CITY OF SOUTH LYON
ZONING BOARD OF APPEALS
May 21, 2015

Chairman Weipert called the meeting to order at 7:03 p.m.

PRESENT: Chairman Phil Weipert and Commissioners Frank Fogarty, Steve Mosier, Ron Morelli, Brian Dunn and Michael Joseph. Also present was Carmine Avanti (Planning Commission), and Tim Wilhelm (City Attorney).

Roll call shows all present with the exception of Joe Ryzyi and Dennis Smith (Building Department) - excused

APPROVAL OF MINUTES:

ZBA APPROVAL OF MINUTES

None (approved November 24, 2014)

OLD BUSINESS

None

NEW BUSINESS

ZBA Case #2015-001 – 649 Covington

The request is for a variance from Section 18-135 of the City Code to allow a privacy fence in the front yard where it is prohibited. The subject property is located at the southwest corner of Norchester and Covington streets and the proposed 6 foot tall wood fence will extend out to the sidewalk on Norchester Street. The property is currently zoned R-3, One Family Residential.

Chairman Weipert informed the applicants that there was not a full board present and they could choose to hold off asking for the variance until a full board could be present. They declined and choose to continue.

The applicants came forward and introduced themselves:

Chairman Weipert –The way it works, is that you come up, introduce yourselves and tell us your

name and address for the record and what your application is about and information about our property.

I am Tim Hefferan and this is my wife Jessica Hefferan and we reside at 649 Covington.

Mr. Hefferan – Our application is for a fence. We have an existing fence (has been there for approximately 45 years).

Recorder Jamison gave copies of 2 letters to the applicants that was received by the City Clerk from residents in favor for the fence. These 2 letters are part of the record.

Mr. Hefferan added that four families have moved into and out of that home and no one has fixed the fence what-so-ever. The fence on the Norchester Street side has gaps in it and our dogs escape. I have tried mending the fence but it is not working. It is falling apart. The only way to fix it is to replace it. When we first moved into the house the selling feature of the house was the big back-yard. We did not know anything about having 2 front yards until we submitted the application. I understand it but our address is on the Covington Street side and so is our mailbox. Our garage faces the Norchester Street side. The reason I am applying for the privacy fence just for privacy. We are on a corner lot and we have 2 dogs and they bark at people when they walk on the sidewalk and it is what dogs do. If we put the privacy fence up, the dogs won't bark and people can feel safe, even though the dogs are friendly. We want the fence for privacy and to replace our existing fence that is falling apart and there is no way of fixing it. Photos were handed to the members.

Mrs. Hefferan explained that there is a house up the street with a fence along the same way we want to do and it is a wood fence.

Chairman Weipert explained that what the Hefferan's need to tell the board what special circumstances about your property are. Something about your lot that is unique compared to others in your neighborhood. You are on a corner lot and you have 2 front yards. Tell us more about a practical difficulty and why you can't use your property the same way as other people similarly situated can use their property.

Mr. Avanti – This is the last house where there used to be a stub street on the east side. It is an old fence and is starting to lean. I'm not sure if there was ever a permit pulled.

Chairman Weipert noticed that there are a couple of other houses that have a chain link fence.

Mrs. Hefferan added that there is 1 at Wellington and Winchester Streets. Also at Covington and Mayfair.

Commissioner Dunn noted that he reviewed the ordinance and it said you could have a fence but just not extended beyond the perimeter of the foundation.
Mr. Avanti – The Ordinance – Section 18-135 b shall not extend into any required front or exterior set-back, which would be just inside the sidewalk and back.

Commissioner Morelli – Depending upon the zoning what the set-backs are. It does not matter which side your driveway is on. Any corner house regardless which way the garage or driveway sits, have two front yards. You are in an R-3 district so I think it is 25'. For a front yard set-back, you would need 25' on both sides. Every corner house has the front yard set-back. The reason they have to is the line of sight and safety. Cars driving to the corner, coming up the other way. That is why those ordinances are in place.

Mr. Hefferan responded I did take a picture at the corner of Covington and Norchester looking both ways and if the fence was there, it would not be in the line of sight.

Chairman Weipert noted that the applicant's fence (the house is off of Covington St.) starts out back on the side of their house I think that is the normal place your fence would start. You have a lot more fence.

Mr. Hefferan explained the second drawing submitted (states office copy) is the correct version. When the inspector explained to me that you can't fence in your front yard, it was enclosing the driveway and garage and that is when we submitted the second drawing. So, the fence would go from the end of the house towards Norchester and head down Norchester and we can't have that either is what we were told. Now I understand that from the end of the house straight back toward the neighbor behind me so that essentially would be cutting our yard in half. Again, the number one selling feature was the big back yard for the dogs. When we go and sell the house they will wonder why the yard is cut in half. Every city has the same ordinance.

Commissioner Morelli noted that we have approved for different reasons fences in the front yard set-back but never have approved one for a privacy fence in the many years I have been sitting here. Everyone has their own unique circumstances. You have to explain to us not that you just want one, there has to be some sort of practical difficulty.

Chairman Weipert explained that they need to show what are the unique circumstances about your property and how other people can use their property in a certain way that you cannot.

You are on a corner, your lot comes to a pie shape or it is the last one in the sub or is different than the rest.

Mr. Avanti – What he wants to do is not allowed right now. What we have to look at is not just this particular circumstance but the entire City. If this were approved, I have been in Court when the judge says you allowed this and now you're telling these folks they cannot do it. We stated to the judge different circumstances and he replied that they are not really that different. You cannot do that you have to treat them all the same. There are other ordinances we are going to propose. There are others that do allow you on a corner lot to go into the front yard set-back but the fence height is limited to 4' and it has to be a minimum of 50% open and basically a decorative type fence. (He then checks the Planning Commission plan) We are hoping to finish by the end of the year. We look to follow the ordinance and if there is something unusual (triangular shape or a lot smaller) or a wet land is sitting there. We want to comply with the ordinance or change the ordinance if it does not seem reasonable.

Commissioner Joseph questioned if they bought the house with the fence in the location it is. If they were to ask to just put up a new chain link fence, would there be an issue?

Commissioner Morelli noted that he would still have to come before the board it would not be conforming. He is grandfathered in. I would have no problem with him replacing the fence. You could repair it. My issue is it is a 6' wall of wood. That is what happens with wood and you can say you will take care of it, then you move 5 years from now and it ends up looking bad.

Mr. Hefferan replied that their dogs were getting out more recently.

Mr. Avanti read from the draft ordinance – unless specifically authorized elsewhere in this ordinance, fences or walls located within the required front yard or exterior side yard shall not exceed 3' in height, be in excess of 49% solid of origin and shall be of a decorative nature as determined by the zoning administrator. Any fence in the non-required front yard or exterior side yard shall be; 1) decorative in nature determined by the zoning administrator or black vinyl coated chain link where it is determined by the zoning administrator that the fence will not be detrimental to property or its surroundings including neighboring properties, streetscapes or intersections of visibility. I have seen ordinances with 3' and 4' for heights. It is pretty standard. We do have the current ordinance in place and I wanted to let you know what is coming down the road. This ordinance would allow a decorative fence in the front yard set-back.

Commissioner Joseph noted that there are 2 separate issues here; one is the fence issue and keeping the dogs in and two a privacy issue.

Ms. Christina Hicks of 621 Covington from across the street from the applicant's. I am in favor of the new fence. A lot of those "natural fences" hedges you see are unmaintained and look horrible. The chain link fences in the neighborhood look horrible. This couple is just trying to replace something with something that looks better and brings up the resale value of their home.

Mrs. Hefferan added that not only that, we have a patio that sits right behind our house and also behind the garage and there is a door back there that will be the new exit to let the dogs out. When it rains, that patio floods. It takes up more than half of the back yard back there and it is almost cutting it in half and cutting it into quarters again for the dogs to utilize. You said we can keep the current fence but that is not going to prevent the dogs from barking. People will cross the street and walk around since the dogs jump up on the fence and barks. It is a safety issue so the dogs don't get out and getting hit by a car and also to allow neighbors to walk by without getting barked at. We are trying to improve the look of the home and have privacy for ourselves.

Commissioner Morelli replied that he does not have an issue with you putting up a 4' high fence but that is not what is here for. What you have before us is a 6' wood privacy fence on two sides and I personally could not approve that. Keep the fence exactly where it is at (it is already there) and replace it with decorative that is fine, but it is that extra 2' for me that is the killer. It ends up looking like a wall from the picture you showed us. It is not attractive and it should not be there. We have never approved one as long as I have been on the board. There was a point where there was no ordinance and some were grandfathered in as your fence was, but I am not in favor of a 6' wide fence.

Chairman Weipert noted that we can't rule on something that was grandfathered in. This fence has been there a long, long time that we know.

Commissioner Dunn responded that he walks through the neighborhood and there are wooden fences at 112 Harvard, 123 Harvard and 110 University along Pontiac Trail. I have lived here eight years, do we know when those were put up?

Commissioner Morelli responded that the first ones were built in the late 60's or early 70's. My first house was at 355 Harvard in 1978 and I was the second owner in there.

Commissioner Mosier replied that he has lived there 20 years and they were there before I was.

Commissioner Morelli added that a lot of those on Wellington were put there for noise and road purposes and those are considered practical difficulties.

Chairman Weipert questioned if there were any interesting elevations on your property?

Mr. Hefferan replied that the way they let their dogs out is through the garage. There is nothing unique about our property. We are on a corner and the fence is for traffic since we are on a corner lot that why we wanted the privacy fence.

Commissioner Dunn questioned if the rejection was due to the proximity to the fence and the height of the fence?

Mr. Avanti replied that when you meet the spec requirements, you are allowed to put up a privacy fence but they requested it in the front yard which is not allowed. In this ordinance, currently you are not allowed to put any kind of fence in the front yard set-back. We are (Planning Commission) looking to potentially change that.

Chairman Weipert asked if they came from the back of the house and went out to the sidewalk, can they do that.

Mr. Avanti responded no, in R-3 there is a 25' set-back.

Chairman Weipert noted that the neighborhood is full of corner houses. I have no problems with you doing a nice shadow box fence half way out from the back of the house going down to the sidewalk but sitting back from the sidewalk with enough space where maybe you could put a hedgerow. Part of the privacy issue with the dog issue is the closeness of the fence to sidewalk. It inconvenient that you would have to maintain the other side of your fence. That is my thought.

Commissioner Fogarty added that I live in a subdivision where the dog jumps over the hedge and dogs bark whether there is a barrier or privacy fence or not. I have rode by your house and the dogs have barked at me. The fence is in disrepair but I guess a 4' tall privacy fence is the best we can go.

Commissioner Morelli added that if you want to put a wooden fence up, whether it is picket, shadow box or decorative I think what most of us up here are saying we don't have an issue with a dimensional variance as long as the fence is no higher than 4'. That dimension may vary with each of us but that seems to be what I heard here. The real issue is not so much the dimension as it is the height.

Mr. Hefferan responded that if we have to replace it with a chain link fence that is what we have to do. It will not give us privacy but I'm not going to plant a whole bunch of trees or bushes.

Commissioner Joseph noted that a 4' wooden fence would give you a certain amount of privacy. I agree that 6' would be in excessive.

Mr. Avanti reminded the board that it is our responsibility to advise to the laws of the ordinances. The law is that you have to prove a practical difficulty. The other concern is if you were to approve a variance and it is something that goes beyond even what we are anticipating for the new ordinance since what can happen is when they adopt the new ordinance you will have folks applying for theirs and they will state that you let them do it.

Commissioner Morelli replied that if he were to drive around this town, there are easily 50-60 and most of those we approved. Many have come before us and put up chain link fences and there was not a site issue.

Commissioner Joseph added that I think you have to take into consideration that they purchased the house with the fence in the location that it is. So, they have to keep it there and eventually repair it or forcing them to have to chop their yard in half.

Commissioner Morelli replied that a true hardship in my opinion would be that they bought the house thinking the yard was big and as long as they never touch that fence they can leave it. If they want to fix it, they can't. To me that is the hardship. They did not buy the house with no fence or half a yard wanting to make it bigger.
Mr. Avanti noted that he gets that. I am suggesting to you that if you want to do that you may want to go on something comparable to what is in the ordinance.

Chairman Weipert – Could you meet with the Hefferan's and let them know what is coming down the pipe and what they could do.

Mr. Avanti - that my guess that it (the ordinance) will probably be something like that. You can have it in the front or side yard set-back if it is no taller than 3' (seems a little low) or 4' and decorative in nature.

Commissioner Morelli noted that it can't be more than 49% coverage so chain link fences work but a wood fence you almost could not have your dogs would go right through.

Mr. Avanti responded there are fences that are decorative and wrought iron or the vinyl coated chain link fence. There are different options available.

Commissioner Morelli replied that what he recommends is the decorative fence that goes around and it improves the property value, the curb appeal, keeps the yard the same size. You meet all criteria except for height.

Commissioner Fogarty questioned if it would be done this year?

Attorney Wilhelm added a few comments directed towards the Chairman. One of the questions that has come up is if this is a non-conforming fence. We have not really looked into that issue. I don't know how this fence came to be. We don't know how the other fences that are alleged to be similar whether those are in fact non-conforming when they were erected and so forth. Generally speaking, you do not want to grant a variance for a non-conforming use for a non-conforming fence in this case. So, you would want to avoid that. One of the things that have come up is maybe if the petition were withdrawn and they had an opportunity to meet with Mr. Avanti he could try to direct them towards something that would comply with what is being proposed as an ordinance. They would still need a variance because we have not approved the ordinance but at least then you would have some comfort level that the variance that you are granting has at least some chance of complying with the ordinance that is going to be proposed for adoption. You would have something that would then be conforming when your zoning ordinance is adopted. From a procedural standpoint, you want to be careful with tabling or postponing and amending a current petition rather than maybe either denying this one or withdrawing it and submitting a more complete with a better idea of what the applicant's wants and they would have an opportunity to meet with the planner in the meantime. My comment is only made from a clarity of records standpoint. There has been a lot of talk of different drawings, what they may want, what they really want and a lot of suggestions from the board. There may be some benefit in speaking with the planner (Mr. Avanti) but I leave that to the board to proceed.

Mr. Avanti added that another possibility is that we could always add this to the next Planning Commission agenda and see what that board thinks. We could then get their input and feedback.

Commissioner Morelli asked a question of Attorney Wilhelm; if they were just tearing the existing fence down could they replace it without them coming before the board? A few years ago the house on Ten Mile with the blue split rail fence in the front yard and the rails were rotted and he repaired the rails for the fence. If Mr. Hefferan were to repair the gate by

replacing a hinge would he have to be here if he is just fixing the existing fence? The rotting, rusting chain link part he could just replace and the rest of the fence can stay there.

Attorney Wilhelm responded that there is a series of questions or points I would make. One is I think he has to have a permit, right? I think to even replace parts of it you may have to get a permit. Then I think you get into a question of whether pulling the whole fence out with posts or just repairing portions of the chain link portion and reattaching. I think it becomes an issue of scale and scope but generally you could get a permit to repair a fence and there may be some facts on how much or what you are repairing that may affect whether that permit is granted. Yes, I think generally, you do not have to get a variance to repair a fence.

Commissioner Dunn asked about the holes in the fence currently and inquired if they got some mesh and covered the holes with that would they need to pull a permit?

Mr. Avanti replied that we are not equipped to answer that question. That is a building official who deals with fences and he has the track record and history of what has been granted variances.

Commissioner Morelli added that he would talk to the building inspector and see if all you are going to do is leave the posts in the ground and leave everything the way it was and just replace the chain link part wherever it is damaged. You may have to do the whole side so it is seamless.

Mr. Hefferan replied that there are couple posts that are bent too. We used to have a huge gap and I had to fix that since the dog could walk right through it.

Commissioner Morelli acknowledged that and again suggested taking into consideration the scope of the project and if everything is going to stay the same or you had to replace one post I don't think it would be an issue. If it were ten posts, now that it is an issue. If you hit the gate with your car and it bends the gate you need to replace the gate that is not as much of an issue and you could probably get a permit to fix it.

Chairman Weipert asked if we could start all over and give the applicant his $200.00 back.

Attorney Wilhelm noted that he is not sure if permits are needed to repair a fence like this. I really don't want the government getting in the way of somebody making simple repairs on their fence. I am not trying to make them pay $200.00 additional dollars. If they need to amend whatever. I think there may be an opportunity to really evaluate and talk to Mr. Avanti what is in the new proposed ordinance. The Planning Commission will meet before the next Zoning Board of Appeals meeting and you may be able to get some direction from the Planning

Commission on this issue and how they feel about the proposed ordinance and at that point you could have some additional information from that body and a better idea of what the applicant is really after.

Mr. Hefferan responded that our issue is that we don't want to cut our yard in half. Just replace the existing fence with another chain link?

Commissioner Morelli replied that he would go talk with the building inspector and see if see if he could meet you out there.

Chairman Weipert asked if anyone wanted to table it until next month. Otherwise they have to re-submit another $200.00 and we need to advertise the meeting again. If we table it, and then the applicant's talk with the inspector and the City Planner they can come back and perhaps they would have better evidence.

Commissioner Morelli noted that if Mr. Hefferan speaks with the building inspector and he says you can replace it you don't have to come here. If he does not say that we will see you in a month.

Attorney Wilhelm suggested that if the applicant inclined they may want to attend (depending upon how you want to proceed and what you hear from the building official) they may want to come to the Planning Commission meeting if we are talking about this particular fence issue. The meeting is scheduled for June 11, 2015.

Mr. Hefferan noted that it was Dennis Smith (building inspector) that came out to his house.

Attorney Wilhelm added that Mr. Smith is out of town currently but he has someone who can answer that question.

ZBA 2015-001 – 649 COVINGTON – CASE #2015-001

Motion by Morelli, supported by Fogarty

Motion to table the meeting until the Zoning Board of Appeals meeting of June 18, 2015.

VOTE: **MOTION CARRIED UNANIMOUSLY**

STAFF REPORTS

Mr. Avanti - The building inspector is back on June 3, 2015. The Methodist Church will be applying for a variance. I have not seen the actual request but when I spoke with them they had ideas that are different than the ordinance would approve. They want to use their existing sign and replace the changeable message they currently have with an electronic message. It jumps from the sign ordinance.

Attorney Wilhelm – Also, in the sign ordinance we provided that the ZBA ha the authority to grant variances to sign requirements. You would apply the same practical difficulty factors in deciding whether to grant or deny a variance request and we also included other considerations that can be taken into account.

Chairman Weipert – The City recently adopted an ordinance for electronic signs. The Methodist Church put in a sign and it did not fly.

Mr. Avanti – There is a maximum of 25% of your sign that can be electronic. They wanted 80%.

Attorney Wilhelm – We understood what they wanted was the ability to erect an electronic changeable message sign. What we did not understand was that they only wanted to replace part of the existing sign so rather than tear it down and build a new one, they want to just change the changeable message part of the existing structure and that does not comply with the ordinance that was amended. Generally what you would see is a monument type sign that has more around the changeable message part and that is the smaller portion. Kind of like a Walgreen's or CVS style. Theirs does not have the structure around the changeable message.

Commissioner Morelli – Otherwise it meets all set-back requirements.

Chairman Weipert inquired whether Tim had reviewed the by-laws.

Attorney Wilhelm replied that he did and I like your suggestion I think to the extent you have not adopted them and I have not looked to see if you have. We ought to adopt something. I will review them and I just did this for the Planning Commission and would also ask the board to entertain a motion to comply with the Open Meetings Act and make a motion to approve your regular meetings for the rest of the year. We should have done that the first meeting (this is the first meeting this year). It is on the web-site as well. We should set our schedule. For the remainder of the year, the third Thursday a motion to approve the regular

ZBA 05/21/15 – ADJOURNMENT

Motion to adjourn the meeting at 8:06 pm

VOTE **MOTION CARRIED UNANIMOUSLY**

Respectfully Submitted,

Phil Weipert, Chairman

Marianne Jamison, Recording Secretary