

**CITY OF SOUTH LYON
ZONING BOARD OF APPEALS
July 21, 2016**

Chairman Weipert called the meeting to order at 7:00 p.m.

ROLL CALL:

PRESENT: Chairman Phil Weipert and Commissioners Brian Dunn, Michael Joseph, Joe Rzyzi and Frank Fogarty. Also present Carmine Avantini (Planning Commission) and Tim Wilhelm (City Attorney).

ABSENT: Ron Morelli and Steve Mosier- Excused.

ZBA 07-21-16 MEMBER ABSENCE

Motion by Weipert, supported by Dunn

To excuse Commissioner's Morelli and Mosier's absence from the meeting.

VOTE:

MOTION CARRIED UNANIMOUSLY

Chairman Weipert led the committee into the Pledge of Allegiance.

APPROVAL OF AGENDA

ZBA 07-21-16 APPROVAL OF AGENDA

Motion by Fogarty, supported by Joseph

To amend the agenda to reverse the order and move Item #1 to Item #2 and Item #2 to Item #1 on the agenda and to approve the agenda as amended.

APPROVAL OF MINUTES:

ZBA 07-21-16 APPROVAL OF MINUTES

Motion by Dunn, supported by Fogarty

To approve the minutes of the May 19, 2016 meeting as presented.

VOTE:

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS

ZBA Case 2016:005 – 204 W. Liberty Street

Request: A variance from Section 18-135(a) Fences may be erected along the rear lot lines and along interior side lot lines to the primary front or exterior side yard setback.

The applicant is proposing to construct a (6) six foot privacy fence in the two (2) front yards of their corner lot.

A variance from Section 18-135(b) fences shall not extend into any required front or exterior side yard setback.

The applicant is proposing to construct a six (6) foot privacy fence that extends ten (10) feet into the required front yard.

Chairman Weipert called the applicants to come up and to state their name and address for the record and to tell the board members what the practical difficulty is.

He also noted that prior to hearing the case that we have two board members who are absent tonight so the applicant will need four out of seven votes to overturn the decision of the building inspector. The applicant has the opportunity to table the case if they prefer to wait for a full board.

Chris Hogan introduced himself and his wife Kristina Hogan of 204 W. Liberty Street and agreed to proceed.

Chairman Weipert noted that the applicant had supplied 13 photos of homes in his neighborhood that have fences that are outside of the ordinance as part of his application.

You have to demonstrate to us as to why the ordinance has caused you difficulty with the use of your property.

Mr. Hogan noted his appreciation for everyone coming out tonight. We did our homework and part of what we are doing here is showing that we are not trying to do anything that is not already being done in our neighborhood. The reasons we need the fence are that we have a cat, two cats actually and one of them is very smart about opening the door and letting herself out. Then she goes out into the street so we have chased her out of the street many times. She is feisty and can jump over 4' in height. That is why we wanted to go with the 6' fence all

around the property. It is a hardship for us since we are trying to keep track of this animal. We also share custody of a dog with my sister and she travels a lot and that is the reason for the fence. We choose the location of the fence specifically on the side between our garage and our neighbor Randy (who lives on Lake Street) to match the sight line of his fence. We discussed our plans with Randy and he agreed with it. It matches the sight line of the property. They wanted us to move the fence in 10'. The concern I have with that is that it now cuts into usable space that we have in our backyard and will reduce the amount of property and will go through the middle of our garden we have back there. The other issue is our property is on the corner and everyone drives by downtown and we are the by-pass route going into downtown.

Mrs. Hogan added as everyone knows, between the hours of 5 am to 7 am and from 5 pm to 7 pm it is rush hour right through there and we are sitting in a fish bowl.

Mr. Hogan replied that this will gain us privacy in our backyard and increase the value of the home. We also have had issues with people walking through our property. People cut through our yard.

Mrs. Hogan told of the wonderful downtown celebrations that we have and it is often our lot that is used to cut through.

Mr. Hogan continued that they have spent a lot of time and money trying to fix up this home we bought 5 years ago and felt by putting up a fence, in addition helping with the cat situation would help increase the value and the appearance of the house.

Commissioner Rzyzi asked the applicants how long have they lived in South Lyon and was informed 5 years. I want to commend you for doing something to try and make your house look nice and I appreciate all the homework you did going into this by taking all the pictures. Oftentimes we sit up here and see people that ask for something and don't have much of an explanation so I see that what you are asking for is not out of the ordinary from what your neighborhood has. For me this is an easy decision for me to approve your variance.

Mr. Hogan responded that he appreciated that. Thank you.

Commissioner Fogarty questioned what would a 6' fence give you that a 4' fence will not?

Mr. Hogan replied protection of the cat. The cat can jump 4' high.

Commissioner Fogarty noted he had a Terrier and had to chain it up.

Mr. Hogan added that it is hard to chain up a cat.

Commissioner Joseph questioned they type of fence he proposed to put up.
Mr. Hogan noted it is a 6' privacy fence wolminized.

Chairman Weipert responded that we appreciate you bringing in the photos of the neighborhood. This does not detract from the character of the neighborhood but you need to show us what is unique about your property and why you cannot use it like other's do in your neighborhood.

We have all heard: corner lot, mixed use neighborhood, downtown and have a by-pass and that is unique, (I thought all the people went down Warren St. and Whipple St.) and a high traffic area. The type of fence is what we are looking at now. Like Randy has a fence will lattice on the top. His is a 6' fence but has a 2' of decorative lattice. We can impose conditions such as scallops or other conditions.

Commissioner Joseph added that he can understand his hardship position if you had children and being on a corner lot in that area. My only concern is that it adds to the value of the neighborhood.

Mr. Hogan asked what the board would propose as far as structure.

Planner Avantini acknowledged that this was a tough call and I am hearing things that were not part of the application. We consider these to be valid reasons and are leaning in that direction. At least they did not run with it all the way down the front of the property, they brought it up to where the walkway is and then they cut it back so there is only limited stretch there.

Chairman Weipert noted that he likes the fence and the applicant does have full blown commercial by him and he is on the corner of the business area. I have no problem with the fence but I would like to see it have some character.

Commissioner Fogarty added that there is lattice fence on his neighbors but is it considered a 4' or 6' fence?

Planner Avantini noted that it is still considered a 6' fence. One of the mitigating factors on that particular fence is does not make it feel so much like a wall since you do have the lattice on top. It is still 6' tall but not quite that visual impact that a solid fence would have at that location. That could be a mitigating factor.

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Chairman Wiepert again acknowledged that we can impose conditions.

Commissioner Fogarty questioned if the interior fence is also proposed for 6'. I consider that not very neighborly.

Mr. Hogan replied that he spoke with his neighbor about it.

Commissioner Fogarty added that he has seen the properties down there and has gone through the area and it kind of puts up a barrier.

Mr. Hogan responded that the neighbor has a 6' fence currently on the other side of the driveway in their backyard. It goes from their house to their garage right along their driveway.

Chairman Weipert noted that his neighbor's fence is behind the house though.

Mr. Hogan added there is already something that is currently in place, a 6' fence that blocks their backyard from our backyard.

Commissioner Rzyzi added so precedence has been set. As long as it is not some awful, ugly fence you plan to put up, I don't see how this would be an issue.

Mr. Hogan responded that he appreciates that and that we hired Novi Fence to do the work. We are going to have a professional come in and make sure it is done right.

Chairman Weipert asked if they would consider the lattice.

Mr. Hogan replied absolutely! If we do it wolminized but the top maybe a foot we did lattice across? Would that be more appealing?

Planner Avantini said that his recommendation would be to have at least that stretch match up to the property to the north. If you put a different type of fence in there it is going to look awkward.

Mr. Hogan confirmed that the suggestion was to use PVC like his neighbor has and lattice like that at the top.

Planner Avantini replied something like that. So there is continuity at that point.

Mr. Hogan replied okay and that he likes the wolminized with the lattice. Over the concrete
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section there will be a large gate. The gate would back the fence line.

Mrs. Hogan noted that is where the tomato plants and the garden is.

Chairman Weipert summed up that they have a nice backyard there, a high traffic area, full blown commercial and industrial there.

Mr. Hogan added that you see a lot of tow trucks down that alley by Norm's Automotive. We love Norm, don't get me wrong. He has worked on my car a lot.

Chairman Weipert noted again that he does see where they have certain circumstances on their property that are unique to them. It happens in downtown areas. The character of the neighborhood is mixed use.

Mr. Hogan explained the neighbor at 206 W. Liberty has a 6' fence there currently. The neighbors that lived there before had a pool and hot tub. They removed the pool but left that fence section up. They already have their backyard blocked off from us so I don't feel like we are doing anything that is adding to that.

Chairman Weipert questioned if they would be willing to do it by matching it?

Mr. Hogan asked if wolminized was okay with the lattice on the top.

Chairman Weipert noted that the Planner's suggestion that you have the same track line with the house next door.

Mr. Hogan clarified just the section that would be visible from the street between the two garages.

Commissioner Joseph stated anywhere along the street line.

Mr. Hogan reviewed that we would do the fence from Randy's garage to our garage and from our garage to our house with lattice. Then from the front section on Liberty from our house to the edge of the fence with lattice on the top section matching our neighbors.

Chairman Weipert questioned the Planner where they are going to the back of that west line, don't you normally go from behind the house?

Planner Avantini responded that is the only point they need a variance for is from the back of
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the house towards the front. Just that stretch they need the variance. From there to the back of the house, all the way back can be fenced.

Chairman Weipert noted that they are bringing it up to the front of the house.

Planner Avantini figured they were bringing it up another 30' maybe, if that, on the back of the house towards the front.

Mr. Hogan agreed yes, they would bring it to the front edge of our house. We want to stop at the edge of the house.

Commissioner Fogarty replied 4' along Liberty, 6' along Washington.

Chairman Weipert reviewed previous discussion: match on Washington Street, match the character and dimension of the lattice of the neighbor. Anything facing the street with lattice.

Mr. Hogan added including the gate with the lattice on top.

Chairman Weipert summed up an example motion: I make a motion to grant a variance for this property from Section 18-35 for a variance. The difficulties that we found were: they have a corner lot, they are on a by-pass, a high traffic area and borderline residential and commercial and it does not disturb the character of the neighborhood. That would be the general idea that we can impose conditions.

For the request of Case #2016-005 – Chris and Kristina Hogan – 204 W. Liberty motion to approve the variance to allow a 6' privacy fence in the required front yard extending into the required front yard setback and along interior side lot lines between the rear and the front of the house where it is prohibited under Section 18-135 of the Code of Ordinances. The reasoning is the subject is a corner lot and is similar to other properties in the neighborhood with regards to topography, unusual shape, and natural features thereby adding character and this would not take away from that. That strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property for a permitted use, or will render conformity with those regulations. The applicable fence setback requirement is fairly standard in most communities and there is nothing about this that will unreasonable prevent the property from being used as a single-family residence. The proposed 6' tall fence will create a barrier around and will not negatively impact the residential appearance on the street. The proposed 6' wood fence along the interior lot line will not negatively impact the residential appearance on the street and that the fence

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be 6' tall with 4' being solid and the top 2' being lattice. The same sight line as the neighbor's property as discussed on Liberty and Washington Streets.

ZBA CASE 2016:005 – 204 W. LIBERTY STREET

Motion by Fogarty, supported by Joseph

VOTE:

MOTION CARRIED UNANIMOUSLY

Chairman Wiepert reminded the applicants to get their building permit.

Mr. Hogan thanked everyone for their time this evening.

ZBA Case 2016:004 – Chuck Moore's Commercial Sign Service – 600 N. Lafayette

Request: Chapter 70 "Signs" Section 70-6(c)(1) "All temporary signs must comply with the sign and height standards as specified in the Sign Dimensional Standards and Regulations Table." A Sign Variance from Section 70-6(c)(1) Sign Dimensional Standards and Regulation Table requiring that the maximum size per sign not exceed: 24 square feet face area.

The applicant is proposing 48 square feet of sign face area.

A Sign variance from Section 70-5(f)2 General Standards for Permitted Signs: Sign Area Requiring when a sign has two (2) or more faces, the area of all faces shall be included in calculating the area of the sign except where two (2) such faces are placed back to back, only larger face shall be considered, provided that both faces are part of the same structure, contain the same message and are separated by no more than two (2) feet.

The applicant is proposing a sign with two (2) faces that are separated by five (5) feet 10 inches, measured from each sign's back outermost edge.

Planner Avantini questioned if he could give the board some background on the case before tabling it?

Attorney Wilhelm replied that they can hear what the City Planner has to say.
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Planner Avantini explained that the reason this is before you in the first place is we had to rewrite our sign ordinance. Generally, that type of a sign would automatically be allowed under your sign ordinance. In Gilbert vs. Reed court case it basically said, you cannot have any of your sign regulations content based, which means, you cannot differentiate between development signs or garage sale signs.

Attorney Wilhelm added that you can but you are subject to a different constitutional level of scrutiny which is extremely difficult to meet. Reed vs. Gilbert said, no it has always been that way and we were serious. Knock off all the exceptions; you may not be content based or subject to that other type of review.

Planner Avantini continued that means if you look at a sign you have to look at it as if you were reading a foreign language. You cannot differentiate as a temporary sign for this activity or for that activity.

Attorney Wilhelm also noted that Reed vs. Gilbert re-enforces that event signs where the content of the sign pertains to an event (that is what that case involved; temporary signs put up to direct people to a church service where the church did not have a permanent location. They would go in on a Saturday afternoon set up all their signs to say this is when and where are service is and then they would pull them out mid-day on Sunday. That ended up in the United States Supreme Court. You have a number of signs where you are dealing with time, place and matter. The type of sign is on a pole or it is attached to a wall and these are event signs like garage sales and community theater events. These types of signs start to get into that content based issue. One of these signs is real estate development signs. How do you know it is a real estate development sign? You have to read it and you have to know what it is about in order to get to the content and that makes it a content based regulation.

Planner Avantini added so what we did was wipe out all the content and we said it is either a permanent sign or a temporary sign. If it is a temporary sign it can be this big that way if you use them for a garage sale, for development or whatever, it is all the same sign and you are not dealing with content. Where this created a problem is when you have instances like this one before us, where you need a bigger sign or you have some other activity where you need a bigger sign. What we did was to keep a smaller sign for all our temporary signs and if you need anything bigger we will have the Zoning Board of Appeals review it. Under the previous ordinance it would have been allowed at that time. I just wanted you to understand why we are dealing with it. Another thing with that particular property in early June there was a request out of South Lyon Square to put the Salvation Army in there and the developers are going to make improvements to the parking lot. The Planning Commission negotiated with

them for 4 hours and obtained other concessions out of them which included trigger
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mechanisms that if they get 90% occupancy or they come back to develop the out lot. They will also improve the façade of the entire building and have already improved the paint and fixed up the back of the building. I don't think anyone walked away feeling it was a 100% win but I believe people can live with it. One of the things we are interested in is for them to get more tenants in there. There is a benefit for the community by letting them have a development sign that will be seen that would potentially allow businesses to notice.

Commissioner Fogarty asked how long does a temporary sign stay up; when it is 80% full, 90% full or 100% full?

Chairman Weipert replied or it could be a time period.

Planner Avantini responded that there are time limits in the ordinance for temporary signs in general. Development signs are a little different. My recommendation is to include the time frame as a condition. When they hit a certain occupancy point then it can come out.

Attorney Wilhelm noted that becomes the issue with timing on temporary signs. I have ordinances where you can only have it up out of 12 month period only 6 months with time. I have seen an ordinance where they require the person with the temporary sign to keep a log of how many days it is up. It is an enforcement problem that is not easily solvable. I think you should be able to come up with a way that makes sense for you. We do have a maintenance code now and we may be able to evaluate whether that falls under the maintenance code and make them deal with that issue.

Planner Avantini added that we negotiated with the developers and they made a lot of concessions on that property that they did not want to. It was a long, hard fought battle but they are going to make improvements at the site and we have to give them a real chance to turn the property around.

I just wanted you to be aware of the background of this case and we can work together to make sure we are helping the cause to make it a better community.

Attorney Wilhelm asked so do we table this or remove it? If they want to show up do we have to re-notice it?

Planner Avantini replied yes.

Chairman Weipert called the next case:
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ZBA CASE 2016:004 – CHUCK MOORE’S COMMERCIAL SIGN SERVICE – 600 N. LAFAYETTE

Chairman Weipert explained that he gets the impression they might want to come back before the board. Since there is a shortage of staff at City Hall it is possible they never received the notice of this hearing.

Attorney Wilhelm noted a communication issue.

ZBA 07/21/16 – MOTION TO TABLE

Motion by Dunn, supported by Joseph

To Table ZBA Case 2016:004 – 600 N. Lafayette

VOTE

MOTION CARRIED UNANIMOUSLY

STAFF REPORTS

No new business scheduled for next month (as of today).

ZBA 07/21/16 – ADJOURNMENT

Motion by Fogarty, supported by Dunn

Motion to adjourn the meeting at 7:50 p.m.

VOTE

MOTION CARRIED UNANIMOUSLY

Respectfully Submitted,

Phil Weipert, Chairman

Marianne Jamison, Recording Secretary