

**CITY OF SOUTH LYON  
ZONING BOARD OF APPEALS  
December 19, 2013**

Chairman Weipert called the meeting to order at 7:02 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 12-19-13 APPROVAL OF MINUTES – October 17, 2013**

Motion by Rodman, supported by Fogarty

To approve the minutes of October 17, 2013.

**VOTE:**

**MOTION CARRIED UNANIMOUSLY**

**OLD BUSINESS**

None

**NEW BUSINESS**

**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 tell us what the practical difficulty is for requesting the variance.

Attorney Wilhelm noted that under ZBA the applicant is required to get a majority of the full board. That is why we offer the option to adjourn for another meeting.

We did get a letter just before the meeting that is part of the record (copy given to applicant).

Mr. Engel introduced himself; Benjamin Engel and I live at 264 Gibson and am the owner of the house. I am requesting a variance for a deck to be approved based on the existing deck that was already there. I understand the deck currently there also broke the ordinance. As you can see I drew out a basic picture of what I am extending. I did not extend it any further north towards the house; there is still an 18' clearance there. I am in fault of the ordinance since I am extending it past the threshold of the 25% minimum that I am allowed. I am doing that for a few reasons. The original wood deck (shown in the photo) was there when I bought the house and it is 13'-5" into the rear yard Setback and that is a free floating deck. I am trying to make the deck more presentable and more valuable to my home as well as for use. I understand that I am in violation of that ordinance and I am only allowed to go 12'-5". I was not aware that the ordinance existed since I already have a deck that existed 17'-5" past the house. I am requesting that it be allowed to be 19'-8" which butts up to my retaining wall in my backyard. Any questions?

Commissioner Morelli noted that it looks like the project was already started without a permit.

Mr. Engle responded that yes it was started and he was not aware he needed a permit at the time. It was made aware to me by Chris Weber (inspector). That is why I am here.

Chairman Weipert – The drawing states wood deck. Is there a de-attached deck in your backyard?

Mr. Engle replied that he has a free floating deck and I was told when I purchased the house that there used to be a pool back there. When they removed the pool, they did not remove the deck because there is rocks and pipes underneath it. So they just left it there and I would like to make more use out of it.

Commissioner Morelli noted that a free floating deck can be placed anywhere in the yard. It is considered landscaping not decking.

Mr. Engle acknowledged he was confused over the different definitions of a deck.

Commissioner Rodman questioned if there were footings or posts underneath. It is not a free floating deck then. Not all decks are attached to the house. It is still a coverage issue.

Inspector Walsh agreed it is an issue of lot coverage. We are talking about a dimensional variance of allowable rear yard projections. So, with a pool located in a rear yard, you can have it 6' from the rear yard lot line and typically you would have your pool enclosure deck/patio around that. A deck is basically abutted to or attached to the house and is allowed to project 12'-5" into the rear yard setback and that is the issue here.

Chairman Weipert added that he went out there and saw that he had something built and I saw something else extended out, what was that?

Mr. Engle replied that he was going to put a hot tub in there. I will tear that up since it won't be accepted anyways because it is projecting even further into it. Now that you brought it up, would the existing deck that was already there be okay to build because it is not attached or butted to the house? I don't understand the language and I tried to research it as far as law and ordinances in Novi and South Lyon. This is not attached to my house. Am I allowed to build a form if it is away from my house then?

Inspector Walsh responded that he is allowed to build a 5' wide deck without a variance. The rear yard setback is insufficient. He is allowed to come out 5'-1" into the rear yard setback so some type of variance would have to be granted. If you look at the intent of the ordinance, you are allowed a projection of 12'-5" to the rear yard setback. I think a reasonable variance request would be approx. 12' - 12'-5" into that setback.

Mr. Engle questioned his measurements on the drawing verses the inspectors measurements.

Inspector Walsh explained that the drawing was not to scale so we went out there and measured from the edge of the curb to the house. Our measurements from the dimension of the house were 24.2'. If you do the math, take away the 99' and the dimension in the front yard to 24' that leaves you less than the 28'. Your fence line is not on your property so you can't measure from that.

Chairman Weipert noted that is obvious that this is a wacky street with non-conforming houses and it was all built a long time ago and not in line with the right-of-ways.

Mr. Engle noted that if his garage burnt down he would not be able to rebuild it according to the ordinances of the City.

Commissioner Fogarty replied that using your example, if the garage burnt down you would be able to replace that garage on the same footprint.

Commissioner Morelli added that this case would fall more into a practical difficulty. For example, outside stairwells are not allowed in the City. There are a lot of older homes that still have them. If they rotted and were needed to be rebuilt, that would be a practical difficulty. There is a hardship here and can be proven because there is no other way to access the upper portion of the residence. You are here asking for a 20' deep deck when say a 10' deep deck could work. It is not the same kind of issue. If the garage would burn down, then you would have a practical difficulty and even if you had to come here it would be a much easier decision for the members.

Chairman Weipert commented that this is a big deck. We tried to look at the

neighborhood conformity. Like the building inspector noted, that this deck cut back, might go better with the neighborhood.

Mr. Engle questioned if what he currently has there is 17.5' away from his house (which is not in accordance to what is allowed) what is the problem with extending that towards my house? If it abuts to my house it would be easier for me to use and would be more valuable and more of use to me. Even if it is not allowed to be 19.8' (which I already started and obviously I am in the wrong) but because it does not conform to the neighborhood or that someone might not like that look I don't understand that philosophy. Something is already there. Most of the work is just taking that piece and attaching it to my house and extending it past the door to make it useful to me.

Chairman Weipert asked if anyone from the public has any comments.

Ms. Walton stated here name is Cindy Walton from 280 Gibson (neighbor to the north). So far I have not heard any hardship. I have a real concern about the fire pit. Are there any recommendations or laws about putting a fire pit in the middle of that deck? The location of pine trees that are right there that could easily catch fire. They are brittle trees. If that tree catches fire all the wood that is lining the fence, the firewood, the deck and my house would be subjected. I am concerned about allowing him to put a fire pit where he has it.

Commissioner Rodman questioned if it was a permanent fire pit?

Inspector Walsh replied that he was not aware of any regulations on fire pits. It does not show a fire pit on his proposal.

Commissioner Rodman noted that free standing fire pits are allowed.

Ms. Walton responded that it did not appear to be a free standing pit.

Mr. Engle replied that it was built three years ago. I don't plan on removing that fire pit.

Commissioner Rodman explained that he believes that built in fire pits are not allowed. Only free standing pits.

Inspector Walsh noted that we have a dimensional variance request here.

Commissioner Rodman added that the plans do not show a fire pit.

Inspector Walsh responded that it is not part of his request.

Mr. Engle noted that it was already there.

Commissioner Rodman explained that if the applicant is erecting a new structure, the whole plan has to come in front of the board. If you are asking for a variance for what you have submitted to us that fire pit cannot go there.

Ms. Walton inquired if there was to be a permanent roof on this deck? There are poles that are standing as high as our roof line.

Commissioner Rodman replied to do that he would have to come in front of the board again for that variance request.

Ms. Walton requested that the board not grant the variance as she sees no hardship and he should stay in compliance with the City ordinance.

Chairman Weipert – Any other discussion? We have a neighbor to the east that appears to be opposed to it and the neighbor to the south is opposed to it.

Commissioner Rodman noted that he is quite unhappy with the discrepancies with the plans submitted. In the packet Mr. Engle said he is replacing the boards. The way it looks, it will be right over the top of that. Ms. Walton is stating the fire pit is still there.

Ms. Walton – That fire pit was not there when he bought his house.

Commissioner Morelli noted that the applicant stated such and that he put it there three years ago.

Commissioner Rodman – There are discrepancies on what is drawn which shows a deck with a 3' railing. It does not show any closed structures or fire pit.

Mr. Engle responded that the posts are that way until you cut them off.

Commissioner Connolly added that he was not sure how the rest of the board felt about the applicant bringing in more details and to table it for a month.

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

Motion by Connolly, supported by Morelli

Motion to table this until next month for more details with the plan being inaccurate. More information is needed on permits for fire pits. This will allow the applicant to get his paperwork up to date.

**VOTE:**

**MOTION CARRIED UNANIMOUSLY**

Chairman Weipert clarified for the applicant what the board just made a motion on.

Mr. Engle responded that he would come back in front of the board next month.

Commissioner Rodman added that the board needs more details and by tabling this the applicant does not have to submit another \$200.00 for the application.

Chairman Weipert asked Inspector Walsh if he could obtain details for the fire pit in regards to the ordinance.

Commissioner Connolly added that perhaps the applicant could bring in some photos and have people whom is on his side come in.

Commissioner Rodman noted that the applicant needs to be able to come back in and explain his hardship. The reasons why you are being denied the use of your property as you see fit and what you are doing and why you are doing it.

Chairman Weipert added that he should look through the whole neighborhood and look at the lot sizes.

Commissioner Rodman noted to the applicant that the reasons cannot be self created. That can mean things such as; I want a bigger deck to enjoy myself. That is self created. Just because you want something does not mean you have to have something.

Mr. Engle responded that he understands that but is confused on what is already out there on the property now.

Commissioner Rodman explained that the current deck projects too far into the rear yard setback as well. That deck would not have been approved either.

Inspector Walsh noted that the pool is a separate issue. There is an existing deck that is out there conforming or non-conforming. What we have today is a deck that was built to large for the ordinance. If the pool was built today and there was a patio or an above grade deck, it would only be allowed to come out 12.5' from the 50' rear yard setback.

Attorney Wilhelm inquired of the Chairman that it was unclear to him whether with this whole issue of the existing deck is the existing structure going to be continued in any way or is this a completely new deck?

Mr. Engle answered that it will be a new deck over top the old deck.

Attorney Wilhelm responded that from my perspective, the concentration should be less on what is out there whether it conforms or not since you are replacing it altogether

which triggers new requirements for the deck and requirements for a dimensional variance. If I may direct the applicant, you have a copy of the application you submitted and on the bottom half of that application identifies the factors that this board will be evaluating and you should provide additional details through the building department/board and craft your presentation to address those issues so the board can evaluate them and make a finding on each of those factors.

**STAFF REPORTS:**

Chairman Weipert – The meeting has been tabled for a month which is the third Thursday in January.

**ZBA 12-19-13 – ADJOURNMENT**

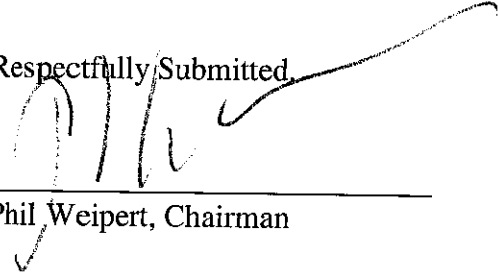
Motion by Fogarty, supported by Rzyzi

To adjourn the meeting at 7:33 pm

**VOTE:**

**MOTION CARRIED UNANIMOUSLY**

Respectfully Submitted,

  
\_\_\_\_\_  
Phil Weipert, Chairman

  
\_\_\_\_\_  
Marianne Jamison, Recording Secretary