

**CITY OF SOUTH LYON
ZONING BOARD OF APPEALS
August 21, 2008**

Chairman Weipert called the meeting to order at 7:06 p.m.

PRESENT: Chairman Weipert and Commissioners Ron Morelli, James Herman, Keith Bradley, Tom Goodcase and Bill Rodman. Also present, Director of Building Safety and Engineering, Joe Veltri.

ABSENT: Mike Potter - Excused

Inspector Veltri – We have not received a letter of resignation yet. He is excused.

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

APPROVAL OF MINUTES:

ZBA 08-21-08 APPROVAL OF MINUTES – July 17, 2008

Motion by Rodman, supported by Herman

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To approve the minutes of July 17, 2008 as recorded.

VOTE:

MOTION CARRIED UNANIMOUSLY

OLD BUSINESS

None

NEW BUSINESS

Allied Signs, Inc. - McDonalds – 22100 Pontiac Trail

Mr. Perry – Introduced self – Dave Perry, owner of McDonalds in South Lyon. My son Jason here is the manager. (Hands photos to board members).

Commissioner Morelli – I want everyone to know, same as last time, my sons do work at this McDonalds.

Chairman Weipert – Does anyone have any problem with Ron voting on this?

Mr. Perry – They are good boys too. I am here to ask for a variance on our menu board. The first picture you see is the existing menu board; the second picture is my Pinckney restaurant after it was converted. Basically what they did was add one (1) panel. The third picture is McDonald's new menu board layout starting in September. It shows you why I need that extra panel. They have been going crazy on drinks lately and we are coming out with smoothies and frosties next year and we just don't have the room on the menu boards to show them. We are staying away from temporary signage, I don't like that. I would like to make it nice, neat and organized back there.

Commissioner Morelli – Will the signs be eliminated that are sticking in the ground right now?

Mr. Perry – Yes.

Commissioner Morelli – Reality is that we already gave you a variance for the menu board you have. It is behind the building and you can't see it anywhere else except from Tel-Com and Powerhouse Gym. It does not really bother anyone. Where does it stop? Next year will you come back with something else?

Mr. Perry – No. This is it.

Chairman Weipert – Until corporate changes something right?

Jason Perry – I am the Manager at McDonalds and corporate changes items every three (3) months. I would say no it won't happen again, but you guys can say no whenever you want. There is also a sign on the first picture and that will be eliminated as well?

Commissioner Morelli – I noticed it is gone now.

Mr. Perry – The wind took it.

Commissioner Rodman – Is it currently bigger than the existing menu boards that are there?

Mr. Perry – It is just one (1) extra panel. There are four (4) panels there now.

Commissioner Rodman – This board gave a variance in the past.

Inspector Veltri – Ordinance allows one (1) menu board at 24 sq. ft. They currently have two (2) menu boards at almost 47 + sq. ft.

Commissioner Rodman – At this point he has not stated what his hardship is. He just said he needs more signage.

Inspector Veltri – He has to state the hardship to you (the board).

Commissioner Rodman – I have not heard a hardship.

Mr. Perry – The hardship is that I don't have the space to put things on it. They have this new layout that is coming in September and I don't have the space for it. We are also trying to make it easier for the customers when they come in since our menu has so many things on it. We are trying to organize it and make it easier to read.

Mr. Patrick Stieber introduced himself from Allied Signs. I think their hardship here is lack of identification to their customers on their menu board. What they are adding here is the same thing that they have but adding an extra panel. It is basically adding an extra 10 sq. ft. of area to display their products to their customers. Due to the menu changes within the corporate operation, they have a definite hardship of lack of identification.

Commissioner Rodman – I personally don't see a lack of corporate identification. This is a corporate mandate that excessively exceeds our sign ordinance and you are asking for even more than what you were granted in your last variance. If anything, you are gaining monetarily because you are advertising more.

Mr. Perry – I wish I was gaining monetarily. As you well know, with costs going through the roof we have to try to change our product mix and try to get more of a variety of drinks. That is why you will see more and more drinks coming out. You make more money on drinks than you do on a Big Mac. McDonald's is trying to make this happen. So we can maintain our prices as low as we possibly can. That is what we are struggling with. My food costs are over \$60,000 and that is a hardship.

Commissioner Morelli – You can't be getting approval everywhere you go so what is McDonald's corporate doing?

Mr. Perry – They have had no problems that I know of.

Mr. Stieber – I have a lot of experience adding these additions on and most cities don't consider this signage. It is not corporate identification, it is product identification. We are not trying to put up McDonald's logos and signage to attract people there, this is to just identify the products that are offered so they can properly order and swiftly get through the drive-thru. We have been putting these up all over the place and most cities don't even require us to get a permit for this type of sign because it is not corporate identification signs. It is product information to the customers. So, to answer that question, no we have not had problems in other cities.

Commissioner Rodman – This is our ordinance. It was excessive the first time you were

here and you were granted a variance. Where is it going to end? If McDonalds decides to add burritos and tacos next year and you will want to add another sign then.

Mr. Perry – This is all I would need.

Commissioner Rodman – That statement was probably made the last time you were here. So far that is all you have given us for a hardship is financial.

Mr. Perry – If you could explain to me what you consider a hardship that would help.

Chairman Weipert – A hardship is something that is unique to your property that is prohibiting you from using it. You need to demonstrate what is special about the zoning district, the shape of your property or the character of the property to get a variance.

Commissioner Rodman – Why you have to have this large of a sign, what is unique about this other than you need to display your product.

Mr. Stieber – The double drive-thru is unique to what they have out there. Traffic flows are also very important and that is why we feel there is a hardship due to the fact that it is a double drive-thru and there is lack of information being able to be displayed safely and quickly to get the customers through.

Commissioner Morelli – I will tell you McDonald's menu is extremely easy to read and to order off their board. The complete opposite of that would be Arby's, it is almost impossible to read their menu board, it is very confusing. They have a very small menu board. I don't have a problem with putting up the other panel up if it meant that all the other signs on the ground were gone. I don't have a problem with granting the variance although, in the motion I would consider putting in that there could be no more of those type signs installed. I wonder if that put even more straps on you because McDonalds changes every thirty (30) days or so.

Mr. Perry – I could live with no "little signs".

Commissioner Rodman - We have to consider that those are changeable panels. Next year the display could go away and you could have McDonalds plastered all over it.

Mr. Stieber – Once they are in the drive-thru, they already know their at McDonalds they are not trying to get corporate identification out of this. Just product information.

Commissioner Morelli – I purposely drove around all the other places to see where you could see that from. Unless you are at the Powerhouse Gym, you cannot see those signs.

Commissioner Rodman – You are stating that the two (2) menu boards that are existing are being removed and will be replaced?

Mr. Perry – No, we want to add one (1) panel.

Mr. Stieber – It is approximately 10 sq. ft.

Commissioner Bradley – It actually would be a variance of 20'-21' +/-.

Chairman Weipert – What else is going to come down?

Mr. Perry – All small signs.

Commissioner Rodman – This still does not stop him from getting temporary sign permits for promotional items.

Inspector Veltri – It is a completely different issue. The sign he is asking for is permanent.

Chairman Weipert – Does anyone from the audience want to speak?

Commissioner Rodman – If there is a motion made I would like to make sure that he can't keep coming in and making it bigger and bigger.

Chairman Weipert – Every application stands on its own. You can't put it in this one that they can't come back.

Commissioner Goodcase – I don't see what the hardship is.

ZBA 08-21-08 ALLIED SIGNS, INC – 22100 PONTIAC TRAIL

Motion by Rodman, supported by Goodcase

Motion to deny the signage for McDonalds due to the fact of a lack of hardship.

VOTE:

2 YEAS, 4 NAYS

Chairman Weipert – That means they are going to get it right?

Inspector Veltri – That motion was denied.

Chairman Weipert -- Any other motions?

ZBA 08-21-08 ALLIED SIGNS, INC – 22100 PONTIAC TRAIL

Motion by Morelli, supported by Herman

I move that we approve the variance per the drawing and stipulate that no other sign but the board sign can be put up. Zoning Ordinance Section 102-85 (a,b).

VOTE:

4 YEAS, 2 NAYS

Kheder Homes at Charleston Park – 411 Amelia Circle – Lot 55 – Under Construction

Mr. Kheder – My name is Joe Kheder and I am the builder at Charleston Park. I did purchase the site from Singh in October 2005. I would like to thank the committee for taking the time to hear this variance request. My wife Anne, she works with me and runs the show. These are my clients; Wil and Caryl VanderRoest and are moving here from Farmington Hills. It has been a real pleasure working here in South Lyon. We have 19 contracts and three (3) specs and two (2) models. One of the specs is going to go this weekend. We have about 25% relocations coming into Charleston Park.

We are here to request a variance relative to density on our particular lot. We have entered into a purchase agreement with the VanderRoests' to build them a 2,900 sq. ft. story and one-half home on a walk-out site. It is a beautiful site on the nature preserve on Amelia Circle. We will be installing a covered patio. The home and the patio meet the ordinance and the zoning. Our concern is that my clients are interested in putting in a built-in swimming (in-ground) on the property. That pool will push us out of the zoning density requirements. The home I am building is typical for Charleston Park. As you come into the project on Singh Blvd. it is basically the first home you see on the right hand side as you come in. We are modifying that floor plan a little bit for our clients on Lot 55. The lot is 495 sq. ft. (.22 of an acre). Within our agreement with our clients, we have contingency language relative to the approval of this pool. It is real important to us and the client. The pool will be a kidney shaped pool to fit in the relative location that we have. All of our preliminary work to this point has taken the swimming pool into consideration. We are by the wetlands and have to be sensitive to regulated property. We have spoken to the landscape architect relative to building a retaining wall to

accommodate this. Groundwater issues have been taken into consideration. It has been well thought out from the beginning.

Chairman Weipert – It looks like you already had it lifted.

Mr. Kheder – Our excavating contractor started on the site and the lots on Amelia are a real challenge. There were a lot of root balls and things of that nature and it really varies from site-to-site. This site took about 13 train loads of 1 x 3 crushed materials just to prepare it and put the foundation in. We prepped the soil in that area with crushed material and back-filled with a sandy-clay mixture knowing that if the pool went in; we are on a good solid foundation from the retaining wall back up to the home.

Commissioner Morelli – The stakes that are back there, are those stakes the lot line.

Mr. Kheder – No, that is the wetland line.

Commissioner Morelli – So this lot goes into the wetlands about 15' feet.

Mr. Kheder – You can see where they cleared back to the line (wetland). We will be doing a retaining wall of some sort but have not decided on the material. Probably a Uni-lock type material right up to that line.

Commissioner Morelli – How much concrete is going to go around the pool?

Mr. Kheder – We have not determined that yet.

Commissioner Morelli – That will make a difference on the property coverage.

Commissioner Rodman – Does the 340 sq. ft. you are asking for include all the concrete you will put in or just the pool?

Mr. Kheder – Just the pool.

Commissioner Morelli – So you will need more.

Chairman Weipert – Would it be about 2'-3' to walk around the pool?

Mr. Kheder – Yes that would be our intention, absolutely.

Commissioner Morelli – So you would need more of a variance.

Mr. Kheder – To incorporate that, yes. I would rather request a higher amount and then not need it then to have to come back to request another variance.

Commissioner Morelli – We had a few come in here from that sub and since it was a consent judgment sub, they did not take into consideration when they gave the lots smaller set-backs all the way around. What is the rear yard set-back?

Inspector Veltri – On this particular lot it is smaller because it backs up to a wetland greater than 100' deep. The common area west of this lot is over 400'. He is going to have a 25' rear yard set-back but that is for the building envelope. Not lot coverage.

Commissioner Morelli – So the porch fits on the building envelope.

Inspector Veltri – Yes. All of that is in.

Commissioner Morelli – Is the entire pool out of the 25%?

Inspector Veltri – No. When I did the calculations, there was a small amount about 28' left from the house, so I took that off from the 360 sq. ft. just by scaling the drawing. They had 20 sq. ft. left which brought it from 360 sq. ft. to 340 sq. ft. variance. The cases you have heard in the past, the pool has always been on an elevated platform. This one here is going to be going on-grade and the property is falling off to the back. Anything within 9" of grade does not count as lot coverage. It is patio.

Commissioner Morelli – Is the patio considered lot coverage?

Inspector Veltri – If it is greater than 9" above existing grade it is considered lot coverage. Driveways, sidewalks and patios are not counted as lot coverage.

Commissioner Morelli – He raised his grade 4' already.

Inspector Veltri – I have the site plan. There is a lot of dirt that is on a site that is all over the place and is raised while the house is under construction. A lot of times they will pile dirt and then they have to push the pile around so they can do the foundation, etc.

Mr. Kheder – I believe the issue is having a structure that is 9" above the grade. Grades vary all over the place. There is nothing in the ordinance that I know of that prohibits us from doing a retaining wall and then changing the grade as long as it meets the flow requirements that are set. It is more of how high above grade you are with a structure.

Commissioner Morelli – We have had people come in before who have built retaining walls, built up their ground and put a patio that is even with the grade and we considered that above grade in the past. There have been a few that come in that have reasonable requests and they are over the lot coverage but they have a small set-back.

Mr. Kheder – The hardship is exactly your point. We went from the typical 10' side yard set-back to and 8' which is roughly 20% just on one (1) side. That by design is providing

a larger building envelope and the courts never addressed the relative issue when you have a larger building envelope, you are by design promoting a larger home and the hardship comes into play relative to the rest of South Lyon that requires 25% and in Charleston Park we are still bound by the 25% requirement yet we are promoting a larger unit.

Commissioner Morelli – I understand that and I applaud you for being here as the builder/developer because that is usually not the case. Usually, the homeowner buys the house and don't realize they can only have a 2' x 6' piece of structure you can stand on and then you are over. They say when I bought the place they never told me I needed to come here. That's the norm and the homeowner is surprised. I applaud you for being here in this instance. I have a feeling that we are going to have a lot of these in this sub as this place gets built out.

Mr. Kheder – That leads me to the next hardship, I am builder in Michigan.

Chairman Weipert – You can't consider financial.

Mr. Kheder – I am not talking finance, I am talking emotion here. I would like to be building many more decks and basements and this is a real issue that we are dealing with for survival. In this economy we will do whatever our clients are asking us to do.

Commissioner Rodman – I have walked this site and right now your rear grade is level with the basement. There is probably a small step up or down however you are going to build the house.

Mr. Kheder – I am going to be filling that in some more. We wanted to let it settle, it is about a 1-1/2' below the brick ledge.

Commissioner Rodman – You are already almost 2'-3' higher than the house next door that is built. Is the grade where the existing house is or way up there?

Inspector Veltri – If you look at your drawing that is going to tell you some elevations. From the back of the house to the rear of the property line you will have almost a 6' drop in elevation. That is shown on the plan right now. If you can see the contour lines from the lot to the north you can see how some of that is going to blend. There is going to be soil that is put in to make it come to the site plan. Not necessarily just this drawing, but the site plan we have in the office. What you are seeing there is a little deceiving but if you are comparing it to the lot to the south, it is an undeveloped lot. The lot to the south will be low until it is built and then it will come up to meet the site plan.

Commissioner Rodman – Right now the flat area where the pool is going to sit is substantially higher than the lot to the north.

Inspector Veltri – He has not applied for the pool permit yet.

Mr. Kheder – When we build the retaining wall I can bring that wall up on the property line and create a return so the home to the north would be looking at some type of retention. However, that neighbor has sent a letter over here in support of this pool.

Commissioner Rodman -- Does that make it a raised elevation?

Inspector Veltri – If he is going to change the elevations, he is going to have to deal with me and the engineers.

Commissioner Morelli – The empty lot (#54) is that currently below the grade that it is supposed to be?

Inspector Veltri – It's not at its final grade. Final grade on those lots are not established until the house is built, so you will see adjustments.

Commissioner Morelli – The house that is in already and is landscaped, the back of his where the grass stops is lower because he did not change the grade.

Inspector Veltri – Once you go into it, you cannot adjust any grading in the wet land area and part of the next lot is in the wetland.

Mr. Kheder – On the south side of that south lot, I still own that lot and I have language in my contracts that talk to retention and it is something that the client needs to deal with regardless of which lot they pick. These lots that have walk-outs get nutty and they can get into a lot of expense to make them look really great or you can do it on the cheap but they meet the code. It is my intention to run this retaining wall onto the lot next door and terminate it there. I will just feather it down. Once I work out a purchase on that next lot, they are already going to see what is going on, physically when they walk the site. There is no surprise that some kind of retention is needed. I have a choice I can either feather that lot to zero or continue the retention to the next lot and deal with that issue. I probably will continue retaining all the way through because if you go two (2) more lots down (lot #52) they had me build a retaining wall. Two (2) more down south of that, there is no retaining wall. It is a case-by-case issue. United Lawnscape is the contractor I deal with. The fence will be right along that retaining wall and you have to have a fence for a pool, and that will die up at the house.

Commissioner Morelli – Joe, the concrete around there isn't going to matter?

Inspector Veltri – It depends if he is going to be raising the grade. This might help you out Bill. From the graded area into the wetland there is an 18' drop shown right on this plan right now. There was going to be a retaining wall there whether there was a pool or

not. If you look at the left rear corner of the house to the wetlands, that is a 7' drop in elevation. He may have to come down and level a little bit. If this came in through planning, the lot sizes in this subdivision would be from 15,000 sq. ft. to 12,000 sq. ft. This whole development will give us a rough way to go.

Mr. Kheder – One of my concepts for marketing this community is that it is really green in its concept. There is 111 acres at Charleston Park. About 50 acres are dedicated wetlands and parks. Higher quality, smaller units.

Chairman Weipert – For the homeowners that are moving in, just because it is a court order there is nothing wrong with the property. It is just that the site plan was rushed.

Commissioner Rodman – About 30% of the lots will be backing up to the wetlands. All my concerns for this pool have been addressed by Joe. I for one do not like to deny the use of a person's property. In this case there is a great hardship due to the fact of the lot size and consent judgment. With the answers Joe gave me and the lack area to put a pool in with the wet lands behind it, the low impact of the surrounding neighbors I can accept it. I see no problem.

**ZBA 08-21-08 – KHEDER HOMES AT CHARLESTON PARK, INC. – 411
AMELIA CIRCLE – LOT #54 - VACANT**

Motion by Rodman, supported by Morelli

I will make a motion to grant the variance to Kheder Homes at Charleston Park for 340 sq. ft. variance to build a pool in the rear yard due to the fact it abuts the wetlands to the rear of the property and per Section 102-456 (c) to fit the character of the neighborhood.

VOTE:

MOTION CARRIED UNANIMOUSLY

Jennifer Hill's Review of the By-Laws

Inspector Veltri – I would like to introduce Jennifer Hill.

Mrs. Hill – I am an attorney for Booth and Patterson and have been there 5-1/2 years and have been representing South Lyon the entire time. I am here to talk about the Michigan Zoning and Enabling Act that was adopted in South Lyon a few months ago. I will be attending all the ZBA hearings from now on.

Inspector Veltri – They use to be able to appeal it and go to Circuit Court.

Mrs. Hill – The major changes were in the notice and the protest petition. The notice has to go out to all of the occupants as opposed to just the person's name on the home and they have to go to all the occupants and be published in the paper 15 days prior to the hearing.

With the Protest Petition a landowner can file a protest petition protesting any applications for a variance and the petition would have to be signed by 20% of the landowners in the area that they are going to be rezoning and 20% of the area within 100' of the boundaries. It would actually go to the Council it would not come to the Zoning Board of Appeals. If an objector actually files a protest petition, City Council has to approve it by a 2/3 vote. It increases their vote that they have to get.

Chairman Weipert – Can you give me an example of a protest petition.

Mrs. Hill – It is something that City Council would have the authority to approve or overturn. Like an open space option. City Council I believe has the ultimate say on rezoning.

Commissioner Rodman – Does that protest petition include landowners adjacent to an applicant for a variance that is coming before us or just things that City Council has the authority to vote on?

Mrs. Hill – In a zoning situation it would be 20%. Say there are 10 acres being rezoned, owners of two (2) parcels would actually have to be the ones that would sign the protest petition. That would be enough signatures on the petition.

Inspector Veltri – I think what Bill was asking was can they only protest Council actions?

Mrs. Hill – Yes, it would go before City Council.

Chairman Weipert – Any city actions?

Mrs. Hill – Not any city actions. Just City Council action they can protest.

Commissioner Rodman – If a homeowner came in front of the board for a variance to erect a pole barn, and it was outside of the ordinance, 20% of the people within 100’ of them that did not want that pole barn, would that be considered a protest?

Mrs. Hill – No. It would have to go before City Council.

Commissioner Rodman – So that does not affect us at all.

Mrs. Hill – No.

Commissioner Morelli – In the new verbiage the word hardship was nowhere to be seen anywhere in there. When I asked Parvin (city attorney) that question he said that this is very developer friendly and the word hardship was left out. In the two (2) cases we heard today, one (1) was the developer did he need a hardship?

Mrs. Hill – It is actually practical difficulty. There are two (2) different standards and they are very different. One (1) is practical difficulty and the other is unnecessary hardship.

The board would have the authority to grant a non-use variance which is like the case today and that is practical difficulty standards. The unnecessary hardship standard comes in when you can actually grant a use-variance. You can allow a person to use their property in a way that is not initially permitted in the district.

Chairman Weipert – Most of what we do is practical difficulty. Everybody says hardship but they mean practical difficulty.

Mrs. Hill – When you are looking at a non-use variance the criteria such as an unique circumstances or physical conditions of the property involved such a narrowness, shallowness, shape, water and is not due to the applicant’s personal or economic difficulty. You also look that it is not so general or recurrent that you can’t make a general rule on it. It is not the result of the applicant’s own actions. Strict compliance with dimensional requirements will unreasonably prevent the property to be used for the purpose that renders the conformity unnecessarily burdensome. When looking at practical difficulty when you are granting the relief, the relief requested the minimum necessary to do substantial justice for the applicant and others in the district – substantial justice. You do have some discretion when weighing the interest between the applicant and other people in the district. Finally, it will not cause any adverse impact on the surrounding properties. Those are the “buzz” words when you are looking at a non-use variance.

When you are looking at the unnecessary hardship standard, the standard is that the property cannot be reasonably used in a manner consistent with the zoning. It also uses unique circumstances and not the general condition of the property, it will not alter the

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essential character of the locality and the hardship is not the result of the applicant's own actions. There is not a huge difference. Unnecessary hardship is the higher burden than the practical difficulty standard and you have to take a hard look at it to see if you want to allow someone to put in a knick-knack shop in an industrial building.

I will go through the basics of the ZBA.

In the membership, it is a three (3) year term and all electors must reside in the jurisdiction, a member may be on the Council but may not be the chair, there may be two (2) alternate members if someone abstains due to a conflict of interest. You may be paid a reasonable premium and charge expenses.

I would have to look at specifics – I haven't seen it addressed but I will research it if you want to know if an alternate is required to replace someone on the board if they sit on another board and that case has been brought before them.

Chairman Weipert – There has been a couple of cases where they have been at planning and they have to table the site plan hearing to get a variance and unless that is granted or not granted, they go back to the drawing board.

Mrs. Hill – Do you have any specific cases that I can look at? I will research it. I will look into a conflict of interest for members of the board.

The meeting must be called by the Chairman, be open to the public, five (5) members constitutes a quorum and you do have the power to subpoena witnesses and have an administrative review.

Inspector Veltri – There has been one (1) administrative review since I have been here.

Mrs. Hill – Applications may come before you where you are required to interpret situations where the layout is different on the site plan than what it actually is. You may review items from the Planning Commission, applications that are for parking or loading space requirements and changes in height resolutions. The language in the ordinance basically falls into the non-use variance; you can review an application to change the height regulation to permit the temporary building for up to two (2) years in undeveloped sections and six (6) months for developed sections.

Whenever you are entering a decision they have to have factual support. I would stay away from just merely citing the 102-85 (2) (a,b,c). You need factual support.

Commissioner Morelli – The cases today didn't need to come up with a hardship, they need to come up with a practical difficulty. These developers have these odd shaped lots and the builder in there wants to put on that lot and it fits and they fire-sale those lots out then another builder will buy it and want to put a house on there and then they come

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before us. What you are saying is that they need to show practical difficulty; the lots are small or whatever it is. They can prove that, so we give them variance, they sell the house, now the guy who bought the house wants to put the same size deck as the neighbor who has a normal size lot, the builder got a variance because it was an odd shape lot already. The new owner has practical difficulties also and he can prove it. So, do we give it to him too?

Mrs. Hill – It would have to be the minimum relief granted. If they only wanted a 20' deck, and now someone comes in and wants a 30' deck. If 20' works for person A, it should be able to work for you. It does not necessarily mean that you have to give them the bigger deck.

Commissioner Morelli – If you give them a grant, it has to be reasonable.

Mrs. Hill – You have a use-variance and a non-use variance and I think the application right now is tailored for a non-use variance. I would like to put together an application that has use variance standards set out that you can go through and the applicant will know what facts they have to show to support their position. You would have a way that you could analyze it.

Mrs. Weipert – Did you say that the applicant cannot have created the situation himself so if a developer came in and created all these goofy sized lots in order to maximize the number of lots, then it seems like they could come in ask for a variance to build the initial house, but if they sold the lot to someone, then could that next person come in and ask for a variance.

Inspector Veltri – The developer and builder are usually two different people.

Chairman Weipert – If Singh came in we would say you did it.

Inspector Veltri – They created the lots.

Mrs. Hill – I think there is a strong argument to be made by the developer who entered into a consent judgment and making their lots smaller. That is the start of it, then what is the end because what are they truly requesting. It would be on a case-by-case basis.

The problem when you were getting into the analysis on the pool was the lot coverage and it is going to be a problem for every person in that development. I am glad that you did not extend it to him on a general basis because every lot is going to be different. The consent judgment was going to be unique circumstance and that is where it was heading and I don't think that should be. I think all of the lots and the requests need to be analyzed on a case-by-case basis.

Commissioner Morelli – Most of the subs in our town seem to be R-2. When Trotter's Pointe came in, that was an R-2 sub and they were building these monster houses on them and we actually changed the ordinance on decks because every single person came in for a deck variance. We changed the ordinance to state that you could go 25% into the set-back and that relieved probably 90% of them. Every house was too big for those lots. That is what the builder is going after. With Singh, it was almost the opposite, instead of putting a big house on a small lot; they had the right size house but made all the lots smaller through consent judgment. A lot of them are going to be over the 25% if they want to put in a deck or whatever.

Inspector Veltri – We go out and look at the property when it is all done and when landscapers come in a lot of grades change but the last time we are on that lot is when we do the grade inspection. If it passes we don't go back. Two (2) months later I can't sit here and say it is the same. A lot of things change over-night and on weekends.

Commissioner Morelli – The guy from McDonalds he could not make any argument for hardship since there was no hardship, but he could have made a great argument for practical difficulty.

Mrs. Hill – Essentially he did. He said that it really is an unnecessary hardship when it really is practical difficulty. When I was listening to the criteria and standards it fell under practical difficulty. You were right on line.

Inspector Veltri – I would like to compliment the board that the questions you asked tonight were great. Bill, you were not clear in your mind on what was going on and then a couple things that were on the drawing that maybe you didn't see were clarified and then it came to light. That pulls information out of the applicant. He has to answer them to satisfy the answer to your question.

Commissioner Rodman – In the McDonalds case, he had a difficulty because he needed more signage because corporate wanted to introduce more items. In that case, it is still a monetary gain also.

Inspector Veltri – When it comes to signs, you can only use an example within 300'.

Commissioner Rodman – With practical difficulty do they have to prove all of those stipulations? If one (1) of them does not meet then they have not proved them all and it is denied.

Mrs. Hill – Right.

Inspector Veltri – That is for a use-variance.

Chairman Weipert – What if someone takes something to City Council to rezone something?

Inspector Veltri – That would be a protest petition.

Chairman Weipert – Would we review it?

Mrs. Hill – It would have to come in as an application. Let me look into it and get back to you next month.

Inspector Veltri – If it is a rezoning request, it goes to the planning commission. They make a recommendation to Council. If 20% of the people who live within 100' sign a petition, they can bring that decision to you.

Mrs. Hill – No. The protest petition only increases the vote that is required to approve the decision.

Commissioner Rodman – Lets go with that, an applicant goes to planning for rezoning. Planning takes it to Council, Council denies them and the applicant does not like that decision. Can he come in front of the ZBA to file an administrative position and say I want ZBA to hear this case?

Mrs. Hill – That would be an application for the ZBA to overturn the Council's decision.

Commissioner Rodman – That is what he would be asking for. We could then, in the future, get case like that.

Commissioner Goodcase –What situation would we need witnesses, it seems awfully formal.

Chairman Weipert – For testimony, to build factual basis to make a decision.

Commissioner Herman – We need a conflict of interest policy.

Mrs. Hill – I will get back to you on that conflict of interest. Thank you.

Commissioner Morelli – At our last meeting we adopted some by-laws that Parvin was going to look at, do you have them.

Inspector Veltri – Attorney Parvin has them.

STAFF REPORTS:

No meeting is scheduled in September.

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ZBA 08-21-08 – ADJOURNMENT

Motion by Morelli, supported by Bradley

To adjourn the meeting at 8:30 P.M.

VOTE:

MOTION CARRIED UNANIMOUSLY

Inspector Veltri – The City thanks you for your time.

Respectfully Submitted,


Philip Weipert, Chairman


Marianne Jamison, Recording Secretary