

**CITY OF SOUTH LYON
ZONING BOARD OF APPEALS
June 18, 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 Tim Wilhelm (City Attorney).

ABSENT: Carmine Avanti (Planning Commission), Dennis Smith (Building Department), and Kristen Delaney (Economic Development) - excused

APPROVAL OF THE AGENDA

We need to change the agenda to place ZBA Case # 2015-001 on the agenda under Old Business that was tabled from the May 21, 2015 meeting.

ZBA 6-18-15 APPROVAL OF AGENDA

Motion by Morelli, supported by Fogarty

To amend the agenda and place ZBA Case #2015-001 on the agenda under Old Business.

APPROVAL OF MINUTES:

ZBA 6-18-15 APPROVAL OF MINUTES

Motion by Morelli, supported by Fogarty

To approve the minutes of May 21, 2015.

VOTE:

MOTION CARRIED UNANIMOUSLY

OLD BUSINESS

ZBA 6-18-15 APPROVAL TO OPEN TABLED MEETING OF 5/21/15

Motion by Morelli, supported by Fogarty

Motion to open ZBA Case #2015-001 – 640 Covington which was tabled from last month.

VOTE:

MOTION CARRIED UNANIMOUSLY

ZBA Case #2015-001 – 648 Covington - Tabled from May 21, 2015 Meeting

Chairman Wipert opened the meeting by summarizing last month's meeting. Last time we heard your case and you told us about the circumstances and we had you talk with the City Attorney, City Planer and our Building Inspector. Do you have new evidence for us?

Mr. Hefferan noted that he spoke with the building inspector (Dennis). Dennis said if we wanted to replace the existing fence with another chain link fence, we would have to get a permit to put in another chain link fence. To replace the existing chain link fence with a new a fence we would need to get a permit. If we wanted to fix it and not replace any of the old posts, we could go ahead and do that. Since some of the old posts are no good they have to be replaced.

Commissioner Morelli questioned if the applicant wants to take down the old fence and erect a new fence at the current height of 4'. Exactly what you have now, just brand new.

Chairman Weipert questioned if Dennis had him get a permit or did Dennis want him to come before the ZBA?

Mrs. Hefferan replied we have to get a variance and come before the board. We have to come here to get approval in order to get that permit. We want to replace it with the same type of fence.

Attorney Wilhelm replied that the fence issue was brought to the planning commission last week to discuss what is contained in the proposed amended zoning ordinance related to this issue. The decision focused much on the location given the types of lots. This particular circumstance where you have two (2) front yards and the percentage is impervious. There was

another discussion of height. There was some concern about visibility through the fence. Carmine had mentioned bringing this issue to the planning commission. The applicant is interested more in just replacing the existing non-conforming fence with something that is with no visibility issue and I don't think the height is the issue either. I think it is location and non-conforming nature of the fence.

Chairman Weipert clarified what the applicant was requesting today. To replace that chain link fence with another chain link fence.

Mrs. Hefferan responded yes, that is the request. Replace it with a black vinyl chain link fence.

Commissioner Morelli confirmed same height and same place. Is that fence height 4'?

Mrs. Hefferan replied yes.

Board discussed options.

Commissioner Rzyzi apologized for not being present at the previous meeting. He inquired if the applicant's neighbors have similar style fences.

Mrs. Hefferan replied yes there is one down the street and it has a 6' privacy fence on the corner.

Chairman Weipert noted that the applicants do have a double driveway.

Mr. Hefferan responded they would need two (2) gates. How it is now only new.

Chairman Weipert asked if there were any additional questions.

ZBA CASE #2015-001- 649 COVINGTON STREET

Motion by Dunn, supported by Rzyzi

Motion to grant the variance to replace the exact fence in the exact location and to height standards. Replace fence with black vinyl chain link fence.

Approve the variance per Section 18-135 of our City Charter that will allow a privacy fence – a black vinyl chain link fence in the exact location and at the same height as the existing fence.

VOTE:

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS

ZBA Case #2015-002 – 640 S. Lafayette St. – First United Methodist Church

The request is for a variance from the City Code Chapter 70 - Signs from Section 70-7 (e)(3) "Additional sign standards" pertaining to "Changeable message signs." A sign variance where the area of a changeable message sign or gasoline price sign shall not exceed one-third (1/3) the total area of the sign.

Chairman Weipert called the first case and had the petitioner state his name, address and the reason for the request.

The applicant came forward and introduced himself:

I am Ken Kneisel and am a member of the First United Methodist Church – 640 S. Lafayette and I would like to give you a quick history; I am not sure all of you understand where we have been over the last 7 months. We decided we would like to put a LED sign in front of our church to replace the sign we currently have there. I did not think this would be any problem since the Catholic Church to the south of us and the City to the north of us already have electronic signs. We found a supplier to do the sign and he came to City Hall to get a permit to install the sign and was told that a new ordinance had been passed this prior February and we are not allowed to have a sign. Hearing that news, I went to a City Council meeting and expressed my unhappiness with that and was told what we needed to do was to get a variance so we could have a sign. We got into that and in 2-3 weeks I received a call saying "no, you don't want to do a variance, you want to do an amendment to the City sign ordinance. That was late December or early January. I spend a great deal of my time in Florida in the winter and it was supposed to happen while I was in Florida. I came back in March and was told that the City sign ordinance had been amended and we were all set to go. We again contacted our sign vendor to go to City Hall to obtain a permit to change our sign and was told we could not do that, your sign is in violation of the amended sign ordinance. What you need to do is to get a variance. Variance, amendment, variance. I am here tonight respectively asking that we are not increasing the size of our sign nor are we doing anything that is not already there. Instead of it being a lit sign with incandescent lights we want to use LED. I am looking for someone to tell me that we should be able to do that. I would be happy to answer any questions.

Commissioner Dunn asked if the dimensions of the current sign are exactly the same as the sign going up?

Mr. Kneisel responded that I hate to use the word exact. It is my understanding that because

the way the LED panels are manufactured, that in fact, our sign is going to be 2" or 3" (approx.) smaller than the existing sign we have. The lit part of the sign will be 2-3" smaller.

Commissioner Dunn questioned about the entire sign not just the LED portion.

Mr. Kneisel replied that the frame that is there is not changing. We are going to take the face of the sign off and replace it with an LED face.

Commissioner Rzyzi noted for the record that he too thinks it was unfortunate that Mr. Kneisel had to go through that many hoops to get a variance. It would have been much easier, if you had been told up front to come to the ZBA. I recognize there was a miss-communication. I would encourage my fellow board members to do as much as possible to get this corrected.

Attorney Wilhelm offered that there was miss-communication as to what the intention was with the replacement of the sign and that led to the miss-communication as to whether the ordinance should be amended versus a variance. I think that the miss-communication on the City's side was is that we were unaware there was any intent to save or use the existing portion or infrastructure of the sign. They were going to build a new sign and there was no concern from our standpoint. As to use what was already there, or to match that size, they would have to build a new sign that complies with the new ordinance.

Chairman Weipert explained that the difficulty is that they are keeping an existing structure and changing the sign face. If the whole structure were larger they would be in compliance.

Attorney Wilhelm replied to his understanding, the sign faces they are proposing do not cause any problems. The ordinance as written and amended, requires that the full sign, the electronic portion can only be 1/3 of the entire sign's face. So, yes attempting to use the existing sign structure and the frame work of what they have out there, the lit portion of their sign will not, per the applicant, be increased in anyway but it will require a deviation from the ordinance as currently amended.

I spoke with Carmine about this briefly. There is a way for them to build a sign where they would be allowed to get the electronic message area they are seeking. However, because of the limitation on how much of the sign face can be electronic message, they need a much bigger sign. This is less about the area where it will be electronic and more about the philosophy of this ordinance on what portion of a sign's electronic messaging is.

Chairman Weipert noted that the bonus here is that the existing sign will not be larger.

Attorney Wilhelm responded that it is a smaller overall structure as the sign face that they would be allowed to build under the ordinance. In order to get the size of the electronic message that they are seeking, they would be putting up a much larger sign. It is all about that ratio of what is allowed to be electronic.

Commissioner Morelli added that he read that it cannot be any more than 1/3 it does not matter if it is changeable manually or if electronic. Yesterday, I went through town and started at McDonalds and went down Pontiac Trail to Northwood's and wrote down every changeable sign in town. I saw 28 changeable signs (some are in the township). Out of the 28 signs only 4 were a third or less. Out of the churches, St. Joseph's was the smallest at 60% and most were 80%. Even the newest signs like Pinz Bowling at 50%. I don't know when the ordinance was amended (February 2014). I don't understand what is trying to be accomplish with the ordinance. I am looking at this and McDonald's is 70%, Walgreen's 75%, Parkside is 100%, Hungry Howie's is 50%, True Value is 35% and Phillips is 90%. I don't understand why we want to make it so difficult for a sign. If the cross with the red sash were in a box it would be considered signage, correct. If so, if you are looking at a sign you take the box and that is beside it. The cross and red sash is signage and it would be if it was in the box, they would probably meet 30% now.

Attorney Wilhelm noted that he has not looked at this issue and does not know the measurements on that additional portion of the structure. I did not draft the sign ordinance, I did review it. I have some experience with sign ordinances and generally speaking my thoughts would be, what is out in the community may not be what you want going forward. The City is not drafting an ordinance to make whatever is out there comply with this ordinance. Once you amend that sign ordinance, they become non-conforming and you are drafting an ordinance for what you want to see in the future.

Commissioner Morelli added that he does understand that because we have done sign variances at the car wash, Brown's and Martin's Hardware. Those are all signs that are out there. Now signs are like those at Speedway and CVS. Of those, CVS is well over 50%. Personally, I think 30% (I see where the intent is) they are saying they only want the changeable part since everyone is going with electronics. S.L Theater is 80% changeable sign.

Attorney Wilhelm supplied that this issue will likely be leading to us reevaluating and bringing back to you an adjustment in this ratio and we will have to first analyze whether there is any other size requirement if you are going to change the ratio then we need to think about adjusting the overall area allowed for a sign. This has highlighted that there seems to be a

history of doing much more than the third and there seems to be some political will to reevaluate whether 1/3 is the appropriate ratio.

Commissioner Mosier replied that he is also on the Planning Commission and we worked hard on the sign ordinance and when it first went to Council, they thought we had allowed too much and Council made a change to reduce it. We went by what our planners did and what we saw around town to get a better handle on it. Council thought 1/3 was too generous.

Commissioner Dunn questioned what if a new business were to come into town would the criteria be different? I am just trying to figure out if there would be a difference in a legal capacity?

Commissioner Morelli replied that if it were brand new construction, they would be in front of us (ZBA board) to conform with all the other signs at the churches.

Mr. Kneisel explained that there are parts of the ordinance he is not familiar with and rules on how often you can change the sign. We are not trying to put a book up there that people are trying to read as they go by. We are a very active church and have a lot of things going on. We need to advertise these events. Our intent is to have 2 or 3 different messages going every 2 minutes or whatever the time limit is.

Chairman Weipert summarized that Mr. Kneisel is asking for relief from the 1/3.

Mr. Kneisel – Yes, however you have to do that as the Zoning Board. When I leave tonight, I would like to be able to call my sign man on Monday and tell him when he goes to City Hall for a permit to install a sign he will be told yes.

Attorney Wilhelm pointed out for the commission that Section 70-13 dealing with appeals and variances in the sign ordinance. Sub-section b – Variances - with the exception of the multi-tenant ground signs that has to be addressed through the Planning Commission, the Zoning Board of Appeals shall have the authority to grant variances from the requirements of this Chapter according to criteria in Section 102-85 (2) in making a decision on whether a practical difficulty exists. The board may also consider the following for sign verification requests. There are 2 factors in determining whether a variance is appropriate, you may give consideration to any extraordinary circumstances that would cause a practical difficulty in complying with the sign standards. This is not an inclusive list.

Chairman Weipert opened the meeting to the public. There were no response from the audience.

ZBA 2015-002 – 640 S. LAFAYETTE – FIRST UNITED METHODIST CHURCH - CASE #2015-002

Motion by Morelli, supported by Fogarty

Motion to approve the variance to let them erect the plan supplied here. Approve the dimensions that were from Attorney Wilhelm per Section 102-85 (2) or (3) which is: (2) a variance is necessary to preserve enjoyment of the property rights similar to the other properties in the same zoning district and in the vicinity, provided that possible increased financial return shall not of itself be deemed sufficient to warrant a variance and (3) the authorization of such a variance will not be of substantial detriment to adjacent property and will not materially impair the intent and purpose of this chapter or the public health, safety and general welfare of the community.

Chairman Weipert summed up that the motion was to grant the variance per Section 70-7 (e) (3) and according to the ordinance _____ pursuant to 102-85 (2) (3) for the reason it will not be a substantial detriment to adjacent property owners and will not materially impair the intent and purpose of this chapter or to the public health, safety and general welfare of the community.

VOTE:

MOTION CARRIED UNANIMOUSLY

Mr. Kneisel questioned if that was effective immediately? If the installer comes into City Hall for the permit on Monday, it will be granted.

Attorney Wilhelm responded that he would make sure the building department knows and the City Manager knows so there should not be any problem.

Mr. Kneisel thanked the committee.

STAFF REPORTS

Chairman Weipert informed the board members that Tim had set up some new ZBA By-Laws for the members.

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Attorney Wilhelm replied that this commission does not have adopted by-laws at this point so there is some urgency to this. These proposed by-laws and rules of procedure that deal with the public hearings for this commission. The by-laws were read, reviewed and discussed.

I need to get the roster and when your terms are, it will have the by-laws, the relevant portion dealing with the ZBA and your standards, your appeal application, your practical difficulty standards and guidance on that from MSUE, copy of your zoning ordinance, your fence ordinance and your sign ordinance. Put together as a minute binder so you have the things you typically need for a case. I have also included that ZBA members are highly encouraged to attend at least four (4) hours per year of training and planning during their current term in office. Do you want that in there? This is the first step so you can familiarize yourself with what your authority and role is and what factors you are to look at. I would like to do a training sometime in the future.

Carmine and I can provide you with information about Planning and Zoning. Are there any questions on the by-laws?

I did review some of the communities that our office represents and I also looked at other sources and other community's by-laws to try to come up with the ideas I thought were appropriate for this community. This covers everything and it may be more in detail than you need but I feel having the detail to fall back on is important. We can adjust it as necessary.

ZBA 06/18/15 ADOPTION OF BY-LAWS

Motion by Fogarty, supported by Mosier

To adopt the By-Laws as presented on June 18, 2015.

VOTE:

MOTION CARRIED UNANIMOUSLY

Attorney Wilhelm noted that the City Council just had City e-mails assigned for their members. If the commissioners would like a separate e-mail instead of using a personal one.

There is a case coming up for July 16, 2015. There will be a meeting.

Commissioner Dunn noted he will be out of town for that meeting.

ZBA 06/18/15 – ADJOURNMENT

Motion by Fogarty, supported by Morelli

Motion to adjourn the meeting at 7:58 pm.

VOTE

Respectfully Submitted,



Phil Weipert, Chairman

MOTION CARRIED UNANIMOUSLY

Marianne Jamison, Recording Secretary