zoning Ordinance requires that the maximum building height for the R1 zoning district is 30.00 feet to the midpoint. The proposed height is 37.08 feet. Therefore a 7.08 foot variance is being requested.
- B. Chapter 126, Article 2, Section 2.06.4** of the Zoning Ordinance requires that the maximum eave height for the R1 zoning district is 24.00 feet. The proposed height is 31.21 feet. Therefore a 7.21 foot variance is being requested.
- C. Chapter 126, Article 4, Section 4.03(A)** of the Zoning Ordinance requires that no accessory structures shall be erected in the required front open space. A retaining wall is proposed to be constructed in the required front open space; therefore a variance to permit the retaining wall is requested.

Staff Notes: The applicant is requesting a height variance for a portion of the proposed residence. The lot slopes from the front to the rear towards the Rouge River.

This property is zoned R1 – Single Family Residential.

Jeff Zielke, NCIDQ, LEED AP
Assistant Building Official

CITY OF BIRMINGHAM
 Community Development - Building Department
 151 Martin Street, Birmingham, MI 48009
 Community Development: 248-530-1850
 Fax: 248-530-1290 / www.bhamgov.org

APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: 4.14.20

Hearing Date: 5.12.20

Received By: HT

Appeal #: 20-0024

Type of Variance:	<input type="checkbox"/> Interpretation	<input type="checkbox"/> Dimensional	<input type="checkbox"/> Land Use	<input type="checkbox"/> Sign	<input type="checkbox"/> Admin Review
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I. PROPERTY INFORMATION:

Address: <u>7313 LAKESIDE</u>	Lot Number:	Sidwell Number:
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II. OWNER INFORMATION:

Name: <u>SCOTT & DANA MARCUS</u>			
Address: <u>1406 EDGEWOOD</u>	City: <u>BIRMINGHAM</u>	State: <u>MI</u>	Zip code: <u>48009</u>
Email: * <u>MARCUS@RSMDEVELOPMENT.COM</u>		Phone: <u>248 703 2227</u>	

III. PETITIONER INFORMATION:

Name: <u>JAMES VERVISCH</u>		Firm/Company Name: <u>JR VERVISCH BUILDING</u>	
Address: <u>583 MADISON</u>	City: <u>BIRMINGHAM</u>	State: <u>MI</u>	Zip code: <u>48009</u>
Email: <u>JIM@VERVISCHHOMES.COM</u>		Phone: <u>248 515 6730</u>	

IV. GENERAL INFORMATION:

The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12th day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.

To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted. Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.

The BZA application fee is \$360.00 for single family residential; \$560.00 for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.

Variance Chart Example				
Requested Variances	Required	Existing	Proposed	Variance Amount
Variance A, Front Setback	25.00 Feet	23.50 Feet	23.50 Feet	1.50 Feet
Variance B, Height	30.00 Feet	30.25 Feet	30.25 Feet	0.25 Feet

V. REQUIRED INFORMATION CHECKLIST:

- One original and nine copies of the signed application
- One original and nine copies of the signed letter of practical difficulty and/or hardship
- One original and nine copies of the certified survey
- 10 folded copies of site plan and building plans including existing and proposed floor plans and elevations
- If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting

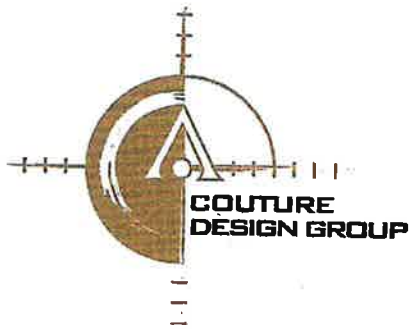
VI. APPLICANT SIGNATURE

By signing this application, I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

*By providing your email to the City, you agree to receive news and notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

Signature of Owner: _____	Date: <u>4/8/20</u>
Signature of Petitioner: _____	Date: <u>4/8/20</u>

Date: 04/14/2020 9:33:15 AM
 Ref: 00160596
 Receipt: 533238
 Amount: \$360.00



City of Birmingham
Board of Zoning Appeals
Community Development

Dear Board Members,

We are requesting a height variance for a new residential dwelling to be constructed at 1313 Lakeside in the City of Birmingham. I would like to present to you the unique conditions and practical difficulties that this property presents to us. We will also describe how we designed the dwelling to be harmonious with this unique piece of property.

Special Conditions:

- Existing grade of property slopes 15 feet from southwest corner to northeast corner.
- A portion of the Rouge river is located on the northeast corner of property
- Flood Plain Elevation is 747.00
- Flood Plain & river encompasses 12% of the property.

Practical Difficulty:

- While maintaining the natural topography which is essential, the northeast corner of the home is exposed creating a natural walkout. When calculating overall height of the structure at this corner (highlighted on plans) it puts us over the required height by 7 feet.
- Basement Floor elevation is required to be set 1 ft above established Flood Plain Elevation which prevents us from lowering the structure.

Our solution was to design a single level 3 seasons room and dining room above this lowest grade / walkout basement area (highlighted on plan) . The thought was to have the home follow the existing topography by stepping the roof heights down in these areas to be harmonious to the site.

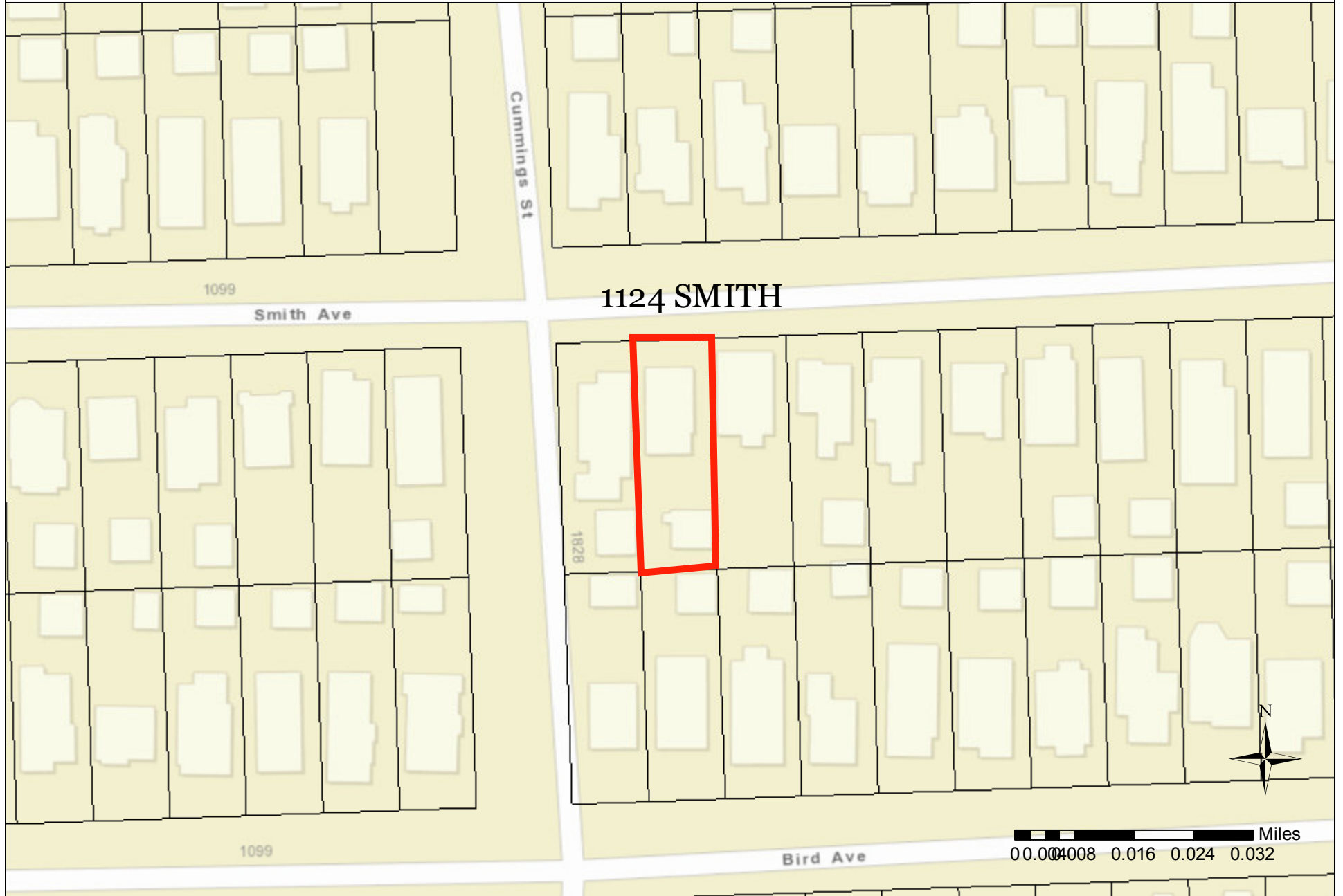
We appreciate your time in reviewing our variance request.

Best Regards,

A handwritten signature in black ink, appearing to read 'KADCA', is written over the typed name Kurt D. Couture.

Kurt D. Couture

1124 SMITH MAP



CASE DESCRIPTION

1124 Smith (20-26)

Hearing date: May 12, 2020

Appeal No. 20-26: The owner of the property known as 1124 Smith, requests the following variance to construct a new single family home with a detached garage:

- A) Chapter 126, Article 2, Section 2.08** 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 22.30 feet. The existing and proposed is 21.00 feet. Therefore a 1.30 foot variance is being requested.

Staff Notes: The applicant is requesting to construct a new single family home with a detached garage. This case was in from of the board in 2019, for a distance between structures on west side, Case 19-39. (see minutes attached).

This property is zoned R3 – Single Family Residential.

Jeff Zielke, LEED AP
Assistant Building Official

CITY OF BIRMINGHAM
Community Development - Building Department
151 Martin Street, Birmingham, MI 48009
 Community Development: 248-530-1850
 Fax: 248-530-1290 / www.bhamgov.org

APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: 4.14.20
 Received By: HT

Hearing Date: 5.12.20
 Appeal #: 20-0026

Type of Variance:	<input type="checkbox"/> Interpretation	<input checked="" type="checkbox"/> Dimensional	<input type="checkbox"/> Land Use	<input type="checkbox"/> Sign	<input type="checkbox"/> Admin Review
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I. PROPERTY INFORMATION:

Address: <u>1124 SMITH</u>	Lot Number:	Sidwell Number:
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II. OWNER INFORMATION:

Name: <u>CAMERON S JAQUILIN SCHILLING</u>				
Address: <u>1144 SMITH</u>	City: <u>BIRMINGHAM</u>	State: <u>MI</u>	Zip code: <u>48009</u>	
Email: <u>SCHILLINGEC@GMAIL.COM</u>	Phone: <u>317 490 9334</u>			

III. PETITIONER INFORMATION:

Name: <u>JR VERVICH BUILDING</u>	Firm/Company Name:			
Address: <u>583 BIRMINGHAM</u>	City: <u>BIRMINGHAM</u>	State: <u>MI</u>	Zip code: <u>48009</u>	
Email: <u>JM@VERVICHHOME.COM</u>	Phone: <u>248 515 6730</u>			

IV. GENERAL INFORMATION:

The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12th day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.

To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted. Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.

The BZA application fee is **\$360.00** for single family residential; **\$560.00** for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.



Variance Chart Example				
Requested Variances	Required	Existing	Proposed	Variance Amount
Variance A, Front Setback	25.00 Feet	23.50 Feet	23.50 Feet	1.50 Feet
Variance B, Height	30.00 Feet	30.25 Feet	30.25 Feet	0.25 Feet

V. REQUIRED INFORMATION CHECKLIST:

- One original and nine copies of the signed application
- One original and nine copies of the signed letter of practical difficulty and/or hardship
- One original and nine copies of the certified survey
- 10 folded copies of site plan and building plans including existing and proposed floor plans and elevations
- If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting

VI. APPLICANT SIGNATURE

By signing this application, I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

Signature of Owner: 	Date: _____
Signature of Petitioner: 	Date: <u>4/5/20</u>

Date: 04/15/2020 11:54:44 AM
 Ref: 00168607
 Receipt: 532056
 Amount: \$360.00

Applicant:

Ernest Cameron & Jaclyn Schilling
1144 Smith
Birmingham, MI 48009
(317)490-9334

Subject:

Board of Zoning Appeals Application

Property:

1124 Smith

Request:

Distance of front setback

Explanation:

Board members,

We plan on building our new single family home on the existing property. Raising the home which currently stands on the property. The new home has been designed to meet all the cities size and height criteria. We would like it to sit equal distance to the street as the neighboring homes.

The calculated front setback for the new house is 22.3 feet, using an average distance of home setbacks 200' feet in each direction. This property is the second home from the East corner of Cummins and Smith.

The homes on the East side of Cummins average 21' with homes on either side sitting 20.4' and 20.8'. Homes on the West side of Cummins average 23.8'. These homes on the other side of the street are creating the proposed property to be placed 22.3' or 1.5' back from the houses on either side.

We would like to ask for a variance to place the proposed home at 21' back. This distance would be the average of the homes on the Eastside, still keeping the new home placed behind the existing neighboring homes by .4' and .3'

We feel this placement is more congruent to the rest of the homes on the Eastside of Cummins.

Variance	Required	Existing	Proposed	Amount of Variance
	22.3'	20.4'	21.0'	1.3'

I appreciate your time in the review of this matter.

Ernest Cameron Schilling

**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, NOVEMBER 12, 2019
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, November 12, 2019. Chairman Charles Lillie convened the meeting at 7:30 p.m.

2. ROLL CALL

Present: Chairman Charles Lillie; Board Members Jason Canvasser, Kevin Hart, Richard Lilley, John Miller, Erik Morganroth, Francis Rodriguez

Absent: Alternate Board Member Ron Reddy

Administration:

Bruce Johnson, Building Official
Mike Morad, Asst. Building Official
Jeff Zielke, Asst. Building Official
Brooks Cowan, City Planner
Laura Eichenhorn, Transcriptionist

Chairman Lillie welcomed everyone and invited Vice-Chairman Canvasser to conduct the meeting for its duration.

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

T# 11-79-19

3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF OCTOBER 15, 2019

Chairman Lillie recommended the second sentence under Call to Order be changed to read "Vice-Chairman Canvasser convened the meeting at 7:30 p.m." Then, under administration, he recommended the sentence reading "Jason Canvasser acted as Chairman for the duration of the evening's meeting" be removed.

**Motion by Mr. Morganroth
Seconded by Mr. Lilley to accept the Minutes of the BZA meeting of October 15, 2019
as amended.**

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

T# 11-80-19

4. APPEALS

**1) 1124 Smith
Appeal 19-39**

Assistant Building Official Zielke presented the item, explaining the owner of the property known as 1124 Smith requested the following variance to construct a new home with a detached garage:

A. Chapter 126, Article 4, Section 4.74 (C) of the Zoning Ordinance requires the minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is greater. The required distance is 14.00 feet. The proposed is 10.00 feet. Therefore, a 4.00 foot variance is being requested.

Assistant Building Official Zielke noted the property is adjacent to a corner lot with an existing nonconforming structure located on it. The property is zoned R3 – Single Family Residential.

Jim Vervisch, builder on the project, was present on behalf of the appellant.

**Motion by Mr. Miller
Seconded by Mr. Morganroth with regard to Appeal 19-39, A. Chapter 126, Article 4, Section 4.74 (C) of the Zoning Ordinance requires the minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is greater. The required distance is 14.00 feet. The proposed is 10.00 feet. Therefore, a 4.00 foot variance is being requested.**

Mr. Miller moved to approve Appeal 19-39 and to tie it to the plans as submitted. He stated that strict compliance with the ordinance would unreasonably prevent the petitioner from using their property due to the positions of the houses on either side.

Mr. Miller said the problem was not self-created and that the proposed solution was reasonable.

Mr. Morganroth explained he would be supporting the motion because while the home is narrow the owners still out forth effort to minimize the non-conformities on both sides of the home.

Chairman Lillie said he would support the motion because if the houses on either side of the appellants' home were not present, the appellant would not need a variance.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**2) 33680 Woodward
Appeal 19-40**

City Planner Cowan presented the item, explaining the owner of the property known as 33680 Woodward requested that the BZA reverse a decision of the building official.

A. Chapter 126, Article 8, Section 8.01(D) of the Zoning Ordinance, which states the Board of Zoning Appeals may hear and decide appeals from any decision made by an administrative official as it relates to the Zoning Ordinance. The BZA may reverse or affirm, wholly or partly, or may modify such decisions.

The applicant is aggrieved by the decision of the Building Official with the interpretation of Chapter 126, Article 9, Definition of health club/studio and Chapter 126, Article 2, Section 2.31, Permitted Uses in the B2-B Zone.

The applicant has applied to open Roots Jiu Jitsu Academy at the subject property of 33680 Woodward. The Building Official has determined that this type of use is categorized as a Health Club/Studio, which is defined in Chapter 126, Article 9, Definitions as "A place designated for and equipped for the conduct of sports, exercise and physical fitness activities." A Health Club/Studio use is not permitted within the B2-B zone.

The applicant has requested that the BZA reverse the interpretation of Roots Jiu Jitsu as a Health Club/ Studio by the Building Official, in favor of classifying the use as a School, which is defined in Chapter 126, Article 9, Definitions as "An institution, either public or private, offering instruction in primary, secondary or collegiate courses of study." School use is permitted within the B2-B zone.

City Planner Cowan specified that the property is zoned B2-B. In regards to relevant history of the site, a pilates studio applied to occupy the subject space in 2003. The Building Official

determined a pilates use was classified as a Health Club/Studio and therefore was not permitted in the B2-B zone. The applicant appealed this interpretation to the BZA on August 12, 2003 (Appeal 03-37), requesting that the Board reverse the Building Official's decision in favor of determining that a pilates studio satisfied the definition and classification of a School, which is permitted in the B2-B zone.

After considering the applicant's case, the BZA motioned to overturn the ruling of the Building Official, determining that the applicant satisfied the Zoning Ordinance's definition of School. Relevant meeting minutes for Appeal 03-37 are attached. It is of note that this hearing in 2003 included a discussion by the Board of a prior case on April 9th, 2002 (Appeal 02-54) where the Building Official's interpretation of a martial arts studio Kuk Sool Won as a Health Club/Studio was also overturned by the BZA in favor of the Zoning Ordinance's definition of School for the property at 33488 Woodward. Relevant meeting minutes for Appeal 02-54 are attached as well.

In 2012, after the pilates studio Body Pure moved out, the dance studio Ballroom moved into the subject site as a permitted use classified as a school. The subject tenant space has been vacant since 2017.

Kevin Denha, property owner and manager, was present to represent the appeal.

Vice-Chairman Canvasser advised Mr. Denha that the BZA would need to see that Building Official Johnson either abused his discretion, made an arbitrary or capricious decision, or based his decision on an erroneous finding of a material fact or an erroneous interpretation of the zoning ordinance.

Mr. Denha replied that the students are taught both martial arts and life skills in Jiu Jitsu class, which makes the proposed establishment more of a school than a health club or studio.

Vice-Chairman Morganroth said he was very open to hearing a persuasive argument for the proposed establishment being a school. He noted that the instructor of the proposed classes was not present and therefore could not explain to the BZA how the proposed establishment would fit the definition of a "school". Vice-Chairman Morganroth asked Mr. Denha to elaborate on how this would be more of a school than "a place designated for and equipped for the conduct of sports, exercise and physical fitness activities," as per Chapter 126, Article 9, Definitions.

Mr. Denha said that just because there was open space instead of traditionally divided classrooms did not mean that school-like teaching could not occur in the space.

In reply to Mr. Miller, Mr. Denha stated his team did not consider pursuing a use variance from the BZA. He said he decided to follow this course after reviewing previous City rulings regarding the property.

Mr. Hart observed that an individual would not be able to enter the proposed establishment at an unscheduled time and independently 'work-out' as one might do at a gym or fitness club. He noted that any individual hoping to use the establishment's facilities would have to attend a scheduled class taught by an instructor.

Mr. Denha confirmed that was the case.

Seeing no further comment from the Board, Vice-Chairman Canvasser invited comment from the public.

Jeff Wilmot of Glenn Wing Power Tools shared concern that the patrons of the Jiu Jitsu studio would use the public parking in front of the building, instead of parking in the designated parking in the back. If this occurred, it would limit the amount of parking available to Glenn Wing Power Tool patrons and patrons of other adjacent retail shops. Mr. Wilmot explained this happened in the past and had a negative impact on his establishment.

Vice-Chairman Morganroth noted that a school use, which is permitted in that space, would likely cause a similar parking issue.

Mr. Wilmot confirmed that would likely be the case.

Michele Major of Sol Potion Studio echoed Mr. Wilmot's concerns. She explained that any establishment where the patrons stay for a longer period of time causes parking congestion in that area.

Joe Hajjar of ML. Spirits echoed Mr. Wilmot's and Ms. Major's concerns regarding parking.

Mr. Wilmot, Ms. Major, and Mr. Hajjar all expressed their respect for Mr. Denha and their appreciation of the renovations he did to the building. They said their only concern was the matter of parking, and they all concurred that they wanted to see Mr. Denha succeed in the space more generally.

Chairman Lillie stated that, while there were clearly parking concerns, the BZA would not be able to weigh in on parking because it was not the issue before the Board. He clarified that the only question before the Board was whether the proposed establishment could be considered a 'school' as defined in the ordinance.

Motion by Vice-Chairman Canvasser

Seconded by Mr. Lillie with regard to A. Chapter 126, Article 8, Section 8.01(D) of the Zoning Ordinance, which states the Board of Zoning Appeals may hear and decide appeals from any decision made by an administrative official as it relates to the Zoning Ordinance.

Vice-Chairman Canvasser moved to deny appeal 19-40. He explained that the BZA is confined by a very high burden of proof in such a matter. Since the BZA makes its determinations on a case-by-case basis, prior decisions regarding similar matters or the same property are informative but not binding. Based on the ordinance definitions of school and health club/studio, Vice-Chairman Canvasser stated the Building Official made an appropriate determination in regards to this case.

Chairman Lillie said there had not been a showing that the proposed establishment would meet the definition of school as set out in the ordinance.

Mr. Miller said he would also be supporting the motion, and said the Building Official's determination was correct.

Mr. Rodriguez said he would be supporting the motion. He also said there are some ambiguities regarding 'schools' in the ordinance definitions of Districts B-1, B-2 and B-3, and said the City should seek to clarify those.

Vice-Chairman Canvasser concurred with Mr. Rodriguez. Vice-Chairman Canvasser said he did not make his motion based on any parking considerations, but agreed it would behoove the City to revisit the definition of 'school' in City ordinance.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 11-81-19

5. CORRESPONDENCE (included in agenda)

T# 11-82-19

6. GENERAL BUSINESS (none)

T# 11-83-19

7. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA (no one from the public wished to comment)

T# 11-84-19

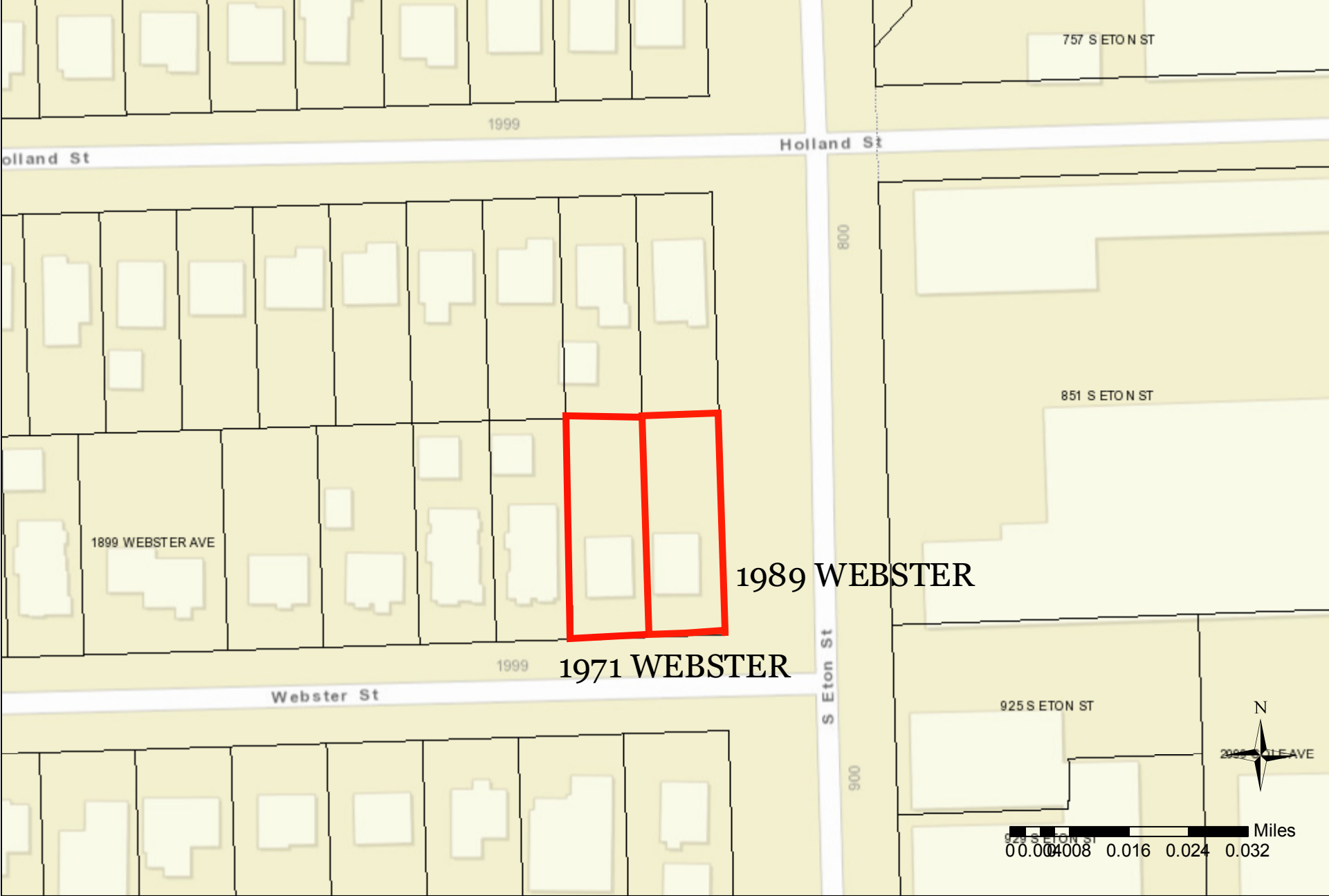
8. ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:25 p.m.



Bruce R. Johnson, Building Official

1971 WEBSTER MAP



CASE DESCRIPTION

1971 Webster (20-27)

Hearing date: May 12, 2020

Appeal No. 20-27: The owner of the property known as 1971 Webster, requests the following variance to construct a new single family home with a detached garage:

- A. Chapter 126, Article 4, Section 4.74(C)** of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 11.00 feet. Therefore, a variance of 3.00 feet is being requested on the East side.

Staff Notes: The applicant is requesting to construct a new single family home with a detached garage.

This property is zoned R3 – Single Family Residential.

Jeff Zielke, NCIDQ, LEED AP
Assistant Building Official

Original

CITY OF BIRMINGHAM
Community Development - Building Department
151 Martin Street, Birmingham, MI 48009
Community Development: 248-530-1850
Fax: 248-530-1290 / www.bhamgov.org

APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: 4.14.20
Received By: _____

Hearing Date: 5.12.20
Appeal #: 20-0027

Type of Variance:	<input type="checkbox"/> Interpretation	<input type="checkbox"/> Dimensional	<input type="checkbox"/> Land Use	<input type="checkbox"/> Sign	<input type="checkbox"/> Admin Review
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I. PROPERTY INFORMATION:

Address: <u>1971 WEBSTER</u>	Lot Number: <u>421</u>	Sidwell Number: <u>20-31-178-055</u>
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II. OWNER INFORMATION:

Name: <u>BLOOMINGDALE HOMES</u>			
Address: <u>602 W. UNIVERSITY</u>	City: <u>ROCHESTER</u>	State: <u>MI</u>	Zip code: <u>48307</u>
Email: <u>JOHN@BUILT BY BH.COM</u>		Phone: <u>248-877-6773</u>	

III. PETITIONER INFORMATION:

Name: <u>SOME</u>	Firm/Company Name:		
Address:	City:	State:	Zip code:
Email:		Phone:	

IV. GENERAL INFORMATION:

The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12th day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.

To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted. Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.

The BZA application fee is \$360.00 for single family residential; \$560.00 for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.

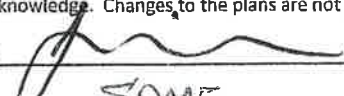
Variance Chart Example				
Requested Variances	Required	Existing	Proposed	Variance Amount
Variance A, Front Setback	25.00 Feet	23.50 Feet	23.50 Feet	1.50 Feet
Variance B, Height	30.00 Feet	30.25 Feet	30.25 Feet	0.25 Feet

V. REQUIRED INFORMATION CHECKLIST:

- One original and nine copies of the signed application
- One original and nine copies of the signed letter of practical difficulty and/or hardship
- One original and nine copies of the certified survey
- 10 folded copies of site plan and building plans including existing and proposed floor plans and elevations
- If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting

VI. APPLICANT SIGNATURE

By signing this application, I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

Signature of Owner: 	Date: <u>4-11-20</u>
Signature of Petitioner: <u>SOME</u>	Date: <u>4-11-20</u>

CITY OF BIRMINGHAM
 Date: 04/20/2020 11:58:03 AM
 Ref: 00168418
 Receipt: 533370
 Amount: \$360.00



April 13, 2020

Applicant: Bloomingdale Homes

Subject: Zoning Board of Appeals

Property: 1971 Webster

Hardship: Dimensional – distance between adjacent houses

Explanation:

Board Members,

We plan to build a new home at 1971 Webster – we will demolish the existing home. The lot is a 40 ft x 115 ft- our plan is to build a 24.5 ft wide home.

The new home is designed to comply with the city zoning requirements within the confines of the lot. We can comply with the min distance between homes on the west side.

However, it presents a practical difficulty to comply with the requirement of a min of 14 ft between the home to the east side -1989 Webster.

However our new home will be 11 ft to the home on the east requiring a 3 ft variance from the required minimum of 14 ft between homes.

Accordingly, we request a variance to the dimensional requirement of 14 ft between houses.

Variance:	Required	Existing	Proposed	Amount of Variance
East side	14 ft	N/A	11.0 ft	3.0 ft

Thank you for your consideration of this request.

Bloomingdale Homes

J. Bloomingdale

John Bloomingdale

248-877-6773

John@BuiltbyBH.com

1989 WEBSTER MAP



CASE DESCRIPTION

1989 Webster (20-25)

Hearing date: May 12, 2020

Appeal No. 20-25: The owner of the property known as 1989 Webster, requests the following variance to construct a new single family home with a detached garage:

- A. Chapter 126, Article 4, Section 4.74(C)** of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 11.00 feet. Therefore, a variance of 3.00 feet is being requested on the West side.

Staff Notes: The applicant is requesting to construct a new single family home with a detached garage.

This property is zoned R3 – Single Family Residential.

Jeff Zielke, NCIDQ, LEED AP
Assistant Building Official

Original

CITY OF BIRMINGHAM
Community Development - Building Department
151 Martin Street, Birmingham, MI 48009
Community Development: 248-530-1850
Fax: 248-530-1290 / www.bhamgov.org

APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: 4-14-20
Received By: HT

Hearing Date: 5-12-20
Appeal #: 20-0025

Type of Variance:	<input type="checkbox"/> Interpretation	<input checked="" type="checkbox"/> Dimensional	<input type="checkbox"/> Land Use	<input type="checkbox"/> Sign	<input type="checkbox"/> Admin Review
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I. PROPERTY INFORMATION:

Address: <u>1989 WEBSTER</u>	Lot Number:	Sidwell Number: <u>20-31-178-056</u>
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II. OWNER INFORMATION:

Name: <u>BLOOMINGDALE HOMES</u>			
Address: <u>602 W. UNIVERSITY</u>	City: <u>ROCHESTER</u>	State: <u>MI</u>	Zip code: <u>48307</u>
Email: <u>JOHN@BUILT BY BL.COM</u>		Phone: <u>248-877-6773</u>	

III. PETITIONER INFORMATION:

Name: <u>SAME</u>		Firm/Company Name:	
Address:	City:	State:	Zip code:
Email:		Phone:	

IV. GENERAL INFORMATION:

The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12th day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.

To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted. Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.

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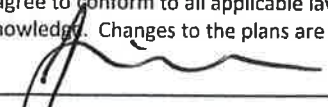
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Signature of Owner: 	Date: <u>4-11-20</u>
Signature of Petitioner: <u>SAME</u>	Date: <u>4-11-20</u>

CITY OF BIRMINGHAM
Date: 04/14/2020 11:43:00 AM
Ref: 00168597
Receipt # 533243
Amount \$360.00



April 13, 2020

Applicant: Bloomingtondale Homes

Subject: Zoning Board of Appeals

Property: 1989 Webster

Hardship: Dimensional – distance between adjacent houses

Explanation:

Board Members,

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However, it presents a practical difficulty to comply with the requirement of a min of 14 ft between the home to the west side -1971 Webster.

We can comply with the min side yard set backs on the east side and west sides. However our new home will be 11 ft to the home on the west requiring a 3 ft variance from the required minimum of 14 ft between homes.

Accordingly, we request a variance to the dimensional requirement of 14 ft between houses.

Variance:	Required	Existing	Proposed	Amount of Variance
West side	14 ft	N/A	11.0 ft	3.0 ft

Thank you for your consideration of this request.

Bloomingtondale Homes



John Bloomingtondale
248-877-6773
John@BuiltbyBH.com