

Birmingham Board of Zoning Appeals Proceedings
Tuesday, January 12, 2021
Held Remotely Via Zoom and Telephone Access

1. Call To Order

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, January 12, 2021. Chair Charles Lillie convened the meeting at 7:30 p.m.

2. Rollcall

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

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

Administration:

Bruce Johnson, Building Official
Brooks Cowan, City Planner
Laura Eichenhorn, City Transcriptionist
Eric Brunk, IT Manager

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

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

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

T# 01-01-21

3. Approval Of The Minutes Of The BZA Meeting Of December 8, 2020

Vice-Chair Canvasser said that in the second full paragraph of the motion, in the third line, he wanted 'petition' changed to 'petitioner'.

On page six, in the first paragraph of the first motion, in the fourth line, Mr. Lillie said 'is the' should be removed from after 'existing/proposed'. In the same paragraph, second to last line, 'is the' should also be removed from after 'existing/proposed'.

Motion by Mr. Lillie

Seconded by Mr. Lilley to accept the Minutes of the BZA meeting of December 8, 2020 as amended.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 01-02-21

4. Appeals

**1) 469 & 479 N. Old Woodward
Appeal 21-01**

CP Cowan presented the item, explaining that the owner of the property known as 469 & 479 S. Old Woodward Avenue was requesting the following dimensional variances to construct a 5-story mixed-use building:

A. Chapter 126, Article 3, Section 3.04(D)(5) of the Zoning Ordinance requires that off-street parking contained in the first story shall not be permitted within 20.00 feet of any building façade on a frontage line or between the façade and the frontage line. The owner has proposed 7 parking spaces within 20.00 feet of the building frontage facing Hazel Street, therefore, a dimensional variance of 20.00 feet is being requested.

B. Chapter 126, Article 4, Section 4.25(LD)(02)(1) of the Zoning Ordinance requires that each building used for mixed commercial and residential use shall supply, on the site of the building, a minimum of 2 off-street loading zones and 2 refuse storage areas. Loading Spaces are required to be 40 feet long, 12 feet wide and 14 feet high in dimension. The owner has proposed one loading space on-site, therefore, a dimensional variance of one loading space is being requested.

Richard Rassel, attorney, reviewed the letters describing why these two variances were being sought. The letters were included in the evening's agenda packet.

Some informational questions were asked of CP Cowan and Mr. Rassel by the Board members.

In reply to Mr. Morganroth, Mr. Rassel explained that the petitioner strongly felt that in order to service the retail and residential guests that the 84 spots must be provided in the proposed locations. He said the petitioner believed it to be much more reasonable to provide parking on-site rather than off-site. He said the project has taken great pains to create an attractive facade along Hazel.

Chris Longe, architect for the project, explained that most of the mechanicals will be on the roof for the purpose of hiding it. The parking on Hazel will be screened for at least the first 30 inches and up to the first 36 inches.

In reply to Vice-Chair Canvasser, Mr. Longe said that retail or office would be unlikely to last in the frontage along Hazel. He said that the petitioner would be unlikely to rent out the space for an office or retail use even in the case of the variances being denied because additional parking would have to be provided.

Public Comment

Patrick Howe, attorney for Birmingham Place Condominium Assn. asked the BZA to think carefully about whether one loading zone would be sufficient in a time of increased deliveries due to the pandemic. He asked that the BZA also weigh whether the parking proposal would be appropriate for the broader neighborhood context in their deliberations. He thanked the BZA for their work.

In reply to Vice-Chair Canvasser, Mr. Rassel confirmed it was his understanding that packages and mail would come into the building off of Old Woodward.

Motion by Mr. Lillie

Seconded by Mr. Morganroth with regard to Appeal 21-01, A. Chapter 126, Article 3, Section 3.04(D)(5) of the Zoning Ordinance requires that off-street parking contained in the first story shall not be permitted within 20.00 feet of any building façade on a frontage line or between the façade and the frontage line. The owner has proposed 7 parking spaces within 20.00 feet of the building frontage facing Hazel Street, therefore, a dimensional variance of 20.00 feet is being requested. and B. Chapter 126, Article 4, Section 4.25(LD)(02)(1) of the Zoning Ordinance requires that each building used for mixed commercial and residential use shall supply, on the site of the building, a minimum of 2 off-street loading zones and 2 refuse storage areas. Loading Spaces are required to be 40 feet long, 12 feet wide and 14 feet high in dimension. The owner has proposed one loading space on-site, therefore, a dimensional variance of one loading space is being requested.

Mr. Lillie moved to grant both variances as advertised and tied them to the plans as presented, conditioned upon the petitioner establishing the seven parking spaces

along Hazel. Before going into his reasons for supporting the variances, he noted that the Planning Board's endorsement of the project does not establish a practical difficulty. Mr. Lillie said the petitioner, however, did establish a practice difficulty in this case. He noted that the existing building already has parking within 20 feet of the building currently facing Hazel. This property is the only one zoned D4 not included in the Parking Assessment District (PAD). He also said there were some efforts at mitigation along Hazel. He said requiring the petitioner to comply with the ordinance would be unduly burdensome, granting the variances would do substantial justice to the petitioner and the surrounding neighbors, and the need for the variances is not self-created.

Mr. Morganroth said being zoned D4 without access to the PAD is a unique burden on this property. He said that Hazel tends to function as more of a cut-through between downtown and Woodward, and that the proposed plans would be a significant improvement compared to the existing building and the amount of currently visible parking. He said that while the single loading zone does not meet the ordinance requirements, making the single zone wider to accommodate the size of two more residentially-scaled trucks is an interesting mitigation. He said for those reasons he would support the motion.

Mr. Miller noted that at the Planning Board's September 23, 2020 meeting they specified that having 14 to 15 spaces on grade and the rest of the parking below allowed for commercial and residential spaces to be separated, which provides added security to the residents. Mr. Miller said this was an added benefit of the proposed design.

Vice-Chair Canvasser said adding additional parking on Hazel, when parking is in such shortage in the City and office and retail is not required on Hazel, is a benefit of this project. He said the drawing of the loading spaces showed the practicality of how they will be best used. He said the reality is that there will be loading on Hazel, Woodward, and in the MDOT right-of-way. He said the unique circumstances of the building merit his support of the motion.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

T# 01-03-21

5. Correspondence

Included in the agenda packet.

T# 01-04-21

6. General Business

None.

T# 01-05-21

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

None.

T# 01-06-21

8. Adjournment

Motion by Mr. Lilley

Seconded by Mr. Reddy to adjourn the January 12, 2021 BZA meeting at 8:37 p.m.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None



Bruce R. Johnson, Building Official