

**CITY OF SOUTH LYON  
ZONING BOARD OF APPEALS  
January 16, 2014**

Chairman Weipert called the meeting to order at 7:12 p.m.

PRESENT: Chairman Phil Weipert and Commissioners Bill Rodman, Frank Fogarty, T.J. Connolly, Joe Rzyzi, Steve Mosier and Ron Morelli. Also present Timothy Wilhelm, City Attorney and Thomas Walsh, Building Inspector.

Chairman Weipert – Roll call shows all present.

**APPROVAL OF MINUTES:**

**ZBA 01-16-14 APPROVAL OF MINUTES – December 19, 2013**

Motion by Morelli, supported by Fogarty

To approve the minutes of December 19, 2013.

**VOTE:**

**MOTION CARRIED UNANIMOUSLY**

**OLD BUSINESS**

Chairman Weipert noted that a motion to remove this case from the table was needed.

**ZBA 12-19-13 – CASE # 2013-007 – 264 Gibson Street**

I make a motion to remove it from the table and to put it back it back on the table.

Motion by Rodman, supported by Rzyzi

**VOTE:**

**MOTION CARRIED UNANIMOUSLY**

**ZBA Case # 2013-007 – 264 Gibson Street**

The request is for a variance to Section 102-108 to allow construction of a deck with a reduced rear yard setback of 23 ft. (37.5 required) on an existing nonconforming residence.

Chairman Weipert asked the applicant to come up and state his name and addresses for the record and to continue his presentation and tell us what the practical difficulty is for requesting the variance. He also noted that the board has new updated packages for this hearing and more information had been obtained.

Mr. Engle began by stating his reason for his request. I am here again requesting the same variance as last time to accommodate my yard. The size and shape of my yard and how it is broken in half by the retaining wall. The retaining wall lies approximately 20' away from my house and breaks up the backyard. It creates a difficulty for me to use the backyard and that is the reason I am building a deck to accommodate the old deck as well to make use out of that and to be able to enjoy the backyard that I have. It is an unique request because the type of land and how there is a steep hill in the back with a retaining wall that holds the one-half of the yard and the second half goes down and that land is unusable. The intent and purposes of the deck is to enjoy the backyard. What I have now is kind of a mess with a free floating back deck. I feel what I proposed is an adequate deck. Yes, it is large but I made it that way so I could accommodate the other factors involved. Basically I was using the old deck as a threshold to go off of. I feel like this is not a terrible request and it does not cause adversity to my other neighbors. The person behind me (to the east) I am not intruding on that piece of land since I am using the depth of my own yard so it is not intruding onto their property or will be overseen or a distraction. I did not go any farther to the north so the adversity to that neighbor really does not exist. She (the neighbor) expressed some concern over my fire pit. I understand that, she does not like the fires being back there since she does not like wood burning. I don't feel like that is a good objective to prevent me from building my deck project since I had that fire pit there for three years and she never complained about it before. Upon this proposal she decided to voice her opinion about that. I want to make mention of the one photo that is from the north side (page 2) top left corner. That is where I plan on putting a hot tub and it is also the reason I have it that size.

Chairman Weipert – The hot tub will be on the north side of your deck?

Mr. Engle – It will be in the top left corner.

Chairman Weipert noted it would be on the south side by the garage. The southeast corner of the deck.

Commissioner Connolly question the applicant if had a chance to review the ordinance on fire pits?

Mr. Engle replied that he did.

Commissioner Connolly it says under Section 8 – 8.00 Portable/fixed outdoor fireplaces shall be used in accordance with the manufacturer's instructions and shall not be operated

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within 15' of a structure or combustive material. It appears in the picture that is within the 15'.

Commissioner Rodman noted that the deck is combustible material.

Attorney Wilhelm added that on that point in Section 8 of the outdoor burning. The exception of the bottom line should be noted as well. Portable/fixed outdoor fireplaces used at one and two family dwellings.

Mr. Engle replied that as he read the ordinances he would read one rule and another one would supersede it and say to reject that one rule. If that was the case, you could never have an outdoor fire pit that you would buy at Lowes or Home Depot sitting on top of that deck.

Chairman Weipert questioned if he intended to build his deck around the fire pit?

Mr. Engle responded that the board should have a picture of the old existing deck and how it was built. That was done three years ago (the last picture in the packet).

Chairman Weipert asked for more information on the retaining wall. Isn't it a natural feature of the land?

Mr. Engle replied he was not sure. The retaining wall is made out of wood it is not just a hill, but it is not natural but I am not sure who put it there it was there prior to my living there.

Chairman Weipert summarized that the applicant has the two backyards (split) and looking at the photo of the home on Hagadorn St., they have a real big backyard and the area behind the retaining wall has a natural swale of those two properties.

Mr. Engle – If you have a bad rain or even with this snow in the spring it sits there in that low spot by the wood pile. That whole section down there floods. Part of the year it is useless with the low water table it gets destroyed and you can't even mow it.

Commissioner Rodman – This is in front of us because it is too big for the size of the lot.

Inspector Walsh acknowledged that is correct and how much the deck projects into the rear yard.

Commissioner Morelli noted that it is too close to the rear yard setback.

Chairman Weipert – He can do about 5.1' without coming to us. Inspector at the last meeting you made a comment that the neighborhood was more appropriate for a 12' deck and that was your opinion.

Inspector Walsh stated that was correct.

Mr. Engle noted that the ordinance would be like an 18' or 20' away from a property line if you look at the back neighbor and you follow the 25% rule he could probably build a 50'-60' deck and he would be within the rules.

Commissioner Morelli responded that in this case he would fall under the percentage of lot coverage. You can only cover a certain percent of your lot. You don't have that issue since your lot is decent size but you fall into a rear yard setback. If you were to fill up your building envelope you would probably be over the percentage of lot coverage but you are not.

Mr. Engle questioned if he is only allowed to build 25% into my yard that means I have 75% of my lot left. If you have a 200' yard and you build a 25' deck you would still have 75% of your lot not covered would that still fall under lot size?

Commissioner Morelli added that you can go 25% into your rear yard setback.

Commissioner Rodman noted that it is not about depth, it is about lot coverage and that includes all the structures on the lot.

Commissioner Morelli responded that your rear yard setback might be 30'-40' depending upon the zoning district you are in. So if you have a backyard that is 200' deep, your backyard fence is 200' from your house let's say. Your rear yard setback in an R-2 is 30'. You can go 25% into that 30'. So the guy with 200' could build a 180' deck and cover all that lot and he only has 25'. If someone has only got 40' and they can only go 25% into their rear yard setback which is 30', they can only build a 13' or 14' deck. The difference is that you both have the same 25' band of grass between the fence line and your deck but you might have a 12' deck and he has a 180' deck. He is covering a larger percentage of his lot than you would be.

Mr. Engle stated that this person could then build a 40' deck.

Commissioner Morelli – He has a big enough lot to do it and you don't. That is the issue.

Chairman Weipert added that one of the things we look at is the character in the neighborhood. About 12' is what the neighborhood has. You are allowed 5.1' and with the character of the neighborhood would accommodate about 12.5' and you are asking for 19'.

Mr. Engle responded that to bring it back to the point that he previously had a deck back there that was 18'. Did that not go with the neighborhood?

Commissioner Fogarty noted that it was a floating deck and it was considered landscaping.

Mr. Engle questioned then why is my deck not a free floating deck? It is not attached to anything.

Commissioner Morelli – You are missing the point. For example, using your wood pile back there, lets say you want to build an 8' x 6' wooden pad for this wood to sit on so it would not be on angle. That would be considered a landscape decor, not like decking you want to build off the back of your house. It is different. Like someone puts up a decorative fence around their landscaping, it does not fall into the same ordinances as if you were to put in a 3' cyclone fence up around your backyard they are considered different statutes. You have a 960' house and you are trying to build a 600' deck off the back of it which goes 20' into your rear yard setback. That is the issue. We are trying to come up with a happy medium that will work for you. The fact you had that other one out there, and someone built it but it wasn't you, it is kind of grandfathered in since it was already there, like the addition that was put onto the back of your garage. If that was built without a permit, we can't hold you responsible for it. You're trying to build this monstrosity without a permit. What do you do for a living by the way?

Mr. Engle responded military and production.

Commissioner Morelli added that then you should have known that you needed a permit for this and you obviously did not go and get one. So now, you are here because you feel it is easier to ask for forgiveness instead of permission and now it is before us and here we sit. We are trying to come up with a logical thing that makes sense for you, after the fact.

Chairman Weipert questioned the span of the joists. The first one is at the back of the house?

Mr. Engle answered yes and they are 16" apart.

Commissioner Rodman noted that he does not understand how this retaining wall is a practical difficulty. How are you being denied the use of your yard?

Mr. Engle replied it is just the shallowness of the yard itself. If I have a 12.5' deck I am only going to have 6' of yard to go to the retaining wall.

Commissioner Fogarty questioned the construction material of the retaining wall.

Mr. Engle replied wood.

Commissioner Fogarty noted that then it could be moved.

Commissioner Rodman noted that he still did not see how he is being denied the use of his property.

Mr. Engle agreed but he would still have a hill there and that portion at the retaining wall is unusable land. With the shallowness of the yard, there is only 6' of yard that goes to the retaining wall. I have this free floating deck and I want to attach it to the house to make it a usable and practical, and to be able to come out the house and go down on 2' of grass and go up on a deck that I cannot use. You say it is a landscape structure and I don't understand that.

Commissioner Rodman acknowledges it is a deck and that has no bearing on why you are here. You are here because you want to build a structure that is bigger than the ordinance allows. It does not matter what was there.

Commissioner Rzyzi added that my uneasiness is that what you are asking for is not in character with the rest of the neighborhood. If you were asking for half the size deck I would feel more comfortable. Our building inspector is saying approximately 12' would fit better. I would be willing to grant the variance on my side. We try to be flexible and work with the people, but it has to be in character of the neighborhood.

Chairman Weipert agreed. From the back of your existing fire pit is about 15' so that would be a variance of about 7' and 5.1' you are allowed into the rear yard setback.

Mr. Engle responded that no, he is allowed to build 12.5' without coming here.

Inspector Walsh corrected that he is only allowed 5.1' into the rear yard setback. I made a recommendation that if the house was built at 50' it would come out 12.5' and I recommended it come out 12.5' from where the house sits today to be in the spirit of the ordinance. Looking at photos you have provided tonight if you were to remove those five joists from the back coming back towards the house, it would be in front of the fireplace and that would actually reduce it by 6.8' giving you a roughly 13' projection. The variance now would be 8.5'. So it is a setback of 29' vs. 30'.

Chairman Weipert added that the applicant has a 50' rear yard setback.

Mr. Engle noted that he is allowed to use 25%, which was understood at the last meeting.

Inspector Walsh explained that from the 50' setback you are allowed to project 25% of that 50' which is 12.5'. Your house sits 42.6' so your house is already into the rear yard setback. You have to go into your house to hit that 50' mark.

Chairman Weipert added that you measure from the back property line into your house.

Commissioner Morelli – That being said, you could build across the whole back of your house. Your problem is how far back you can come out.

Chairman Weipert added that he is with Joe since when I looked at it I think that would be a good fit.

Commissioner Rodman questioned what the uniqueness of the lot was and it is not the retaining wall. Everyone here knows what the uniqueness is. It is the placement of the house.

Commissioner Morelli responded exactly. The uniqueness of your situation is the way your house already sets into your rear yard setback.

Mr. Engle noted he was going off where the house is and the rear yard off the back of the house.

Commissioner Morelli explained that rear yard setback is measured from the property line, towards the street and then you have a 50' rear yard setback requirement. At the last meeting it was brought up that the fence is not on the property, is that true? So that fence line may be on your neighbor's property but that is neither here nor there.

Mr. Engle noted that it is a non-conforming house to the ordinance already then. Commissioner Morelli replied correct.

Chairman Weipert summed up that the applicant has an odd lot; there is a retaining wall and a natural swale in the yard. That is what we have. The uniqueness of the property is how his house sits back in the rear setback.

He is allowed to go 13.4' total. The variance would be about 7.8'.

Commissioner Morelli added that with that variance approved, you can build your deck as wide as his house if he wanted to correct?

Chairman Weipert replied that when we grant the variance, what should be there is what is on this drawing, on that lot.

Commissioner Rodman questioned if the applicant built it wider than it already is will it impact the side yard setback since the request of this variance will not cause an adverse impact on the surrounding properties, property values or the use and enjoyment of the property in the neighborhood of zoning district because.....

**ZBA 01-16-14 – CASE # 2013-007 – 264 Gibson Street**

Motion by Rzyzi, supported by Morelli

Motion to allow a deck to be constructed for 13.4' allowing for 7.8' variance because there are unique circumstances or physical conditions of the property such as narrowness, shallowness, shape, water, topography or similar physical conditions and the need for the variance is not due to the applicant's personal or economic difficulty because the location of the house is non-conforming to the existing ordinance due to location of where it was originally built.

The need is not self-created because it allows for a safer environment.

The requested variance is the minimum variance necessary to do substantial justice to the applicant as well as to other property owners in the district because the request is in line with other houses and sizes of decks in the neighborhood.

The requested variances will not cause and adverse impact on surrounding property, property values or the use and enjoyment of the property in the neighborhood or zoning district because the size is already reduced to match the surrounding neighborhood.

**VOTE:**

**MOTION CARRIED UNANIMOUSLY**

Commissioner Connolly questioned the location for the fire pit.

Chairman Weipert noted that the fire pit was not being changed. Any more discussion? Also noted that there was no New Business on the agenda.

**STAFF REPORTS:**

Chairman Weipert – Nothing is scheduled yet for next month.



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**ZBA 01-16-14 – ADJOURNMENT**

Motion by Morelli, supported by Rodman

To adjourn the meeting at 7:50 pm

**VOTE:**

**MOTION CARRIED UNANIMOUSLY**

Respectfully Submitted,

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Phil Weipert, Chairman

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Marianne Jamison, Recording Secretary