

**Birmingham Board Of Zoning Appeals Proceedings
Tuesday, December 8, 2020
Held Remotely Via Zoom And Telephone Access**

1. Call To Order

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, December 8, 2020. Chairman Charles Lillie convened the meeting at 7:30 p.m.

2. Rollcall

Present: Chairman Charles Lillie; Board Members Jason Canvasser, Kevin Hart, Richard Lilley, John Miller, Erik Morganroth, Francis Rodriguez; Alternate Board Member Erin Rodenhouse (all regular members were located in Birmingham, MI; Alternate Board Member Rodenhouse's location was not ascertained since she was not voting in the evening's petitions.)

Absent: Alternate Board Member Ron Reddy

Administration:

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

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

Vice-Chairman Morganroth described BZA procedure to the audience. He noted that the members of the Board of Zoning Appeals are appointed by the City Commission and are volunteers who serve staggered three-year terms. They are a quasi-judicial board and sit at the pleasure of the City Commission to hear appeals from petitioners who are seeking variances from the City's Zoning Ordinance. Under Michigan law, a dimensional variance requires four affirmative votes from this board, and the petitioner must show a practical difficulty. A land use variance requires five affirmative votes and the petitioner has to show a hardship. He pointed out that this board does not make up the criteria for practical difficulty or hardship. That has been established by statute and case law. Appeals are heard by the board as far as interpretations or rulings. In that type of appeal the appellant must show that the official or board demonstrated an abuse of discretion or acted in an arbitrary or capricious manner. Four affirmative votes are required to reverse an interpretation or ruling.

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

T# 12-61-20

3. Approval Of The Minutes Of The BZA Meeting Of November 10, 2020

Mr. Miller said that in the fourth line of the paragraph beginning "Mr. Miller said" on page four, 'could' should be changed to 'should'.

Motion by Mr. Canvasser

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

Motion carried, 5-0.

ROLL CALL VOTE

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

Nays: None

T# 12-62-20

4. Appeals

**1) 1880 Kenwood Court
Appeal 20-46**

Assistant Building Officials Morad and Zielke presented the item, explaining that the owner of the property known as 1880 Kenwood was requesting the following variances to construct a new home with an attached garage:

A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 28.66 feet. The proposed is 25.00 feet. Therefore a 3.66 foot variance is being requested.

B. Chapter 126, Article 4, Section 4.75(A)1 of the Zoning Ordinance requires that a private, attached, single-family residential garages must be setback a minimum 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The proposed is the garage is 11.24 feet in front of the furthest façade. Therefore a variance of 16.24 feet is being requested.

ABO Zielke said the lot is rectangular in shape on a cul-de-sac. This property is zoned R1 – Single Family Residential.

In reply to Mr. Lillie, ABO Zielke confirmed that if the garage were set back five feet from the the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line then neither of the variances would be necessary. He confirmed that the applicant could move the garage far enough back to comply with the ordinance.

In reply to Vice-Chairman Morganroth, ABO Zielke confirmed the distance between the front porch and the recess on the other side of the dining room would be about two feet.

Vice-Chairman Morganroth noted that if the recess were pulled forward then the furthest point back would be the porch, which would affect where the garage could be built.

ABO Zielke confirmed for Mr. Miller that there was sufficient space in the rear of the home to move the house back while remaining in the building envelope.

Thomas Affeldt, architect, reviewed the letter to the BZA describing why these two variances were being sought. The letter was included in the evening's agenda packet.

It was noted by the Board that 1886 Kenwood is non-compliant with current ordinance.

In reply to questions from the Board, Mr. Affeldt stated:

- Setting the house and garage at 1880 Kenwood further back than proposed could give the feeling for the neighbors at 1886 Kenwood that 1880 Kenwood's garage is practically in 1886 Kenwood's back yard. That was part of the applicant's reasoning for wanting to keep the garage and home more forward on the property.
- There was also a desire to minimize the dimensional discrepancy between 1886 Kenwood's garage, which has a 25-foot setback, and the as-designed setback for 1880 Kenwood which would be 30-feet.
- If the home and garage are pushed back the 3.66 feet necessary to comply with the ordinance, the north end of the garage would be very close to being in the rear setback. Doing so would also increase the impervious area on the site since the driveway would have to continue further than originally planned, and the move could block the neighbors' view.
- While it might be possible to build a house on this lot that would not require variances, any such configuration on the lot could result in a negative outcome for the neighbors.
- The wall in front of the recess next to the dining room would not be the appropriate place to measure the furthest setback from the front property line, since that wall does not face the street. Of the walls that do face the street, the dining room would be the closest to the front property line.
- If he was recalling correctly, the garage would be set back five feet from the dining room wall.
- He felt that averaging the setbacks of the neighboring homes to the east and west of 1880 Kenwood would not be appropriate in this case since to the east there was no appropriate neighbor to include in the average and the orientation of the home to the west is very different from 1880 Kenwood's planned orientation. Consequently, he used the 25 foot setback provided by the ordinance for when there are no appropriate neighboring setbacks to average from.

Mr. Hart said that if the house and garage were moved 3.66 feet to the north that there would be no need for variance A. He noted the distance from the west edge of the garage to the neighboring property would be over 51 feet, which would still be far enough to not make it feel

like 1880 Kenwood's garage was in 1886 Kenwood's backyard. He also stated that moving 1880 Kenwood in such a way would actually better preserve the neighbor's views when looking to the east.

Public Comment

Danielle and Jeff Kalt, 1886 Kenwood, said it would be better for them if 1880 Kenwood's buildings were not moved further back on the lot. The Kalts' pathway and patio face northeast, and if 1880 Kenwood's buildings are moved further back on the lot the primary view from the Kalts' patio would be 1886 Kenwood's garage. If the home and garage at 1880 Kenwood were built according to the current plans, those buildings would still not be as close to the street as the Kalts' garage. They said moving 1880 Kenwood's garage back would be profoundly intrusive.

Motion by Mr. Canvasser

Seconded by Mr. Miller with regard to Appeal 20-46, A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 28.66 feet. The proposed is 25.00 feet. Therefore a 3.66 foot variance is being requested, and B. Chapter 126, Article 4, Section 4.75(A)1 of the Zoning Ordinance requires that a private, attached, single-family residential garages must be setback a minimum 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The proposed is the garage is 11.24 feet in front of the furthest façade. Therefore a variance of 16.24 feet is being requested.

Mr. Canvasser moved to deny both variances. He said the issue was self-created and that there was no hardship demonstrated. He noted that Mr. Affeldt stated an ordinance-compliant house could be built on the lot. He also noted that the petitioner rests much of its argument on what it interprets as the 'intent' of the ordinance, and said that as a quasi-judicial Board it would not be appropriate for the BZA to base its decisions based on conjectured intent. He said the BZA is required to look at the plain language of the ordinance to guide its decisions. Mr. Canvasser also stated he was skeptical of the claim that every lot on a cul-de-sac is inherently irregular and deserving of extra flexibility vis-a-vis the ordinance as a result. He said cul-de-sacs are common enough, even if there are not an overwhelming number in Birmingham, that it would not be appropriate to categorize them as an unusual condition.

Mr. Miller said there is nothing that requires 1880 Kenwood to build a three-car garage facing 1886 Kenwood's patio and home. He noted 1880 Kenwood's garage could be in its backyard, facing the street, or on the south side of the site. That means a variance request to accommodate the proposed garage placement for 1880 Kenwood is a self-created matter, and not one of inherent hardship. Birmingham ordinance also goes to great lengths to keep garages behind the front façades of homes. Not only do these plans aim to have the garage further towards the front of the home than allowed by ordinance, but they even propose to have the garage encroaching into the front yard setback. Mr. Miller said only in very rare situations would the BZA ever consider granting such a request. He noted the building envelope

on this lot is large enough to accommodate most of the applicants' desires for the house. Commending Mr. Affeldt on his creativity and skill in the design, Mr. Miller expressed confidence that Mr. Affeldt would be able to design a home that generally satisfies the owners' wants and the requirements of the building ordinance.

Mr. Lillie said expecting 1880 Kenwood to comply with the ordinance would not be unduly burdensome. The garage could be moved back to comply with the ordinance and there are other ways of meeting the ordinance requirements as well. Since it is new construction, the issue is self-created.

Both Mr. Canvasser and Mr. Lillie reminded those present that variances are not granted or denied based on neighbor support or opposition, and that only a finding of practical difficulty allows the BZA to grant a dimensional variance.

Mr. Hart agreed with previous comments that since this is new construction there is sufficient opportunity to build a home that complies with the ordinance. He also agreed that no hardship had been demonstrated.

Vice-Chairman Morganroth said that while the plan was beautiful and appropriate for the neighborhood, a practical difficulty had not been established and so the requested variances could not be granted.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

**2) 815 Purdy
Appeal 20-47**

ABO Zielke presented the item, explaining that the owner of the property known as 815 Purdy was requesting the following variances to construct a second floor addition with modification to the existing floor of an existing non-conforming home:

A. Chapter 126, Article 4, Section 4.75(A)1 of the Zoning Ordinance requires that a private, attached, single-family residential garages shall not occupy more than 50% of a linear building width of a principal residential building that faces a street. The existing/proposed is the garage is 69.50%. Therefore a variance of 19.50% is being requested.

B. Chapter 126, Article 4, Section 4.75(A)1 of the Zoning Ordinance requires that a private, attached, single-family residential garages must be setback a minimum 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The existing/proposed is the garage is 9.40 feet in front of the furthest façade. Therefore a variance of 14.40 feet is being requested.

C. Chapter 126, Article 4, Section 4.75(A)2 of the Zoning Ordinance requires that garage doors on an attached garage which are facing a street may not exceed 9.00 feet in width; where there are multiple doors, they must be separated by a solid wall or jamb not less than 8.00 inches wide. The proposed is 18.00 feet. Therefore a variance of 9.00 feet is being requested.

ABO Zielke noted the property is zoned R3 – Single Family Residential. He confirmed both variances A and B relate to existing non-conformities with the home, and that neither of those variances would be expanding those non-conformities. Variance C would be expanding an existing non-conformity.

Mark Rauh of Timberland Homes reviewed the letter to the BZA describing why these variances were being sought. The letter was included in the evening's agenda packet.

There were no questions from the public.

Motion by Mr. Lillie

Seconded by Mr. Rodriguez with regard to Appeal 20-47, A. Chapter 126, Article 4, Section 4.75(A)1 of the Zoning Ordinance requires that a private, attached, single-family residential garages shall not occupy more that 50% of a linear building width of a principal residential building that faces a street. The existing/proposed garage is 69.50%. Therefore a variance of 19.50% is being requested and B. Chapter 126, Article 4, Section 4.75(A)1 of the Zoning Ordinance requires that a private, attached, single-family residential garages must be setback a minimum 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The existing/proposed garage is 9.40 feet in front of the furthest façade. Therefore a variance of 14.40 feet is being requested.

Mr. Lillie moved to grant variances A and B only and to tie them to the plans as submitted. He said it would be unduly burdensome to make the petitioner comply with the ordinance in these two instances since the house is already non-comforming. He noted that the need for these two variances was not self-created.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

Motion by Mr. Lillie

Seconded by Mr. Hart with regard to Appeal 20-47, C. Chapter 126, Article 4, Section 4.75(A)2 of the Zoning Ordinance requires that garage doors on an attached garage which are facing a street may not exceed 9.00 feet in width; where there are multiple doors, they must be separated by a solid wall or jamb not less than 8.00 inches wide. The proposed is 18.00 feet. Therefore a variance of 9.00 feet is being requested.

Mr. Lillie moved to deny variance C because he said compliance with the ordinance in this case would not be unduly burdensome and granting the variance would increase the non-conformity.

Mr. Miller said he would support the motion because the outside dimension of the garage is 21.4 feet, which with two nine foot doors would still leave room for the required 8 inch separation in the middle with plenty of room on either side of the doors.

Vice-Chairman Morganroth said he would also support the motion because the ordinance can be met in this case.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 12-63-20

5. Correspondence

Included in the agenda packet.

T# 12-64-20

6. General Business

None.

T# 12-65-20

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

None.

T# 12-66-20

8. Adjournment

Motion by Mr. Lillie

Seconded by Mr. Lilley to adjourn the December 8, 2020 BZA meeting at 8:53 p.m.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None



Bruce R. Johnson, Building Official