

**CITY OF SOUTH LYON
ZONING BOARD OF APPEALS
February 16, 2017**

Chairman Weipert called the meeting to order at 7:02 p.m.

ROLL CALL:

PRESENT: Chairman Phil Weipert and Commissioners Ron Morelli, Frank Fogarty, Joe Rzyzi and Steve Mosier. Also present Kelly McIntyre and Megan Blaha (Planning Commission) and Tim Wilhelm (City Attorney).

EXCUSED ABSENCE - Brian Dunn absent.

Chairman Weipert led the committee into the Pledge of Allegiance.

APPROVAL OF AGENDA

ZBA 2-16-17 APPROVAL OF AGENDA

Motion by Fogarty, supported by Morelli

Chairman Weipert added corrections to the agenda. To add the By-laws of the Election of Officers and also the Proposed Meeting Dates of the ZBA Board for the year. To approve the agenda as amended.

VOTE:

MOTION CARRIED UNANIMOUSLY

APPROVAL OF MINUTES:

ZBA 2-16-17 APPROVAL OF MINUTES

Motion by Mosier, supported by Rzyzi

To approve the minutes of the December 15, 2016 meeting.

VOTE:

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS

ZBA Case 2017:001-David and Lisa Grant – 1137 Equestrian Dr.

Request: The applicant is requesting a variance from the City of South Lyon Code or Ordinances, Article VII "Supplementary District Regulations", Division 2 "Height, Bulk, Density and Area Limitation", Sec. 102-456 "Schedule Limiting height, bulk, density and area by zoning district". In Zoning District R2, Maximum percent of lot area covered by all buildings is 25%. The applicant is requesting a 3.24% lot coverage variance to replace a patio with a deck.

The applicant is requesting a variance from the City of South Lyon Code of Ordinances, Sec. 102-108 "Porches and Decks". Decks at or below the ground floor level may project into a required side or rear yard, not to exceed a depth of 25 percent of the depth of the required side or rear yard. The applicant is requesting a 5 ft. variance to project past the 12 ft. allowed.

Chairman Weipert called the first case and stated as a courtesy we offer any applicant the right to table their case to another meeting if they would like to have a full board.

Weipert then called the up the applicant and to state his name and address for the record and to tell the board members what his request and practical difficulty is.

Mr. Grant introduced himself and his wife Lisa Grant and stated his address as 1137 Equestrian Dr. We started the process with the house and took care of things in the house and then came the patio which was heaving and the steps were leaning. This would be neat if we could walk right out onto our deck. Our deck figuration is just under what we had with the patio that was there. The patio was a longer rectangle and was larger than what we plan to have with the deck. Nothing fancy. The dimensions came up and the restrictions which is great since I am a big opponent of guidelines and processes but it did not accommodate both of our doors. That is why we are here so we can get approval for a deck to accommodate both of the doors. We are not the only house in the neighborhood like that. That is what we are asking for in the variance, something big enough. To be aesthetically pleasing, you cannot have it any narrower or it would look goofy 21' x 5' or whatever. We are looking to put it over the rectangle that was there. I spoke with all our immediate neighbors and it was okay with them. Not sure how many letters you received.

Blaha stated there were 3 letters that were received.

Chairman Weipert inquired if there was something unique about his lot in that sub.

Mr. Grant replied that we do not have big lots. In the calculations from the City of South Lyon, it prohibits us from exceeding certain amounts and that is why we are requesting a little bit of a variance for that and it will accommodate both of our doors and offer us a nice quality of life as far as walking out of our patio doors.

Commissioner Morelli stated that he went over and looked at the house and to give a little history on that sub; back in the early 1990's when that sub (Trotter's Pointe) was in front of the Planning Commission the builder wanted to put the biggest house he could on the smallest lot he could. Unfortunately he used up most of the building envelope which led us, after that sub was built, creating an ordinance that you could go 25% into the rear yard set-back and was created for Trotter's Pointe because everyone who wanted a deck had to come before the ZBA. You could not build a deck, the houses were too big. The unfortunate part, is that we cannot say your nice people, it looks good, we received 3 letters it is okay go ahead and build it. We are governed by rules and laws that there has to be practical difficulty or hardship. You have a standard lot in the sub. That is why there are so many brick pavers in that sub, different building inspectors over the years had different ideas of what brick pavers could count for. Some did count them towards the 25% lot coverage at one point. Nobody considered it as going into the 25% set-back because brick pavers were never considered permanent; not like concrete patios or decks. You need to come up with some sort of practical difficulty or hardship on why we need to go against the existing ordinance to give you that variance. I have been doing this a long time. You want to be friendly but there are laws that you yourself said you want to comply with. That is what you have to prove to us. You have the chimney there, you have the 2 doors on the other side, you want it to look good and you want to walk out onto it and all of that makes sense, unfortunately, and it is not just your lot, it is almost every lot in that sub that it does not meet the criteria.

Mr. Grant responded that we take the dog out that way and it is why we need something flat. Lisa is going in and out of the door all the time and she has a fusion in her ankle (along with being diabetic) and it is more of a hardship for her and she needs something flat to walk on.

Commissioner Fogarty asked for clarification on the zoning. It is stated as R1 on the CIB Planning findings dated February 8, 2017.

Zoning District was clarified as R2 (not R1 as on paperwork submitted)

Commissioner Rzyzi stated that his personal opinion is that he takes exception with sitting up here on this board I always feel like I personally should not be in a position to really tell you what to do with your property. I view it as your property and within reason you should be able to do what you want to if your neighbors sign off on it and the homeowner's association signs

off I am all for it. I don't know what these people would say but if I had a choice I would vote yes. So I am trying to help you help us and as Ron said there has to be some way to word it. Is there something else on the lot that is unique.

Mr. Grant replied that the board has pictures and the step down to the porch is 24" down from the door, it is a pretty flat lot and easements on either side to accommodate water drainage.

Chairman Weipert added that you had mentioned the double doors and we do care about aesthetics and it does throw things out of proportion. Some of the factors are that it is not caused by you. Here we have a sub that came into R2 and then the builder at that time was allowed to build every square inch of the building envelope. So, that certainly is not your fault. The City did try to accommodate the 25% with the lawyers and that is certainly not your fault. Even the City was trying to make sure that you could use your property. One of the factors is that YOU did not cause the need for the hardship.

Commissioner Rzyzi noted that in the past what we did was with a list in front of us it is not unusual, not out of character with the neighborhood so therefore we could do it. If someone can come up with a motion, I would gladly second it.

Commissioner Mosier questioned if the deck would be the same size as the patio.

Mr. Grant replied it would be a little smaller than the patio. The original patio was out a little ways.

Commissioner Morelli noted that the width is not the problem it is the depth, so you have 12' and anything past 12'. If it went out 12' and you did not want the extra 5' I think you would need zero variance since you would be under the 25% lot coverage.

Planner Blaha stated no it would not be under lot coverage.

Commissioner Weipert stated that he too looked at the property and the neighbors and we try to look for consistency and another neighbor's deck looks about 5'-7' out beyond yours.

Mr. Grant offered that if he were to put in a pool he could basically do a deck in his whole yard.

Chairman Weipert noted for the record that the HOA approved you and your neighbor's letters are in support.

Commissioner Fogarty questioned if R2 Zoning correction of the documents had been added to the minutes.

Recorder Jamison stated yes.

ZBA CASE 2017:001 –DAVID AND LISA GRANT – 1137 EQUESTRIAN DR.

Motion by Fogarty, supported by Rzyzi

To approve with respect to ZBA Case 2017-001 to approve the variances requested for a 5' variance to project past the 12' allowed and for the following reasons;

1. The property shape is similar to other properties in the neighborhood.
2. It will not cause an adverse impact on surrounding property, property values or the use and enjoyment of property in the neighborhood or zoning district.
3. The deck size is not excessive.
4. The City of South Lyon is currently reviewing lot coverage allowances for all districts.

VOTE:

MOTION CARRIED UNANIMOUSLY

Attorney Wilhelm questioned McIntyre and Blaha that if the variance is granted will that create a need for a lot coverage variance.

Planner McIntyre stated yes, a 3.24% lot coverage variance.

Chairman Weipert noted that the deck next door is out and yours is not out of character. Get your building permit.

Chairman Weipert called the next case:

ZBA Case 2017:002 – Christina and Tony Calo – 1174 Gentry Dr.

Mr. Calo's brother was there to represent the Calos. Also there was the contractor for the decking.

Chairman Weipert questioned if we needed the homeowner to be present.

Attorney Wilhelm stated he can appear with written notice that he can represent the owners.

Commissioner Fogarty stated that we should follow the ordinance.

Planner McIntyre commented that it was the contractors building permit that was denied by the Building Department. The Homeowner's are the applicants.

Chairman Weipert offered that he would prefer if the homeowner decides if they want a full board or not.

Discussion continued if the homeowners request could be heard without the homeowner's being present. It was noted that the building permit application is signed by Jamie Ruddy of Cedar Works (owner). Mr. James Gallagher of Cedar Works asked to make a telephone call.

ZBA CASE 2017:002 –CHRISTINA AND TONY CALO – 1174 GENTRY

Motion by Fogarty, supported by Morelli

A motion for a recess was called.

VOTE:

MOTION CARRIED UNANIMOUSLY

Chairman Weipert announced the next Agenda Item;

ZBA CASE 02-16-17 – Setting ZBA Calendar Dates

To set the Scheduled Meetings for the current year that are listed in the packet for the 3rd Thursday of the month and are posted out in the window at the City Hall Building.

Motion by Mosier, supported by Fogarty

To approve the meeting dates as listed for 2017.

VOTE:

MOTION CARRIED UNANIMOUSLY

Chairman Weipert announced the next Agenda Item;

ZBA CASE 02-16-17 - ELECTION OF OFFICERS OF ZONING BOARD OF APPEALS BOARD

Election of the officers as follows:

Phil Weipert	Chairman
Frank Fogarty	Vice Chairman
Ron Morelli	Secretary

Motion by Rzyzi, supported by Fogarty

To approve the vote of elected officers on the Zoning Board of Appeals for 2017.

VOTE:

MOTION CARRIED UNANIMOUSLY

ZBA Case 2017:002 – Christina and Tony Calo – 1174 Gentry Dr.

Motion by Morelli, supported by Rzyzi

To bring back to the table ZBA Case 2017-002 from Recess.

VOTE:

MOTION CARRIED UNANIMOUSLY

ZBA Case 2017:002 – Christina and Tony Calo – 1174 Gentry Dr.

The applicant is requesting a variance from the City of South Lyon Code of Ordinances, Sec. 102-108 "Porches and Decks". Decks at or below the ground floor level may project into a required side or rear yard, not to exceed a depth of 25 percent of the depth of the required side or rear yard. The applicant is requesting a 3.5 ft. variance to project past the 12.5 ft. allowed.

Attorney Wilhelm noted that you clearly have authorization to appear as an agent or attorney. You have a relative representing with permission to appear on their behalf. It is not unusual for the board to hear from contractors making a case. There is nothing in the ordinance stating they cannot appear on behalf of the owner to make a case for a practical difficulty and they then have to live with the result and representation or ask to table the case to the next meeting when the owners are here to be sure what is being said on their behalf.

Chairman Weipert explained that the contractor would need a majority of a 7 person board which is 4. We have 2 questions; 1) are you the attorney and 2) are you duly authorized agent who submitted the application and if you are the duly authorized agent of the homeowners, do you know their position on whether they would want to wait for a full board.

Mr. James Gallagher replied that he had just spoke to his boss on the phone and his boss spoke with the homeowners today and he indicated that they are prepared to proceed with the current board.

Chairman Weipert stated so you are representing that you are the duly authorized agent and that you can speak for them as a duly authorized agent and that they want to proceed without the full board.

Mr. Gallagher responded that his boss told him that they are good to go.

Chairman Weipert stated that we have a duly authorized agent who is able to speak for the applicants requesting a variance from the code that decks at or below the ground floor level may project into a required side or rear yard, not to exceed a depth of 25% of the depth of the required side or rear yard.

Mr. Gallagher replied that if you look at the lot the rear yard looks large but the envelope artificially reduces the size of what they would be able to do out from the edge of the house in the yard. Also in that neighborhood, each and every adjacent home is a deck of equal size or larger and projects to the lot line. The petitioner is asking the board to allow their deck since every other house in that sub has a deck and what they are looking for 3.5' which only exists on the deck drawing on a partial aspect of the deck, not even the entire deck. What they are looking for is a 3' x 6' section of an octagon that protrudes slightly so if they had lawn furniture it would fit to entertain people on their deck. They are looking to be able to invest in their home, keep property values, keeping in character with their neighborhood and enjoy their home.

Commissioner Morelli stated that you (Mr. Gallagher) said that you have not been to the home.

I have been to the home and am almost positive it is a walk-out and there is a door wall going from the basement into the back yard. If that is correct, nowhere in this packet does it show if it is going to be on the ground but I am assuming this is going to be up above and coming off the door wall on the main floor, so this is going to be a raised deck correct.

Mr. Gallagher replied yes.

Commissioner Morelli stated in height or grade 5'-10" that is impossible because above the door wall.....

Mr. Gallagher questioned if it read 5' to 10'.

Commissioner Morelli confirmed it did read 5' to 10'.

Mr. Gallagher stated 5' to 10' based on the dimensions of the house could change.

Commissioner Morelli noted it was only the top part of the octagon that sticks out past.

Mr. Gallagher stated just that small part sticks out. It is dog eared.

Chairman Weipert added that they need something out there or a fire escape ladder.

Commissioner Morelli also noted that the drawing did not show any steps to the deck.

Mr. Gallagher replied that if there are no steps on the drawing, the other part is just a cross section that we provide all building departments to show dimensions per code. It may not have steps. If it had steps it would show what the grade is. No steps on the drawing it is going to be a second story access only.

Chairman Weipert inquired if there was anyone from the public that would like to speak. I did walk it and the neighbors do have decks and this would not be inconsistent with theirs.

Commissioner Fogarty noted that he too walked the property.

ZBA CASE 2017:002 – CHRISTINA AND TONY CALO – 1174 GENTRY DR.

Motion by Morelli, supported by Rzyzi

To approve the variance of Section 102-85(2)(c) that authorization of the variance will not substantially be a detriment to the adjacent property and will not materially impair the intent or purpose of the charter or public health, safety and general welfare of the community.

VOTE:

MOTION CARRIED UNANIMOUSLY

Chairman Weipert stated for him to get his building permit.

OLD BUSINESS

None

STAFF REPORTS

Chairman Weipert inquired if anything was coming up for the board?

Planner Blaha noted nothing is scheduled.

ZBA 2/15/17 – ADJOURNMENT

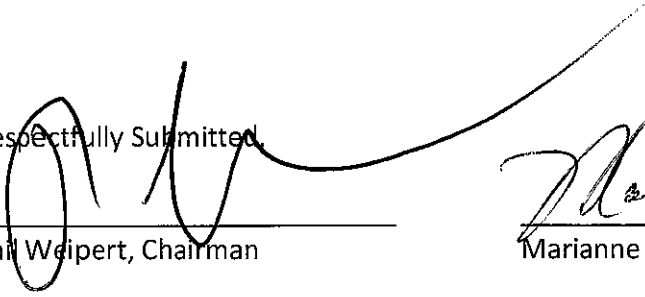
Motion by Morelli, supported by Fogarty

Motion to adjourn the meeting at 8:52 pm

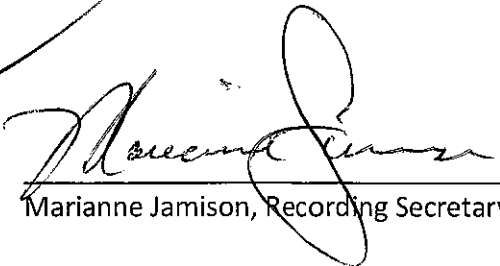
VOTE

MOTION CARRIED UNANIMOUSLY

Respectfully Submitted,



Phil Weipert, Chairman



Marianne Jamison, Recording Secretary