

**CITY OF SOUTH LYON  
ZONING BOARD OF APPEALS  
February 19, 2009**

Chairman Weipert called the meeting to order at 7:04 p.m.

**PRESENT:** Chairman Weipert and Commissioners James Herman, Keith Bradley, Tom Goodcase and Bill Rodman. Also present, Director of Building Safety and Engineering, Joe Veltri and City Attorney Jennifer Hill.

**ABSENT:** Ron Morelli

**ZBA 02-19-09 ABSENCE**

Motion by Rodman, supported by Herman

To excuse Ron Morelli from the meeting.

**VOTE:** **MOTION CARRIED UNANIMOUSLY**

Chairman Weipert – We have one (1) vacancy on the board.

**APPROVAL OF MINUTES:**

**ZBA 02-19-09 APPROVAL OF MINUTES – January 15, 2009**

Motion by Bradley, supported by Rodman

To approve the minutes of January 15, 2009 as recorded.

**VOTE:** **MOTION CARRIED UNANIMOUSLY**

**NEW BUSINESS**

None

**OLD BUSINESS**

**Jeff Malmsten – 439 Reese Street**

Chairman Weipert – Lets review the last meeting. We tabled it to see if you could find any new information for us along the lines of what is your practical difficulty. We heard you have a double lot, an old house in a neighborhood with mixed use. Do you have any new information? Come up and introduce yourself.

Mr. Malmsten – I live at 439 Reese Street in South Lyon. I want to thank you for all of your comment at last month's meeting. When I went home and looked it over it again, several things came out. I have a slightly varied proposal from what I had before. The first thing I would like to present to you, I did take up your suggestion about going around the neighborhood and seeing what is in the neighborhood. (Passed out maps to board and to Joe Veltri).

Mr. Malmsten – With my new proposal which was based on comments I heard from the board regarding an addition. So it makes the third building a moot point since I want to propose an addition instead of a third building. This map shows a three block by two block area around me. I was surprised to find that there were more situations where there were three accessory buildings. Some on double lots, some on single lots and one on an irregular shaped lot. It was interesting to me to find that out. Today I come before you because another thing I heard was how come this wasn't an addition which when I went around I tried to stick as close to my area as I could and homes that were older in the older section of South Lyon. There are a number of accessory buildings that you could see and guess their age and see when they were added on to. I saw a number of them that had an addition to an accessory building like a shed roof that come off the side or whatever. Out of seven additions, five or six were that way. There were other types of additions up to and including one where it looked like it was an accessory building built onto three or four times and now is a residence. It changed so much over its history. So, based on your suggestion, actually it was a criticism but I saw it as a great suggestion and it kind of answers Phil's question about the placement of this new structure. He was wondering why it wasn't in some other location on Lot #10. It is located within just a couple feet of the gamble roof structure (wood structure as it is titled on the survey). This wood structure is within the power easement and that is why I could not add to it. So, that is what started this third structure. It got moved more off the rear set-back there. This was before I had a survey done. Once I got the survey done, which I only had a couple days before I came to this meeting and went back to take a look at it. I came to find out after Joe saying 3' set-backs are required and just all the things that I heard that the building is really in compliance with respect to set-backs and easements. It is not conforming with respect to splitting the lots and the house it is too close. So, to answer the question of location or the comment of location, I thought it was appropriate to locate it as a separate entity by taking into account your comments about additions.

What I would like to do now would be to continue that over to the existing wood structure and have it as an addition rather than a third structure. I really can't argue the third structure. There are no physical difficulties that I can come up with that say I need this third building. I came in with my reasoning which is not acceptable for what I am trying to do here. In being that I was so close and seeing what I saw in the neighborhood, to me it made a tremendous amount of sense to join them which I have seen in a whole host of situations around town. So I am hoping that by taking your recommendations into account and me changing the way this is organized a little bit, that we can take the third independent structure out and I can't think of any other comment in that area.

With respects to the practical difficulty, I would like to point out that my next door neighbor which is # 6 on the map has a double lot. He has an older home but he happens to be placed in such a way on his lots that he has the opportunity to build out that second lot. We are in RM-2 zoning and he can put up another one of the shoe box duplexes, a garage and another accessory building on there if he so selected to and he is kind of pursuing that and that is how I know that he can do that. I also found on # 7 that on something only 50' wide they have a garage and another accessory building and it is on half the size of the lot (parcel) that I have. My contention for the practical difficulty is the fact that the house was built in 1899 and I think the wood shed was built in the 40's perhaps. At that point in time nobody took into account all these separate blocks and what could be built out and what couldn't and they encroach on that Lot #10. Therefore it can't be split. If I could if it was a matter of a few feet, I could have the opportunity to build that out to 75% but I can't. I can't because of the way that the structure was built well before I bought this place. I think that is what makes my property different from my neighbors or from what I see on Lot #7 which like I said is only about 30'. I paced it off and it only about a 50' wide lot. By looking at this differently as an addition, I also pointed out in my last meeting that I reduced the size of the wood shed by 5' x 18' deep. Back when I changed that building, it was actually built as a structure with a 5' x 18' addition on it. It was not in good shape. It was kind of a green house kind of a thing. I could not bring it back and that is why I changed it the way that I did and just worked with the original structure because there was height restrictions and other things that I had not considered. So, if you were to take into account that 5' x 18' and look at all this square footage now combined, I am really only asking for a net 75 sq. ft. addition compared to what was there. I am asking for that extra 75' because I can't split the lot, it is a double lot and you have placement of the older structures there which I can't do anything about and I just hope this reasoning satisfies the board and I get a favorable decision.

Chairman Weipert – It sounds like you are trying to negotiate with us.

Mr. Malmsten – No.

Chairman Weipert – You talking about combining the buildings. The one that was the subject.

Mr. Malmsten – To continue the lines of that building over to the woodshed since they are only a couple a feet apart.

Chairman Weipert – You are adding material to combine those two buildings into one building.

Mr. Malmsten – Correct. Yes.

Chairman Weipert – When you say split, what do you mean by split the lots?

Commissioner Rodman – It is one parcel.

Mr. Malmsten – It could be split if it wasn't for the fact of the house and wood shed placement. Those are the reasons why I can't do more with the property. From what I understand, the house was built at a point in time when they owned that whole triangle from the railroad tract to Lottie to Reese.

Commissioner Rodman – We can only act on what was submitted. We can't negotiate changes or anything like that. The proposal that is in front of us is a request for a variance and is based on what you submitted to the City. That is what we can make our judgment on and only that. What we have here right now is a request to have a third out structure and then the extra square footage.

Mr. Malmsten – How would I ... would I have to re-submit showing the new idea?

Inspector Veltri – You would have to re-submit asking for a variance of 200 and some square feet. You said a 75' sq. ft. addition to the 160 sq. ft. shed.

Mr. Malmsten – No the net. I was speaking of the 5' x 18' which I did rebuild. If you take that into account to the 160 sq. ft., adding up all the buildings and then subtracting that out, it is only 75 sq. ft.

Inspector Veltri – You are allowed 576 sq. ft. with a total of two out buildings. So, if you had a 20' x 20' garage, hypothetically, and a 10' x 10' shed you would be at 500 sq. ft. Then you still could not build a third one. You could add on to the accessory structure 76 sq. ft. but you cannot exceed the total number of two out buildings and 576 sq. ft. which equals to a 24' x 24' detached garage. You would have to apply for a variance for anything over the 576 sq. ft.

Mr. Malmsten – What do I have to do first? Give you a revised print or whatever?

Inspector Veltri – You would have to submit a proposal and I would deny it, then you can appeal my decision with the zoning board again.

Mr. Malmsten – You can ask someone to come back to exactly the same thing that we are at here now?

Inspector Veltri – No, because you would be proposing something different. You cannot apply for the same variance twice. You would be modifying your variance because you want to join the two sheds. That is what you would be applying for. Then you would be asking for a variance for everything over 576 sq. ft.

Commissioner Rodman – The total of all the out buildings.

Mr. Malmsten – Now I see we are going to have to do something different. Really it only nets out to about 150 sq. ft. according to my math.

Commissioner Rodman – That is moot because we can't do anything about that right now. We can only act on what is in front of us. You have to give us a reason why you should have the third out building or pull this off the table and start over. You have the choice.

Mr. Malmsten – I really couldn't come up with a good reason to present to you, what I thought was a good reason anyway, that is acceptable. I could not stand up here and say I have a great reason for a third building because of this reason or that reason other than, maybe I will shift gears here. How about the fact that there are four things within four other parcel or lots or whatever you want to call them; houses or addresses that are within two blocks of me that have the addition that I am asking for.

Inspector Veltri – For clarification, you can use an example within 300' and a lot of them were built long before this even went in. I am aware of some of them but they were in before the 576 sq. ft. ordinance change.

Chairman Weipert – It is in the old part of town.....

Mr. Malmsten – Only 300'?

Attorney Hill – So the record is clear, only 1 person should speak at a time.

Commissioner Rodman – I understand there are other buildings and lots around you that have three out buildings.

Chairman Weipert – That is relevant.

Commissioner Rodman – It is relevant to the neighborhood but it is not relevant in practical difficulty and so far.....

Mr. Malmsten – Practical difficulty as stated I thought was the fact that I can't split my lots because of the placement of the structures.

Commissioner Rodman – Placement of the structures does not.....

Mr. Malmsten – With my neighbor next door....

Chairman Weipert – That is not before us. I don't think that it is relevant. You do have a lot of property there.

Commissioner Rodman – It is one parcel of property. The ordinance states you can have no more than two out buildings at 576 sq. ft. You are asking for a third out building with an increase of 164 sq. ft. above.

Mr. Malmsten – What exists doesn't add up to 576 sq. ft.

Chairman Weipert – Joe, does the legal description.....

Inspector Veltri – It is one parcel. It has one parcel ID number.

Commissioner Rodman – What does the survey say.

Inspector Veltri – It has one parcel ID number.

Commissioner Rodman – I am asking about square footage.

Chairman Weipert – So, he is adding 200 more square feet.

Inspector Veltri – Since the first two buildings were existing I just wrote the dimensions of the third one.

Commissioner Rodman – He is asking for a third out building which is against the ordinance and 160 sq. ft. which is above what is required in the ordinance. So, as a board we can discuss and talk about that request and determine if he has a practical difficulty based on that parcel of land. We can't take into account that there are two lots there because it is a parcel as zoned.

Mr. Malmsten – Yet a parcel that is half the size can do the same thing.\

Inspector Veltri – It would probably be a "lot of record". It was platted that way even though it did not meet today's ordinance, we still have some "lots of record" in the City, where it is smaller than what our zoning would allow. But, it was platted that way when it was vacant so that would be a buildable lot.

Mr. Malmsten – What would be buildable, Lot 10?

Inspector Veltri – A “lot of record” would be. There is one I know of with a 45’ wide Lot in the City. It was platted that way, it is vacant right now and if someone wanted to build on it I would have to issue a building permit. It would be an odd looking house but it is a “lot of record” and was platted that way years ago.

Mr. Malmsten – I know I should come here knowing this stuff. So a parcel can be one or more lots?

Inspector Veltri – Yes. We have a lot of combined lots where there are two lots sometimes even three lots that are combined into one parcel.

Commissioner Bradley – You still only get the 576 sq. ft. and two buildings no matter how many lots.

Mr. Malmsten – If that is the way it is.

Commissioner Bradley – An alternative is to deny this one and come back to ask for the variance to combine the two buildings and request that variance.

Chairman Weipert – Or spend the time to split the lots.

Commissioner Herman – Then he has to move the house.

Commissioner Rodman – Or get a good lawyer.

Inspector Veltri – Or you could move the property line and come in here and ask for a variance on the property dimension.

Commissioner Rodman – Again that is a moot point. Unless you have some other comments or statements concerning practical difficulty for your parcel and why you should have it. Do you have anything else?

Mr. Malmsten – Okay, not other than the two things that I said that I have a neighbor right next door to me that split his lot because of the way the buildings placed to a greater build out. I can’t do that. You are allowed to have the same requirements on something that is half the total land square footage. To me, maybe I am wrong, but to me that is a practical difficulty with my parcel.

Chairman Weipert – It is relevant to the neighborhood but theirs is lawful non-conforming. They were put on a long time ago, it is not something that was just put on. You can’t say that they have a 45’ lot and have three structures and you have 100’ and

want.... Like we said before, you come to us and what you have there you built without a permit it is not like you were grandfathered 20-30 years ago.

Commissioner Rodman – The difference between theirs and yours is that theirs is lawfully grandfathered non-conforming where yours is unlawfully non-conforming.

Mr. Malmsten – I am sure # 7 isn't.

Commissioner Rodman – We can't take that into account other than that it is just there.

Mr. Malmsten – Some of the other ones I saw did appear to be much older or somewhat old, whatever.

Chairman Weipert – It is an old mixed neighborhood with mixed zoning, mixed use and it has a bigger amount of property than some of the parcels.

Commissioner Rodman – I personally still don't see any practical difficulty other than there is really nothing about this that states that he can have three out buildings.

Mr. Malmsten – That is why I thought that combining them it is more like what you are suggesting.

Commissioner Rodman – But we can't discuss that.

Mr. Malmsten – Unfortunately, I can see that now.

Commissioner Rodman – Okay. If it was a size thing or something like, okay now I can start listening to those things, but right now he has three out buildings and the ordinance states clearly, no more than two. I don't see a practical difficulty why he would need three. Even if that lot was split, he could just build a third one on that second lot if it was split but I don't know if that is legal either. I still see no practical difficulty whatsoever with this parcel to have three out buildings.

Mr. Malmsten – That is why I thought I came back with a great idea.

Commissioner Rodman – I would like to make a motion for denial due to no practical difficulties to the lot. If he wants to pull it off the table and come back with something else, that is his choice.



**ZBA 02-19-09 – JEFF MALMSTEN – 439 REESE STREET**

Motion by Rodman, supported by Herman

Motion to deny the zoning request of Jeff Malmsten at 439 Reese Street to a variance to Chapter 102-431 – three accessory building structures and additional square footage.

**VOTE:**

**MOTION CARRIED UNANIMOUSLY**

Inspector Veltri – You might want to add (if it is denied) what do you want him to do with the third shed? What do you want him to do with the structure?

Commissioner Rodman – If it is a non-conforming structure, it should be removed

Chairman Weipert – Don't you go administratively and do something about that?

Inspector Veltri – Yes.

Mr. Malmsten – What I suggest is that early next week (I won't do it tomorrow) I will give you a new application showing the change.

Commissioner Rodman – Can I ask this? Can I put this in, the shed needs to be removed within 60 days or otherwise have a new variance in front of the board for his request for modifications?

Chairman Weipert – I think we should just say yes or no.

Attorney Hill – If you want my opinion, it seems awfully complex. You make a motion to deny and if a court case is already pending you will need a judge to order it and he knows he has the ability to come back with a plan for the addition that possibly he can present to the court where the judge could stay it if that is what the judge so chose.

Commissioner Rodman – I hereby do not amend my motion.

Mr. Malmsten – I am trying not to waste your time. I'm really not. Oh boy! I think the situation was that my house was the original house and I think they owned that whole triangle, so they built the house downhill, down Lottie there for family member. I think it was a sister. One big happy family.

Chairman Weipert – That is interesting.

Mr. Malmsten – Thank you.

Inspector Veltri – Be in on Monday. No later.

**STAFF REPORTS:**

We don't have a meeting next month.

Commissioner Rodman – If he does come back, we need to know the legal description of the lot.

Inspector Veltri – It is right there, it is one parcel. You can have three lots and still have one parcel.

Attorney Hill – Is it eligible for a split?

Inspector Veltri – Not the way the house is. If it was vacant right now and it was combined and he wanted to split the two lots, yes. You would have two “lots of record” it was platted that way. When you have a house, I have to apply the set-backs to the house which is going to make that other lot bigger. Accessory structures have to be 3' off the property lines because of the garage that might even push it a little further and that would make for a narrower lot. He could come in and ask for a variance.

Commissioner Rodman – As a board we can only look at this as one parcel period.

Inspector Veltri – It is one parcel. There are pieces of property in the City that are Lot #21, the west 7.5' of Lot #22 and the east 3' of Lot #19. That is just the legal description.

Attorney Hill – What is the minimum lot size in the City.

Inspector Veltri – It depends on the zoning district. We have 100' and 120' lots. He has two lots.

Chairman Weipert – The neighbor has a house on 50'.

Inspector Veltri – He said he is in R-2 but he is in RM. I will have to check. The whole area was changed to RM either 1 or 2.

Chairman Weipert – That whole area went to residential and I thought it went to R-3.

Inspector Veltri – It went to multiple. Not Walker's Garage, it stayed Industrial.

Chairman Weipert – Walker came in and complained and they made it R-3, same as my neighborhood.

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Inspector Veltri – I thought it is RM.

Chairman Weipert – I will dig it up for you.

Inspector Veltri – I will look at the zoning map. I think it is RM.

Chairman Weipert – The zoning map may not have been changed.

Inspector Veltri – A lot of it was industrial before.

Chairman Weipert – How many times have they passed a motion and they did not tell you? Every time.

Inspector Veltri – Point made.

**ZBA 02-19-09 – ADJOURNMENT**

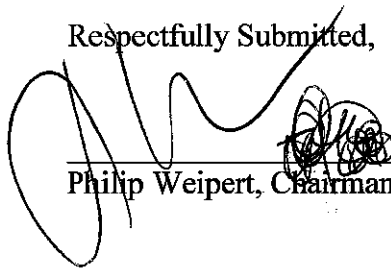
Motion by Bradley, supported by Rodman

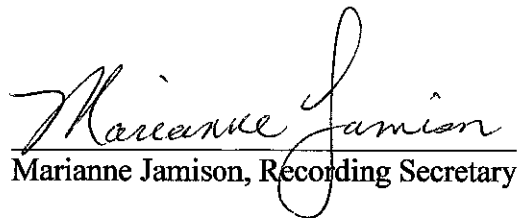
To adjourn the meeting at 7:45 P.M.

**VOTE:**

**MOTION CARRIED UNANIMOUSLY**

Respectfully Submitted,

  
Philip Weipert, Chairman

  
Marianne Jamison, Recording Secretary